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C.M.A.No.2488 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2488 of 2021 and

C.M.P.No.14328 of 2021

New India Insurance Company Limited,
Pondicherry.

.. Appellant

Vs.

1.Subashini

2.Minor. Swetha

3.Minor. Ragul

(Minor respondents 2 & 3 are represented
by their Mother, Subashini, 1st respondent
herein)

4.Arumugam

5.Jayalakshmi

6.Pazhani

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2021, made in M.C.O.P.No.2200 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.



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C.M.A.No.2488 of 2021



For Appellant : Ms.S.R.Sumathy
For RR 1 to 5 : Mr.R.Bala Ramesh

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 22.01.2021, made in M.C.O.P.No.2200 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellant is the 2nd respondent in M.C.O.P.No.2200 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. The respondents 1 to 5 / claimants filed the said claim petition, claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Sivakumar, who died in the accident that took place on 08.01.2018.

3.According to the respondents 1 to 5, on 08.01.2018 at about 17.15 hours, while the deceased Sivakumar was travelling as pillion rider in the Bajaj Pulsar motorcycle bearing Registration No.TN 31 BB 0583 driven by one Prabakaran on the extreme left side of the C.N.Palayam –



Silambinathanpettai Main Road at a moderate speed, opposite to one Rajkumar house, the driver of the Tipper Lorry bearing Registration No.TN 20 U 3299, drove the same in the opposite direction from South to North in a rash and negligent manner without making horn, dashed against the motorcycle in which the said Sivakumar was travelling as pillion rider and caused the accident. Due to the said impact, the said Sivakumar fell down from the motorcycle and the rear right wheel of the Tipper Lorry ran over the head of the said Sivakumar and he died on the spot. Hence, the respondents 1 to 5 filed the claim petition claiming compensation against the 6th respondent and appellant, being the owner and insurer of the Tipper Lorry respectively.

4.The 6th respondent-owner of the Tipper Lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 5 in the claim petition. According to appellant, the rider of the motorcycle in which the deceased traveled as pillion rider only drove the same in a rash and negligent manner from the opposite direction without wearing helmet, dashed against the Tipper Lorry belonging to 6th respondent and invited



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the accident. The accident did not occur due to the negligence on the part of the driver of the Tipper Lorry belonging to 6th respondent. The owner and insurer of the motorcycle have to be impleaded as necessary parties in the claim petition and the petition is bad for non-joinder of necessary parties. The rider of the motorcycle was a tortfeasor and hence, the respondents 1 to 5 cannot claim any compensation from the appellant. The appellant denied that the Tipper Lorry belonging to 6th respondent was insured with them on the date of accident and also the driver of the Tipper Lorry was possessing valid driving license and holding valid badge endorsement to drive Heavy Goods Vehicle. The appellant denied the validity of Fitness Certificate and Registration Certificate of the Tipper Lorry. The respondents 1 to 5 have to claim compensation only from the 6th respondent – owner of the Tipper Lorry for violation of policy condition. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 5 is highly excessive and prayed for dismissal of the claim petition as against the appellant.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Govindharasu, eyewitness to the accident was examined as P.W.2, one Mahendran, working as Junior Assistant in the Metropolitan



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Transport Corporation was examined as P.W.3 and 12 documents were marked as Exs.P1 to P12. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tipper Lorry belonging to 6th respondent and directed the appellant, being the insurer of the Tipper Lorry to pay a sum of Rs.84,25,000/- as compensation to the respondents 1 to 5.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 22.01.2021, made in M.C.O.P.No.2200 of 2018, the appellant – Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal without any basis fixed the notional income of the deceased at Rs.40,000/- per month. The deceased was working as a Driver in the Metropolitan Transport Corporation and was earning only sum of Rs.21,950/- per month as salary. The Tribunal erroneously accepted the evidence of P.W.3, who is working as Junior Assistant in the



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Metropolitan Transport Corporation and erroneously fixed the monthly income of the deceased at Rs.40,000/- and granted excessive amount as compensation towards loss of dependency. The Tribunal ought to have fixed the monthly income of the deceased at Rs.21,950/-, applied 50% enhancement towards future prospects and awarded compensation towards loss of dependency. The amounts awarded by the Tribunal under conventional heads are excessive. The total compensation awarded by the Tribunal is excessive and prayed for reducing the compensation.

