



C.M.A.No.1655 of 2022

and

C.M.A.No.2268 of 2021

and C.M.P.No.12298 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1655 of 2022

and C.M.A.No.2268 of 2021

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C.M.A.No.1655 of 2022

The Divisional Manager,
United India Insurance Company Ltd,
3rd Party Claims Hub, Katpadi Road,
Vellore.

...Appellant

Vs.

1.Srinivasamurthy,
2.K.Kamala,
3.K.Harish
4.M/s.Mahaveera Transport (P) Ltd,



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Opp.Hero Honda Company,
Malpoura Village, Dharuhera,
Rewaria District, Hariyana State.

5.The Regional Manager,
Andhra Pradesh State Road Transport
Corporation, Tirupathi,
Chitoor District.

...Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 09.04.2021 and made in M.A.C.T.O.P.No.1800/2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Triupattur.

For Appellant : Mr.D.Bhaskaran
For R1 to R3 : M/s.M.Malar

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1.Srinivasamurthy
2.K.Kamala
3.K.Harish

...Appellants

Versus

1.M/s.Mahaveera Transport (P) Ltd.,

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Opp. Hero Honda Company,
Malpoura Village,
Dharuhera Rewari District,
Haryana State.
(Since R1 remained exparte before the Tribunal her presence may be
dispensed with)

2.The Divisional Manager,
United India Insurance Company,
3rd Party Claims Hub,
Katpadi Road,
Vellore.

3.The Regional Manager,
Andhra Pradesh State Road Transport Corporation
Tirupathi
Chitoor District.

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award against the judgment and decree dated 09.04.2021 and made in M.A.C.T.O.P.No.1800/2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellants : M/s.M.Malar

For R1 : Ex-parte

For R2 : M/s.D.Bhaskaran

For R3 :M/s.G.V.Shoba



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COMMON JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The appellants/claimants have filed C.M.A.No.2268 of 2021 aggrieved by the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1800 of 2013. The Insurance Company has filed C.M.A.No.1655 of 2022 challenging the finding of the negligence and regard to the quantum of compensation awarded by the Tribunal.

2.For easy convenience, parties are referred to as per their rank in M.C.O.P.No.1800 of 2013.

3.The claimants are the parents and brothers of the deceased Padmapriya.

4.It is the case of the claimants that on 14.06.2013 at about 12:45 a.m when the deceased was travelling from Bangalore to Tirupati in GARUDA APSRTC (Bus bearing Reg.No. AP 11 6044) and when proceeding at Vaddanathopu, NH4, near Nangali of Mulbagal Taluk, a



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Container lorry bearing Reg.No.HR47-D-5853 came in the opposite direction in a rash and negligent manner and dashed against the right side of the bus. Due to the accident, the bus and the container lorry caught fire in which Padmapriya was burnt and died on the spot. The claimants, hence filed the claim petition for compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs) against the owner of the container lorry and the Insurer who is the second respondent herein and the Andhra Pradesh State Transport Corporation.

5.The first respondent remained ex parte.

6.The second respondent herein filed a counter stating that the container lorry was not driven in a rash and negligent manner. On the other hand, it was the bus belonging to the 3rd respondent herein which had to maintain timing that was driven in a rash and negligent manner. The driver of the bus had given a false complaint against the container lorry driver. In any event, the 3rd respondent is guilty of contributory negligence because the accident was a head on collision.



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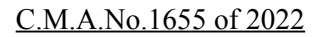
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7.The third respondent herein filed the counter stating that the bus was not driven rashly. The accident took place only due to the rash and negligent of the driver of the container lorry. After investigation, the police also filed the final report against the driver of the container lorry.

8.Before the Tribunal, the claimants examined two witnesses on their side as P.W.1 and P.W.2 and marked 30 documents Ex.P1 to P.30. The respondents examined three witnesses as R.W.1 to R.W.3 and marked fifteen documents as Exs.R.1 to R.15.

