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C.M.A.No.3484 of 2021

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 22.07.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3484 of 2021
and C.M.P.No.10026 of 2022

1.Satya

2.Minor Dhanalakshmi

3.Minor Rudrapriya

4.P.K.Santhanam

5.Pachiyammal (died) ...Appellants/Petitioners

(Minors 2 and 3 are represented by
her mother and natural guardian
1st petitioner Mr.Satya)

Vs.

1.N.Sudharsan

2.Narayanamoorthy Travels,
rep. by its Proprietor,
Mr.B.Narayanamoorthy,
No.142 B, Peters Road,
Thousand Lights,
Chennai – 600 006.



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3.United India Insurance Company Limited,
No.235,Gandhi Road,
Arni – 632 301,
Thiruvannamalai District.

4.Rajendran

5.ICICI Lombard General Insurance Company Limited,
Zenith House,
Keshavrao Khade Marg,
Mahalaxmi,
Mumbai – 400 034.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 16.04.2021 in M.C.O.P.No.273 of 2011 on the file of the learned Judge, Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellants : Mr.S.Thirunavukkarasu

For Respondents : Mr.S.Arun Kumar for R3

R2 – Served – No appearance

Not ready in notice
regarding R1 and R4
- No appearance

Mr.P.Mahesh for R5



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JUDGMENT

The petitioners before the learned V Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, in M.C.O.P.No.273 of 2011 are the appellants before this Court. The parties are referred to in the same rank and array as before the trial Court.

2.The facts in brief which has culminated in filing of the above appeal are as follows:

The petitioners are the legal representatives of late Gnanasekaran being his wife, daughters and parents. They have filed a claim petition seeking compensation of a sum of Rs.12 lakhs for the death of Gnanasekaran in a road accident on 19.06.2010 at about 03.30a.m.. The petitioners would submit that the said Gnanasekaran was employed as a Driver of the omni bus of M/s.Narayanamoorthy Travels and that he was paid a sum of Rs.12,000/- per month. It is their case that on the ill fated day, the said Gnanasekaran was driving the Omni bus, bearing



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Registration No.TN 25U 6666 on the GST Road. When the bus reached Maduranthagam it collided with the lorry bearing Registration No.TN 07 AP 7173 which was parked on the road without any indication or parking signal. As a result of which, the Omni bus has dashed against the lorry. Apart from the deceased, others have also sustained injuries. The petitioners had filed a petition against the 1st and 4th respondents who are the owners of the omni bus and the lorry and the respondents 3 and 5 are the insurer of the vehicles. Pending the proceedings, the 5th appellant Pachaiyammal, the mother of the deceased had passed away.

3.The 3rd respondent who is the insurer of the Omni bus had filed a counter denying the negligence stating that the driver of the omni bus namely Gnanasekaran did not possess a valid driving license to drive the vehicle. He would also contend that at the time of the accident, the vehicles had no valid permit and FC. However, they had gone to state that the accident has occurred only on the negligence of parking the



lorry in the middle of the road without any indication. Therefore, the Insurance Company and the owner of the lorry is liable to pay compensation to the petitioners. They further contended that the petitioners would have to claim compensation under the Workmen's Compensation Act. They had submitted that the petitioners should approach the learned Commissioner under the Workmen's Compensation Act. They had denied the age, income and the avocation of the deceased.

4.The 5th respondent Insurer of the lorry had filed a counter *inter alia* contending that the accident occurred only on account the negligence of the driver of the bus. The lorry was parked on the road side and not in the middle of the road. The First Information Report had been lodged by a passenger of the bus who had contended that the accident had occurred only on the negligence of the driving of the bus driver. They had also put the driver of both the vehicles to strict proof



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that they possessed a valid driving license and the vehicles had valid permit and FC.

5.The deceased and the injured persons in the above accident had filed separate claim petitions. Thereafter, the learned V Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai conducted a joint trial of all the claim petitions and a Common Judgment has been passed. With reference to the issue of negligence, the Tribunal had taken note of the fact that the First Information Report which was lodged by one of the passengers travelling in the omni bus in which it was stated that the accident had occurred on account of the rash and negligent driving of the bus by the driver, namely, the deceased Gnanasekaran. However, the Insurance Company had come forward with the case that the accident had occurred only on account of the rash and negligent driving by the driver of the lorry. They have also examined PW1 and PW2 and marked Ex.P1 to Ex.P45. Ex.R2 is the details of the find paid by the lorry driver for parking the lorry in a non



parking place. Ex.R7 is the investigation report. The 5th respondent would also state that in the connected claim petitions, the 3rd respondent United India Insurance Company alone was asked to pay compensation on behalf of the 1st respondent, the owner of the omni bus and therefore the same yardstick need to be applied here.

