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C.M.A.No.2112 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.2112 of 2021
and C.M.P.No.11617 of 2021

The Manager,
M/s.TATA AIG General Insurance,
403-L 2nd Floor,
Pantheon Road,
Egmore, Chennai 600 008.

.. Appellant

Vs.

1.A.Perumal

2.P.Sampoornam

3.A.Lalitha

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2020, made



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in M.C.O.P. No.82 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi.

For Appellant : Mr.J.Michael Visuvasam

For RR1 & 2 : Mr.F.Terry Chella Raja

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 16.12.2020, made in M.C.O.P. No.82 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi.

2.The appellant is the 2nd respondent in M.C.O.P. No.82 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one P.Ragavan, who died in the accident that took place on 23.03.2016.



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3. According to the respondents 1 and 2, on the date of accident, at about 09.30 p.m, when the 1st respondent and his son, the deceased P.Ragavan was standing in the left side of the mud road near Govindapuram, opposite to RDS Tiles shop, the driver of the Lorry bearing Registration No.TN-03-J-6810, owned by the 3rd respondent, drove the same from Ambur to Vellore direction in a rash and negligent manner, hit on the said P.Ragavan and caused the accident. The accident has occurred only due to rash and negligent driving by driver of the Lorry owned by the 3rd respondent. In the accident, the said P.Ragavan sustained severe head injuries and died on the spot. Hence, the respondents 1 and 2 filed the said claim petition, claiming compensation against the 3rd respondent and appellant, as owner and insurer of the said vehicle respectively.

4. The 3rd respondent, owner of the Lorry, remained exparte before the Tribunal.



WEB COPY 5. The appellant, insurer of the vehicle, filed counter statement and denied all the averments made by the respondents 1 and 2 in the claim petition. According to the appellant-Insurance Company, the death of the son of the respondents 1 and 2 is a suicide and not a motor accident. On perusal of Final Report dated 08.04.2016 submitted by the Ambur Town Police before the Judicial Magistrate, Ambur, it is seen that the deceased P.Ragavan demanded the respondents 1 and 2/his parents to buy a new Two Wheeler with gear for him, for which the respondents 1 and 2 refused. Due to that reason, on the date of accident, the deceased P.Ragavan out of anger and with an intention to commit suicide, went out of the house and was lying down on the left rear side wheel of the Lorry owned by the 3rd respondent, which was parked at the service road nearby his house. The driver of the said Lorry who came back after having a tea at the opposite side shop, started the Lorry, due to which the rear wheel of the Lorry ran over the head of deceased P.Ragavan and caused the accident. Since the intention of the deceased to commit suicide was clearly made out by the Police on their detailed investigation, the criminal



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case was closed as 'mistake of facts'. For the death not due to the motor accident and failure to prove the negligence against the person on whom the compensation is claimed, this claim petition filed under Section 166 of the Motor Vehicles Act will not sustain and the respondents 1 and 2 have no *locus standi* to file this claim petition as against the appellant-Insurance Company. The respondents 1 and 2 have to prove the age of the deceased. Having claimed that the deceased P.Ragavan was a student at the time of accident, earning no income, the amount of Rs.15,00,000/- claimed by the respondents 1 and 2 is excessive and exorbitant and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one Venkatesan, eye-witness to the accident as P.W.2, Karthick as P.W.3 and marked 12 documents as Exs.P1 to P12. The appellant-Insurance Company has examined one Praveen Kumar, Sub-Inspector of Police as R.W.1, Sudhakar/driver of the Lorry as R.W.2 and marked 2 documents as Exs.R1 & R2.



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7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Lorry owned by the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.20,76,000/- as compensation to the respondents 1 and 2.

8.Against the said award dated 16.12.2020, made in M.C.O.P. No.82 of 2016, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company reiterated the averments in the counter statement and submitted that the Tribunal failed to consider the credibility of evidence of 1st respondent as P.W.1 and evidences of P.W.2 and P.W.3. P.W.2 is relative of respondents 1 and 2 and P.W.3 is resident of the same village. They are only interested witnesses. The Tribunal failed to see that when according to the 1st



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respondent, he and his deceased son were standing in the mud road, only his son was fatally injured while the 1st respondent did not suffer any injury. The Tribunal failed to appreciate the oral and documentary evidence let in by the appellant. In any event, the monthly income fixed by the Tribunal is excessive. The total compensation granted by the Tribunal is also excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 and 2 made submissions in support of the award of the Tribunal and submitted that the learned Judge considering the oral and documentary evidence placed before it, rightly fixed the negligence on the driver of the Lorry and liability on the appellant. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 and 2 and perused the entire materials available on record.



