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C.M.A.No.2429 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2429 of 2021

and

C.M.P.No.13817 of 2021

The Divisional Manager,
M/s. United India Insurance Co. Ltd,
No.4, Promenade Road, Cantonment,
Trichy – 1.
Policy No.0124063002P303197057.

.. Appellant

Vs.

1.Manimegalai

(The deceased name was amended as per
Order in I.A.No.2898/2018 dated 20.11.2018)

2.P.Vijay

3.Priya

(2nd and 3rd respondents declared as major and
amended as per order in I.A.No.1/2019 &
3/2019 dated 09.07.2019)

4.Minor. Gomathi

(Minor 4th respondent rep. by her natural guardian
and next friend mother Manimegalai – R1 herein)



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5.Pushpa

6.Govindaraj

7.Mubarak Ali

8.The Divisional Manager,
The Oriental Insurance Company Ltd,
No.4 Bharathidasan Road, 2nd Floor,
Cantonment, Trichy – 1.
Policy No.453309/31/2013/6046.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2021, made in M.C.O.P.No.609 of 2013, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant	: Mr.D.Bhaskaran
For RR 1 to 5	: Mr.T.Gobinath
For RR 6 & 7	: No appearance
For R8	: Mr.S.Arunkumar

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

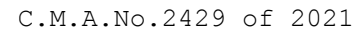
This Civil Miscellaneous Appeal has been filed by the appellant / United India Insurance Company Limited against the judgment and decree dated 20.01.2021, made in M.C.O.P.No.609 of 2013, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.



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2.The appellant is the 2nd respondent in M.C.O.P.No.609 of 2013, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. The respondents 1 to 5/claimants filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Chandrasekaran who died in the accident that took place on 11.05.2013.

3.According to the respondents 1 to 5, on 11.05.2013 the deceased Chandrasekaran was travelling as Additional Driver in the lorry bearing Registration No.TN 45 AF 1782 belonging to 7th respondent and insured with 8th respondent on the GST Road towards Chennai. At about 08.30P.M., while the lorry was proceeding opposite to Sri Ram Hotel, Kannapiranpuram, the driver of the lorry bearing Registration No.TN 31 E 7899 belonging to 6th respondent and insured with appellant, who was proceeding ahead of the 7th respondent's lorry at hectic and uncontrollable speed, without giving any caution, without blowing horn, without obeying any traffic rules and regulations, suddenly applied brakes and stopped the lorry on the road. Due to the said act of the driver of the lorry belonging to 6th respondent, the right backside body of the lorry belonging to 6th respondent was dashed on the left front side of the lorry belonging to 7th



5. The appellant being the insurer of the lorry belonging to 6th respondent filed counter statement and denied all the averments made by the respondents 1 to 5 in the claim petition. The appellant denied the manner of accident as alleged by the respondents 1 to 5. According to the appellant, no driver would stop the lorry as alleged by the respondents 1 to 5. The red light signal would be automatic while applying brake of the lorry. Had the driver of the lorry belonging to 7th respondent drove the same maintaining reasonable distance, the accident could have been



avoided. In fact, the driver of the lorry belonging to 7th respondent attempted to overtake the lorry belonging to 6th respondent in a rash and negligent manner and caused the accident. Further, it is evident from the Accident Register that the deceased accidentally fell down from the lorry. Therefore, it is clear that the accident has occurred only due to the negligent driving by the driver of the lorry owned by 7th respondent. The respondents 1 to 5 have to prove the age, avocation and income of the deceased to claim compensation. In any event, the quantum of compensation claimed by the respondents 1 to 5 are excessive and prayed for dismissal of the claim petition as against the appellant.

6.The 7th respondent – owner of the lorry bearing Registration No.TN 45 AF 1782 filed separate counter statement and denied the manner of accident and stated that at the time of accident, the deceased was travelling as Spare Driver in the lorry belonging to 7th respondent driven by one Ravi. While they were proceeding opposite to Sri Ram Hotel at Kannapiranpuram, the driver of the lorry belonging to 6th respondent, who was proceeding ahead of the lorry owned by 7th respondent, without giving any caution, suddenly applied the brake and stopped the lorry on the road. Due to the tortuous act of the driver of the



6th respondent's lorry, the right backside of the 6th respondent's lorry was dashed on the left front side of the lorry owned by 7th respondent. The entire negligence is only on the part of the driver of the lorry belonging to 6th respondent. At the time of accident, the lorry belonging to 7th respondent was insured with 8th respondent and the insurance policy was in force and hence, the 7th respondent is not liable to pay any compensation to the claimants. The compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of claim petition.