6.The Tribunal had also taken into account the fact that in that claim petition, the owner and the insurer of the lorry have not been impleaded as parties and therefore, the Judgment given there would not have a bearing on the case at hand. The Tribunal after assessing the evidence both documentary and oral came to the conclusion that the driver of the deceased driver Gnanasekaran was primarily negligent and fastened 70% negligence on him. However, the lorry driver was also mulcted with contributory negligence since he had parked the lorry at a place where it was not parking. Therefore, the negligence for not parking in the parking bay was fixed at 30%.



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7.As regards the quantum, the petitioner in MCOP No.273 of 2011 had produced Ex.P.38 – Salary Certificate issued by the 2nd respondent showing the monthly income of Rs.12,000/-. The Tribunal has not considered the same as the author of Ex.P.38 has not been examined. The Tribunal therefore adopted a notional income of Rs.10,000/- to which 25% of future prospects was added and 1/4th deducted towards personal expenses since the deceased was 43 years at the time of death multiplied of 14 was adopted. Therefore, the annual dependency works out to a sum of Rs.1,12,500/- by adopting a multiplier of 14, the total worked out to a sum of Rs.15,75,000/-.

8.Apart from that, the Tribunal has granted amounts under the head of loss of estate, funeral expenses, loss of consortium and loss of love and affection, etc., Ultimately, the compensation was fixed at Rs.17,75,000/- since 70% of contributory negligence was mulcted the



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deceased Gnanasekaran the total compensation that was payable by the respondent was Rs.5,32,500/-.

9.The claimants are aggrieved by the Award on two grounds, (1)fastening of negligence on the deceased Gnanasekaran and (2) quantum of compensation, particularly, with reference to loss of dependency.

10.The appellants relied upon the two Judgments of this Court as follows:

(1) 2018 (1) TN MAC 544 (SC)

Archit Saini and another v. Oriental Insurance Company Limited and others

(2) 2018 (1) TN MAC 663 (MAD)

Reliance General Insurance Company Limited, Sri LakshmiComplex, I Floor, Parthi Street, Omalur Main Road, Swarnapuri, Salem District, rep.by its Branch Manager v. Ayyadurai and others



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11.As regards the negligence, I see no reason to interfere with the finding of the Tribunal and therefore, the negligence would continue to be apportioned as the ratio is 70:30. The Tribunal below has committed an error in reducing the salary despite the fact that the claimants have filed Ex.P.38 which is the Salary Certificate issued by the 2nd respondent that he is the driver of the 2nd respondent/Agency. It is evident that on the said date, the deceased Gnanasekaran was driving the bus belonging to the 2nd respondent.

12.In these circumstances, there is no necessity for the Tribunal to disbelieve Ex.P.38. Further, a perusal of the order would show that the Tribunal has awarded Rs.10,000/- alone as monthly income. The Award under this head requires modification. It is admitted that the deceased was employed in the 2nd respondent Travels. The salary shown in Ex.P.38- Salary Certificate shall be taken which is a sum of Rs.12,000/-. To this, future prospects of 25% is to be added which



works out to Rs.15,000/- per month. The annual income would be a sum of Rs.1,80,000/- out of this amount $\frac{1}{4}$ th has to be deducted towards personal expenses. Therefore, the annual contribution to the family would be a sum of Rs.1,35,000/-. The multiplier to be adopted is 14. Therefore, the loss of income would be a sum of Rs.1,35,000/- x 14 = 18,90,000/-. In all other respects, the Award remains unaltered. Therefore, taking into consideration the above aspects, the modified amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.15,75,000/-	Rs.18,90,000/-	Enhanced
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Transportation	Rs.10,000/-	10,000/-	Confirmed
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of consortium to the 1 st petitioner	Rs.40,000/-	Rs.40,000/-	Confirmed
6.	Loss of love and affection to the	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
	petitioners 2 to 4			
	Total	Rs.17,75,000/-	Rs.20,90,000/-	
		70% contributory negligence committed by the deceased (1775000 x 70% = Rs.12,42,500/-)	70% contributory negligence (Rs.20,90,000 x 70% = Rs.14,63,000/-)	
	Total compensation awarded	Rs.5,32,500/-	Rs.6,27,000/-	

The 5th respondent Insurance Company is liable to pay only 30% of the above amount, i.e., a sum of Rs.6,27,000/-.

13.This Civil Miscellaneous Appeal is partly allowed. As the insurer of the 4th respondent's vehicle, the 5th respondent/Insurance Company is directed to deposit the said sum of Rs.6,27,000/-, less the



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amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.273 of 2011 on the file of the learned V Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier.

14.On such deposit, the appellants/Claimants 1 and 4 are permitted to withdraw the entire award amount with proportionate accrued interest and costs, as apportioned by the Tribunal by making necessary applications.

15.The share of the minors/2 and 3 claimants shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors/ 2 and 3 claimants shall be paid to the mother of the minors, once in three months, till they attain majority.



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The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

22.07.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.



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P.T. ASHA, J,

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