9. The Tribunal on the basis of the evidence and pleadings on record found that the driver of the container lorry was guilty of negligence and the second respondent as the Insurer is liable to pay compensation. The Tribunal awarded the total compensation of Rs.28,98,616/- together with 7.5 % interest. The claimant has preferred C.M.A.No.2268 of 2021 as stated earlier for enhancement. The second respondent has preferred C.M.A.No.1655 of 2022 challenging the finding on negligence and



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10. Mr. D. Baskaran, learned counsel for the 2nd respondent submitted that the finding of the Trial Court as regards negligence is erroneous. The accident took place because of the head on collision and the Tribunal ought to have fixed 50 % negligence on the driver of the bus belonging to the 3rd respondent. The other injured persons have not made any claim. The compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11. The learned counsel for the 3rd respondent would submit that the Tribunal correctly came to the conclusion that the accident took place only because of the rash and negligent driving of the container lorry and that Ex.R8, Rough sketch would show that the container lorry had come to the right side of the road where the bus was proceeding and collided against the right side of the bus. Because of this collision, fire broke out and the unfortunate incident took place. There is no negligence on the part of the driver of the bus and prayed for dismissal of the appeal against 3rd respondent.



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12.The learned counsel for the claimants submitted that the monthly income fixed by the Tribunal is meagre and that at the time of accident the deceased was earning nearly Rs.30,420/- per month and the Tribunal erroneously reduced the monthly income to Rs.29,090/-. The Tribunal also erroneously deducted Rs.18,56,856/- received by the claimants from the employer of the deceased (i.e) from the Tata Consulting Service Company under Personal Accident Insurance Scheme. The compensation awarded by the Tribunal under the different heads are meagre and prayed for enhancement of compensation.

13.Heard learned counsel for the 2nd respondent and the learned counsel for the claimants.

14.From the materials on record, it is seen that it is the case of the claimants that the deceased died because of the rash and negligent driving of the driver of container lorry. The Tribunal found that the accident took place only due to the negligence of the driver of the container lorry and



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the second respondent/Insurer is liable to pay the entire compensation. The learned counsel for the 2nd respondent submitted that the Tribunal ought to have fixed contributory negligence on the side of the driver of the bus belonging to the 3rd respondent herein. We find that on the side of the respondents, three witnesses were examined. R.W.1 is the manager of the second respondent. R.W.2 is the driver of the bus belonging to 3rd respondent. His evidence is clear and cogent to the effect, that he was driving on the extreme left side of the road. The driver of the container lorry came in the opposite direction in a rash and negligent manner and collided and caused damage on the right side of the bus. As a result of the collision, both the container lorry and the bus caught fire and this was the cause for the unfortunate accident. Nothing was elicited in the cross examination done on behalf of the second respondent, to discredit the version of R.W.2, the driver of Andhra Pradesh State Transport Corporation bus. The driver of the container lorry was not examined as witness. That apart, Ex.R8 rough sketch clearly shows that the container lorry had gone to right side of the road and dashed against the right side of the bus which was going on the left side of road. The rough sketch



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clearly suggest that negligence was on the side of the driver of the container lorry. Negligence has been established not only through the evidence of R.W.2 but also corroborated by the rough sketch which speaks for itself. Thus, the Tribunal had concluded rightly that the negligence was on the part of the driver of the container lorry. Therefore we see no reason to interfere with said finding on fixing negligence on the part of the driver of the container lorry.

15.As regards quantum, we find that the claimants have produced Ex.P13 Pay Slip issued by the employer of the deceased. The monthly income is shown as Rs.30,420/- (Current + arrears) The arrears amount comes to Rs.1,330/- . Hence, the Tribunal rightly concluded that the monthly income as Rs.29,090/.