7.The 8th respondent – Oriental Insurance Company Limited being the insurer of the lorry bearing Registration No.TN 45 AF 1782 belonging to 7th respondent filed counter statement and denied the manner of accident and contended that due to negligent driving by the driver of the lorry belonging to 6th respondent, the accident has occurred. The F.I.R. was registered only against the driver of the lorry belonging to 6th respondent and there is no negligence on the part of the driver of the lorry belonging to 7th respondent. The 8th respondent denied the age, avocation and income of the deceased and the dependency of the respondents 1 to 5. The compensation claimed by respondents 1 to 5 are highly excessive and prayed for dismissal of the claim petition.



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8.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Ravi, driver of the lorry belonging to 7th respondent as well as eyewitness to the accident was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. The respondents 6 to 8 and appellant did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent and directed the appellant as insurer of 6th respondent's lorry to pay a sum of Rs.29,05,000/- as compensation to the respondents 1 to 5 and dismissed the claim petition as against the respondents 7 & 8.

10.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 20.01.2021, made in M.C.O.P. No.609 of 2013, the appellant has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the Tribunal failed to adjudicate the issue properly on negligence and



liability. The accident occurred only when the driver of the lorry bearing Registration No.TN 45 AF 1782 belonging to 7th respondent drove the same in a rash and negligent manner and dashed on the backside of the lorry bearing Registration No.TN 31 E 7899 owned by 6th respondent and insured with appellant, which was proceeding ahead of him. The Tribunal failed to see that the vehicle coming behind the ongoing vehicle must maintain sufficient distance from other vehicle. The evidence of P.W.2, the driver of the lorry belonging to 7th respondent is not acceptable as he only dashed on the backside of the lorry belonging to 6th respondent which was going ahead of him. In the Accident Register registered as per the information furnished by P.W.2, it has been stated that the deceased fell down from the lorry. If P.W.2, the driver of the lorry belonging to 7th respondent maintained moderate speed, he could have avoided the accident. The accident occurred only due to the negligence of P.W.2, driver of the lorry belonging to 7th respondent. The respondents 1 to 5 did not examine the employer of the deceased. The Tribunal erroneously accepting the income of the deceased based on the letter head salary certificate, fixed excessive amount of Rs.15,000/- as monthly income of the deceased and granted excessive compensation and prayed for setting aside the award of the Tribunal.



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12.Mr.T.Gobinath, learned counsel appearing for the respondents 1 to 5 / claimants contended that the accident occurred only due to the negligence on the part of the driver of the lorry bearing Registration No.TN 31 E 7899 belonging to 6th respondent and insured with appellant. The respondents 1 to 5 examined the driver of the lorry bearing Registration No.TN 45 AF 1782 belonging to 7th respondent as P.W.2, in which the deceased traveled and proved the negligence on the part of the driver of the lorry owned by 6th respondent. The deceased was working as Spare Driver in the lorry bearing Registration No.TN 45 AF 1782 and the respondents 1 to 5 have filed Ex.P5 / driving license and Ex.P10 / salary certificate of the deceased issued by the owner of the lorry and proved the salary of the deceased. The finding of the Tribunal fixing negligence on the part of the driver of the lorry belonging to 6th respondent is valid and the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

13.Though notice has been served on the respondents 6 & 7 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.



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14.Mr.S.Arunkumar, learned counsel appearing for the 8th respondent – Oriental Insurance Company Limited submitted that the Tribunal dismissed the claim petition against the 8th respondent and prayed for dismissal of the appeal as against the 8th respondent.

15.Heard the learned counsel appearing for the appellant, learned counsel appearing for the respondents 1 to 5 as well as the learned counsel appearing for the 8th respondent and perused the entire materials on record.

