



C.M.A.No.891 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2022

CORAM:

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

C.M.A.No.891 of 2021
and C.M.P.No.5116 of 2021

The Branch Manager,
National Insurance Company Ltd.,
Hero Vertical 101 106, BMC House Ni,
New Delhi-110 001.

.. Appellant

Vs.

1.S.Sudha
2.Singaram
3.Minor Devi
4.Minor Sivasakthi
5.Minor Sivaguru
6.Sasi @ Sasikumar
(Minors 3 to 5 are represented by their
mother Sudha, 1st respondent herein)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 28.02.2019 made in M.C.O.P.No.29 of 2014 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Panruti.

For Appellant
For R1 & R3 to R5
For R6

: M/s.R.Sree Vidhya
: M/s.T.Gobinath
: M/s.T.Arockia Dass



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J U D G M E N T

(Judgment of the Court was delivered by **S.SOUNTHAR,J.**)

WEB COPY Aggrieved by an award of the Motor Vehicles Accident Claims

Tribunal, granting compensation to respondents 1 to 5/claimants for the death of one Sivabooshanam, husband of 1st respondent, son of second respondent and father of respondents 3 to 5, the insurer of the offending vehicle belonged to 6th respondent has come up by way of this appeal.

2. According to the respondents 1 to 5, the claimants, the deceased Sivabooshanam was travelling as a pillion rider in a two wheeler TVS Star City bearing Registration No.PY 01 AL 6810, driven by one Narayanasamy on 30.06.2014. While the said Narayanasamy was driving the two wheeler from East to West direction on the left hand side of the road by observing traffic rules, the 6st respondent who rode the two wheeler Hero Igniter bearing registration No.TN 15 2174 came from behind and dashed against the vehicle on which the victim was travelling as a pillion rider. As a result of the same victim died. According to the respondents 1 to 5, the victim was aged about 35 years at the time of accident and he was engaged in agriculture and as a bullock cart owner, earned not less than Rs.20,000/- per month.



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WEB COPY 3. The 6th respondent, owner of the offending vehicle filed a counter and resisted the claim petition mainly on the ground the two wheeler in which the deceased victim travelled as a pillion rider was driven by its rider in a rash and negligent manner and he stopped the vehicle suddenly by applying sudden break. Therefore according to the 6th respondent the accident had taken place only due to a rash and negligent driving on the part of the rider of the two wheeler in which the deceased was travelling as a pillion rider.

4. The appellant herein had filed a counter making averment to the effect that accident had taken place only due to a rash and negligent driving of rider of the vehicle in which victim was travelled. The appellant also disputed the age, avocation and income of the victim. The Tribunal on appreciation of the oral and documentary evidences came to the conclusion that the accident had taken place only due to a rash and negligent driving of the vehicle of the 6th respondent, consequently fastened the liability on the insurer of the 6th respondent vehicle namely the appellant. The Tribunal having regard to the date of accident fixed the monthly income of the deceased at Rs.11,000/- and



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applied multiplier of 17 and awarded compensation of Rs.24,27,896/-.

Aggrieved by the same the insurance company is before this Court.

5. The learned counsel for the appellant would submit that the Tribunal without appreciating the evidences of R.W.1 and R.W.2 namely the owner of the vehicle insured with the appellant and the pillion rider of the said vehicle and also the judgment of the criminal court in Ex.R.1, erred in giving a finding that the accident had taken place only due to a rash and negligent driving of the 6th respondent.

6. The learned counsel further submitted that the monthly income fixed by the Tribunal at the rate of 11,000/- per month without evidence is highly excessive. The learned counsel also submitted that the amount awarded by the Tribunal under various conventional heads are excessive, in view the ratio laid down by “Pranay Sethi case”. The learned counsel appearing for the respondents 1 to 5 /claimants would submit that the Tribunal rightly came to the conclusion that the 6th respondent was at fault by relying on the Ex.P.1, F.I.R. It was also submitted that the judgment rendered in criminal Court



under Ex.R.1 acquitting the 6th respondent is not binding on the Tribunal. The learned counsel further submitted that the income of Rs.11,000/- fixed by the Tribunal is very much on lower side and hence the quantum of compensation arrived at by the Tribunal requires no interference.