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12.From the materials on record, it is seen that it is the case of the respondents 1 and 2 that on the date of accident, at about 9.30 p.m., while the 1st respondent and his son were standing on the left side of the mud road, near Govindapuram, opposite to RDS Tiles shop, a Lorry owned by the 3rd respondent and insured with the appellant which was driven by its driver in a rash and negligent manner, dashed on the son of the respondents 1 and 2 and their son suffered severe head injury and died on the spot itself. To substantiate their case, the 1st respondent examined himself as P.W.1, one Venkatesan, eye-witness to the accident was examined as P.W.2, one Karthick was examined as P.W.3 and FIR which was registered against the driver of the Lorry was marked as Ex.P1. According to the appellant-Insurance Company, the son of the respondents 1 and 2 did not die due to the injuries in the motor accident, but he committed suicide. To prove their case, they examined the Sub-Inspector of Police as R.W.1 and one Sudhakar, driver of the Lorry as R.W.2 and marked the Final Report as Ex.R1 and rough sketch as Ex.R2.



WEB COPY 13. From the award of the Tribunal, it is seen that R.W.2, driver of the

Lorry deposed that he parked the Lorry in the service road to have a tea. After having tea, he came and checked all the tyres of the Lorry and started the Lorry. If really the deceased was lying under the rear tyre of the Lorry, R.W.2 would have noticed and would not have started the Lorry. Further, R.W.2, in his evidence has stated that after the accident, he made arrangements to send the injured to the Hospital and went to the Police Station, but he has not given any complaint stating that the deceased committed suicide. FIR was registered only based on the complaint given by the 1st respondent on the next day at about 9.00 a.m. If really R.W.2 had gone to Police Station immediately after the accident, nothing prevented him from lodging a complaint that son of the respondents 1 and 2 committed suicide under rear tyre of the Lorry. Hence, the Tribunal rightly did not accept the evidence of R.W.2/driver of the Lorry. Further, R.W.1, Sub-Inspector of Police failed to prove that Ex.R1 – Final Report was filed before the concerned Magistrate Court and the same was accepted by the Court. In Ex.R2 – Rough Sketch, there is no service road and



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in the mud road, accident has occurred. P.W.1 to 3 have stated that accident occurred in the mud road when the driver of the 3rd respondent drove the Lorry in a rash and negligent manner, dashed on the son of the respondents 1 and 2 who was standing in the left side of the mud road along with the 1st respondent and caused the accident. The Tribunal considering the evidences of P.W.1 to P.W.3, R.W.1, R.W.2, Ex.P1 – FIR and Ex.P2 – Rough Sketch, held that the deceased had not committed suicide and accident has occurred only due to the negligent act of R.W.2/driver of the Lorry owned by the 3rd respondent. There is no reason to interfere in the said finding of the Tribunal.

14.It is the case of the respondents 1 and 2 that at the time of accident, the deceased P.Ragavan was aged 17 years, studying XI standard at Hindu Higher Secondary School at Ambur. The 1st respondent deposed to that effect. The Tribunal considering the age of the deceased P.Ragavan, following the judgment of this Court reported in **2019 (1) TN MAC – 54 (DB) [Andal Vs. Avina Kannan]** and considering the cost of inflation index for the year 2016-2017, fixed a sum of Rs.13,302/- per month as notional income of the



deceased. The accident is of the year of 2016. The deceased was a student and

non-earning member. In view of the fact that the deceased was a student at the

time of accident, the notional income fixed by the Tribunal is excessive and

hence, the same is modified and reduced to Rs.10,000/-. The deceased was

aged 17 years at the time of accident. The Tribunal rightly granted 40%

enhancement towards future prospects, applied the multiplier '18' following

the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC**

(Sarla Verma and others vs. Delhi Transport Corporation and another)

and after deducting 50% towards personal expenses of the deceased, awarded

compensation towards loss of dependency. Fixing the monthly income at

Rs.10,000/-, granting 40% enhancement towards future prospects, applying

multiplier '18' and after deducting 50% towards personal expenses of the

deceased, the amounts granted towards loss of dependency is modified to

Rs.15,12,000/- (Rs.10,000/- + 4000 [Rs.10,000/- X 40%] X 12 X 18 X 50%).

The Tribunal has awarded only a sum of Rs.50,000/- towards loss of love and

affection to the respondents 1 and 2, who are the parents of the deceased

P.Ragavan. The same is meagre and hence, enhanced to Rs.80,000/- at the



rate of Rs.40,000/- each. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate.

The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	20,11,176/-	15,12,000/-	Reduced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	50,000/-	80,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
	Total	20,76,176/- rounded off to 20,76,000/-	16,22,000/-	Reduced by Rs.4,54,000/-

The Tribunal has granted compensation along with interest at the rate of 6% per annum. Considering the raise in cost of living, the respondents 1 and 2 are entitled to interest at the rate of 7.5% per annum.



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15.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.20,76,000/- is modified and reduced to Rs.16,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.82 of 2016. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount lying the deposit to the credit of M.C.O.P.No.82 of 2016 if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (S.S., J)
02.09.2022



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V.M.VELUMANI, J.
and
S.SOUNTHAR,J.

(gsa)

To

- 1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Vaniyambadi.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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