16. From the materials on record, it is seen that the deceased was aged 23 years at the time accident, working as Asst. Systems Engineer in TATA Consultancy Services and was earning a sum of Rs.30,420/- per month (including deductions). The appellants have marked Ex.P.13 – salary certificate to substantiate their contention. The Tribunal



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considering Ex.P13-salary certificate, fixed a sum of Rs.29,090/- (without deductions) as monthly income of the deceased after deducting Rs.1,330/- towards arrears. As per Ex.P11 – post mortem certificate, the deceased was aged 23 years at the time of accident. Following the judgments of the Hon'ble Apex Court in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)** and **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the Tribunal rightly applied multiplier 18 and granted 50% enhancement towards future prospects. However, the Tribunal erroneously deducted the Personal Accident Claim Insurance of Rs.18,53,856/- received from the employer of the deceased and the same is not correct. Thus, by fixing Rs.29,090/- as monthly income of the deceased, the calculation for arriving annual income is as follows :-

Annual income of the deceased	...	Rs.3,49,080.00
(Rs.29,090 x 12)		

50% enhancement towards }		
future prospects }	...	Rs.1,74,540.00



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Annual income ... Rs.5,23,620.00

Income Tax Slab for Assessment Year 2014-15

Upto Rs.2,50,000/-	-	Nil
Rs.2,50,001 to Rs.5,00,000 - 10% (Rs.2,50,000 x 10%)	-	Rs. 25,000.00
Rs.5,00,000 to Rs.10,00,000/- - 20% (Rs.5,23,620 – Rs.5,00,000 = Rs.23,620 x 20%)	-	Rs. 4,724.00

Rs.29,724.00

Annual income after deducting income tax
(Rs.5,23,620 – Rs.29,724) - Rs.4,93,896/-

Hence, fixing the annual income of the deceased as Rs.4,93,896/-
applying multiplier 18 and deducting 1/2 towards personal expenses of the
deceased, the compensation awarded by the Tribunal towards loss of



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dependency is modified to Rs.44,45,064/- [Rs.4,93,896/- x 18 x 1/2].

17.The Tribunal however had deducted Rs.18,53,856/- which the claimants received under the Personal Accident Insurance Scheme from the employer of the deceased. It is seen from Ex.P.15, Insurance document produced by the claimants that the deceased has paid premium for enrolment in the said scheme and the said premium has been deducted from her salary. Thus, we could see this amount was paid to the claimants due to a private contract between the deceased and her employer. The contract was based on the consideration paid by the deceased. The compensation obtained by the claimants due to the contract between the deceased and the third parties cannot be deducted from the compensation payable to the claimants. The advantage derived by the claimants is due to the contract between the deceased and the employer. This has been made clear by the Hon'ble Supreme Court in ***Sebastian Lakra and others vs. National Insurance Company Limited*** reported in (2019) 17 SCC.

“12.The law is well settled that deductions cannot be



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allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.”

Thus, the finding of the trial Court that this amount paid to the claimants by the employer has to be deducted from the total compensation payable to them is erroneous.

18. Therefore, the compensation awarded under the loss of



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dependency is enhanced to 44,45,064/-. The Tribunal has not awarded compensation under the head loss of filial consortium. The claimants 1 and 2 being the parents are awarded a sum of Rs.40,000/- each towards loss of filial consortium. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	28,58,616/-	44,45,064/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Transportation expenses	10,000/-	10,000/-	Confirmed
5.	Loss of filial consortium to claimants 1 and 2	---	80,000/- (40000 X 2)	Granted
	Total	Rs.28,98,616/-	Rs.45,65,064/-	Enhanced by Rs.16,66,448/-

19. With the above modification, the C.M.A.No.2268 of 2021 is



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partly allowed and the compensation awarded by the Tribunal at Rs.28,98,616/- is hereby enhanced to Rs.45,65,064/- together with interest at the 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The claimants are directed to pay the necessary Court Fee if any on the enhanced award amount. C.M.A.No.1655 of 2022 is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

(V.M.V.,J)

(S.M.,J)

11.11.2022

Index : Yes/No

Internet : Yes/No

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Speaking Order/Non Speaking Order
dk

To

1.The Special Subordinate Judge,
Triupattur.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.



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V.M.VELUMANI

and

SUNDER MOHAN, J.

dk

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