7. Heard arguments of the learned counsel for the appellant and contesting respondents, perused the typed set of papers. The Tribunal while fixing negligence on the part of the 6th respondent rider of vehicle bearing registration No.TN 15 2174, placed reliance on F.I.R. Ex.P.1 wherein the 6th respondent was cited as an accused. The case of the respondents 1 to 5/claimants is that the 6th respondent came from behind and hit the vehicle in which the victim was traveling as a pillion rider in a rash and negligent manner. However, the respondents 1 to 5/claimants have not examined any eyewitness to the incident. On behalf of the 6th respondent, he examined himself as R.W.1 and the pillion rider of the 6th respondent's vehicle was examined as R.W.2, the Senior Assistant of the appellant insurance company was examined as R.W.3. R.W.1 in his evidence, deposed that rider of vehicle in which the victim was traveling as pillion rider, without observing traffic



rules suddenly applied break and consequently accident had taken place. The

other witness namely R.W.2 though in his chief examination deposed that

accident had taken place due to a rash and negligent driving by the rider of

the vehicle in which deceased Sivabooshanam was traveling, in his cross

examination he deposed that he did not know the number of the vehicle in

which the victim traveled and the number of the vehicle in which he traveled

as a pillion rider. Therefore, the evidence of R.W.2 is not believable. However

the tribunal erred in completely ignoring the evidence of R.W.1, who was an

eyewitness and driver of the offending vehicle. In the absence of examination

of any eyewitness on behalf of the respondents 1 to 5/ claimants, based on

F.I.R., only, entire negligence cannot be fixed on the 6th respondent.

Therefore, in the facts and circumstances of the case and evidence available

on record, we are inclined to fix 25% negligence on the part of driver of the

vehicle in which deceased victim was traveling as a pillion rider. Coming to

the quantum fixed by the Tribunal is concerned, the monthly income of the

deceased was fixed at Rs.11,000/-. Though there is no satisfactory evidence to

support the avocation and income of the victim having regard to the date of

accident namely 01.06.2014, we are inclined to fix notional income of



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deceased at Rs.11,000/-.

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8. The Tribunal fixed age of the victim at 35 and applied multiplier as 17. As per the law laid down in ***SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER***, the applicable multiplier for the age of 35 is 16. Therefore, we modify the multiplier as 16. Having regard to the age of the deceased, future prospects can be granted at 40%. Therefore loss of dependency would be Rs.11,000 + 40%= Rs.15,400/- (Rs.15,400/- X 12 X 16 X $\frac{3}{4}$ = Rs.22,17,600/-). Since we fixed 25% of negligence on the part of the rider of the vehicle in which the victim traveled as a pillion rider 25% (Rs.5,54,400/-) of the above said sum has to be deducted from compensation payable to the claimants. If Rs.5,54,400/- is deducted, the amount payable to the claimants under loss of dependency would be Rs.16,63,200/-. In addition to that the 1st respondent is entitled to Rs.40,000/- towards loss of consortium as against Rs.1.00 lakhs awarded by the Tribunal. The second respondent father is entitled to Rs.40,000/- towards loss of love and affection instead of Rs.25,000/- awarded by the Tribunal. The respondents 3 to 5 are entitled to Rs.40,000/- each towards loss of love and



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affection (totally Rs.1,20,000/- towards loss of love and affection) instead of Rs.75,000/- awarded by the Tribunal. The compensation awarded under other conventional heads are confirmed. Therefore, the compensation fixed in this appeal is modified as follows:

<i>S l . N o</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of dependency	21,97,896/-	16,63,200/-	Reduced
2.	Loss of Consortium	1,00,000/-	40,000/-	Reduced
3.	Loss of love & affection to 2nd respondent	25,000/-	40,000/-	Enhanced
4.	Loss of love & affection to respondents 3 to 5	75,000/-	1,20,000/-	Enhanced
5	Transportation	5,000/-	5,000/-	Confirmed
6	Funeral expenses	25,000/-	25,000/-	Confirmed
	Total	24,27,896/-	18,93,200/-	Reduced by 5,34,696/-

9. In the result:

1. This Civil Miscellaneous Appeal is allowed by reducing the compensation awarded by the Tribunal from Rs.24,27,896/- to



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Rs.18,93,200/-.

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2. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together 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. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the modified award amount, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.
3. If the amount already deposited by the insurance company exceeds the amount awarded in this appeal the appellant is entitled to withdraw the excess amount.
4. Out of the above said compensation amount the 1st respondent is entitled to withdraw Rs.5,93,200/-, the 2nd respondent is entitled to withdraw Rs.2,50,000/-, the respondents 3 to 5 are entitled to compensation of Rs.3,50,000/- each towards their share and they are entitled to withdraw the same by satisfying the Tribunal as to the fact of attaining majority.



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5. Consequently, connected miscellaneous petition is closed.

6. There shall be no order as to costs.

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

01.09.2022

Index : Yes / No
Speaking/Non-speaking Order
jai

To

1. The Motor Accident Claims Tribunal,
(Subordinate Judge), Panruti.

2. The Section Officer,
VR Section,
High Court, Madras.



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V.M.VELUMANI, J.



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