10.The learned counsel appearing for the respondents 1 to 5 contended that at the time of accident, the deceased was working as Driver in Metropolitan Transport Corporation, K.K.Nagar Depo, Chennai and was earning a sum of Rs.25,000/- per month. The Tribunal considering Ex.P12 / salary certificate and the evidence of P.W.3 that had the deceased been alive he would have earned a sum of Rs.85,000/- per month at the time of his retirement, fixed a sum of Rs.40,000/- per month as notional income of the deceased and the same is not excessive. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.



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11. Heard the learned counsel appearing for the appellant as well as learned counsel appearing for respondents 1 to 5 and perused the entire materials on record.

12. From the materials on record, it is seen that it is the case of the respondents 1 to 5 that at the time of accident, the deceased was working as Driver in Metropolitan Transport Corporation, K.K.Nagar Depo, Chennai and was earning a sum of Rs.25,000/- per month. To prove their case, the respondents 1 to 5 examined one Mahendran as P.W.3, who was working as Junior Assistant in Metropolitan Transport Corporation and marked Ex.P9 / duty pass of the deceased, Ex.P10 / pay slip of the deceased and Ex.P12 / salary certificate of the deceased. The Tribunal considering Ex.P12 / salary certificate and the evidence of P.W.3 that had the deceased been alive, he would have worked till he was aged 59 years and would have earned a sum of Rs.85,000/- per month at the time of his retirement, fixed a sum of Rs.40,000/- per month as notional income of the deceased. As per Ex.P12 / salary certificate, the last drawn salary of the deceased was Rs.21,950/- per month. The Tribunal having accepted Ex.P12 / salary certificate of the deceased, erroneously fixed a sum of Rs.40,000/- per month as notional income of the deceased. The notional



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income fixed by the Tribunal at Rs.40,000/- per month is erroneous. The

respondents 1 to 5 are entitled to compensation towards loss of dependency by fixing Rs.21,950/- per month as salary of the deceased.

As per Ex.P3 / postmortem report, the deceased was aged 36 years at the time of accident. The deceased was a permanent job holder. Following the judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs.**

Delhi Transport Corporation & another], the Tribunal has rightly granted 50% enhancement towards future prospects and applied multiplier '15'. There are five dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, by fixing a sum of Rs.21,950/- as monthly income of the deceased, granting 50% enhancement towards future prospects, applying multiplier '15' and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is reduced to Rs.44,44,875/- {Rs.32,925/- [Rs.21,950/- + Rs.10,975/- (50% of Rs.21,950/-) X 12 X 15 X 3/4]}. The Tribunal has awarded a sum of Rs.2,50,000/- towards loss of love and affection to the respondents 1 to 5, which is not correct and the same is liable to be set aside and it is

hereby set aside. The minor respondents 2 & 3, who are the children of



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the deceased are entitled to a sum of Rs.40,000/- each towards parental consortium and the respondents 4 & 5, who are the parents of the deceased are entitled to a sum of Rs.40,000/- each towards filial consortium. The Tribunal has rightly granted a sum of Rs.40,000/- towards loss of consortium to 1st respondent. 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	81,00,000/-	44,44,875/-	Reduced
2.	Loss of love and affection	2,50,000/-	-	Set aside
3.	Parental consortium to respondents 2 & 3	-	80,000/- (Rs.40,000/- each)	Granted
4.	Filial consortium to respondents 4 & 5	-	80,000/- (Rs.40,000/- each)	Granted
5.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
7.	Loss of estate	15,000/-	15,000/-	Confirmed
8.	Transportation	5,000/-	5,000/-	Confirmed
	Total	Rs.84,25,000/-	Rs.46,79,875/-	Reduced by Rs.37,45,125/-



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.84,25,000/- is hereby reduced to Rs.46,79,875/-. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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.2200 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. On such deposit, the respondents 1, 4 & 5 are permitted to withdraw their respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare the minor respondents 2 & 3. The appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.2200 of



2018, if the entire award amount has been already deposited by them.

Consequently the connected Miscellaneous Petition is closed. No costs.

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(V.M.V., J) (T.V.T.S., J)
23.09.2022

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Index : Yes / No
Internet : Yes / No

To

- 1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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