16.It is the case of the respondents 1 to 5 that on 11.05.2013, while the deceased was travelling as Spare Driver in the M & Co., Transport lorry bearing Registration No.TN 45 AF 1782 belonging to 7th respondent, the driver of the lorry bearing Registration No.TN 31 E 7899 belonging to 6th respondent, who was proceeding ahead of the lorry owned by 7th respondent, drove the same in a rash and negligent manner, applied sudden brake and stopped the lorry in the middle of the road. On seeing this, the driver of the lorry in which the deceased was travelling, tried to avoid the accident by turning the lorry to right side. In spite of the



same, the lorry in which the deceased travelled dashed on the backside of the lorry which was proceeding ahead and thus the accident occurred due to negligent stopping of lorry by the driver of the lorry bearing Registration No.TN 31 E 7899. To prove the said contention, the respondents 1 to 5 examined the driver of the lorry in which the deceased was travelling as P.W.2 and marked F.I.R. as Ex.P1, which was registered against the driver of the lorry belonging to 6th respondent. On the other hand, it is the case of the appellant that the accident has occurred only due to negligent driving by P.W.2, who drove the lorry without maintaining sufficient safe distance and while trying to overtake the lorry going ahead, dashed on the backside of the lorry belonging to 6th respondent. To substantiate their contention, appellant and 6th respondent did not let in any oral and documentary evidence and also they did not examine the driver of the lorry belonging to 6th respondent. The Tribunal considering the evidence of P.W.2, contents of Ex.P1/F.I.R. and in the absence of any contra evidence to the evidence of P.W.2, fixed negligence on the part of the driver of the lorry bearing Registration No.TN 31 E 7899 belonging to 6th respondent. There is no error in the said reasoning of the Tribunal, warranting interference by this Court.



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17.As far as quantum of compensation is concerned, the respondents 1 to 5 claimed that the deceased was working as Driver in M & Co. Transport, Thuraiyur TK, Trichy District and was earning a sum of Rs.15,000/- per month and produced Ex.P5 / Driving License and Ex.P10 / salary certificate of the deceased to prove the same. The Tribunal accepting the said salary certificate, fixed the monthly income of the deceased at Rs.15,000/-. A perusal of Ex.P10 shows that it is not a salary slip of the deceased. In a letter head it has been stated that deceased was working as Lorry Driver and was paid a sum of Rs.15,000/- per month. The respondents 1 to 5 have not filed any salary slip and did not examine the owner of the Transport Company to prove the income of the deceased. The Tribunal without properly appreciating Ex.P10, erroneously accepted the same and fixed a sum of Rs.15,000/- as monthly income of the deceased. In the absence of any materials with regard to income of the deceased, the monthly income fixed by the Tribunal is excessive. The accident occurred in the year 2013. Considering the date of accident and nature of work done by the deceased, a sum of Rs.13,000/- is fixed as notional income of the deceased. The deceased was aged 38 years at the time of accident. The Tribunal considering the age of the deceased has rightly granted 40% enhancement as per the judgment of the Hon'ble



Apex Court reported in **2017 (2) TNMAC 609 (SC)**, [*National*

Insurance Company Limited Vs. Pranay Sethi and others]. Following

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

SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport

Corporation & another], the Tribunal rightly applied multiplier '15' and

deducted 1/4th towards personal expenses as there are five dependants of

the deceased and awarded compensation. Thus, by fixing a sum of

Rs.13,000/- as monthly income of the deceased, the compensation

awarded by the Tribunal towards loss of dependency is modified to

Rs.24,57,000/- {Rs.18,200/- [(Rs.13,000/- + Rs.5,200/- (40% of

Rs.13,000/-)] x 12 x 15 x 3/4}. The respondents 2 to 4 are the children of

the deceased and the Tribunal has not awarded any amount towards loss

of love and affection. The respondents 2 to 4 are entitled to a sum of

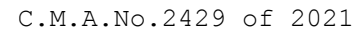
Rs.40,000/- each towards loss of love and affection. The amounts

awarded by the Tribunal under other heads are just and reasonable and

hence, they are 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	28,35,000/-	24,57,000/-	Reduced



2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to respondents 2 to 4	-	1,20,000/-	Granted
	Total	Rs.29,05,000/-	Rs.26,47,000/-	Reduced by Rs.2,58,000/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.29,05,000/- is hereby reduced to Rs.26,47,000/-. The appellant-Insurance Company is directed to deposit the modified 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.609 of 2013, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. On such deposit, the respondents 1 to 3 & 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 4th respondent is directed to be deposited in any one of



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the Nationalized Banks, till the minor 4th respondent attains majority. On such deposit, the 1st respondent, being the Mother of the minor 4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 4th respondent. The appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.609 of 2013, if the entire award amount has been already deposited by them. This appeal is dismissed as against the respondents 7 & 8. Consequently the connected Miscellaneous Petition is closed. No costs.

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

22.06.2022

krk

Index : Yes / No

Internet : Yes / No

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

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

V.M.VELUMANI, J.



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and

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