



C.M.A.No.3574 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3574 of 2014

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Cross Obj.No.36 of 2016

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M.P.No.1 of 2014

C.M.A.No.3574 of 2014

The National Insurance Company Limited,
2nd Floor, ID Chetty Street,
Opposite Bus Stand,
Tiruchengode.

...Appellant

Vs

1.Janaki

2.Divya

3.Nithya

4.S.Vannila

... Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree passed in MACT.O.P.No.728 of 2010 dated 22.01.2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.

For Appellant : Mrs.N.B.Surekha
For Respondents
(1 to 3) : Mr.Lokesh
For Respondent 4: Not ready in notice.

Cross Obj.No.36 of 2016

1.Janaki

2.Divya

3.Nithya

...Cross Objectors

Vs.

1.The National Insurance Company Limited,
2nd Floor, ID Chetty Street,
Opposite Bus Stand,
Tiruchengode.



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2.S.Vannila

... Respondents

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Prayer: Cross Objection is filed under Order 41 Rules 22 of CPC to enhance the award in the Judgement and Decree in M.A.C.T.O.P.No.728 of 2010 dated 22.01.2014 on the file of the MACT, Subordinate Court, Sathyamangalam.

For Cross Objectors : Mr.Lokesh

For Respondent 1 : Mrs.N.B.Surekha

JUDGEMENT

The insurance Company has filed the above appeal challenging the award passed by the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam in M.A.C.T.O.P.No.728 of 2010. The facts in brief are as follows.



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2. The respondents 1 to 3 herein are the petitioners before the Tribunal below. The appellant herein is the 2nd respondent before the Tribunal. The 2nd respondent herein is the 1st respondent before the Tribunal below. The parties are referred to in the same array as in the Claim Petition.

3. The petitioners who are the legal representatives of the deceased Rangarajan has filed the above referred claim petition seeking compensation of a sum of Rs.13,00,000/- for the death of the said Rangarajan in a road traffic accident on 27.05.2010, involving the vehicle belonging to the 1st respondent and insured with the 2nd respondent. The said Rangarajan is stated to be a Grade II Mechanic at Chettinad Builders Private limited, earning a monthly income of a sum of Rs.9,751/-.



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4. It is the case of the petitioners that on the ill-fated day, 27.05.2010 at about 11.30 AM, the deceased was traveling in a TVS heavy duty moped bearing registration No.TN 36 Y 1885 from Godapalayam to Mettupalayam main road and was traveling in a west to east direction. The deceased Rangarajan intended to turn right into the Puliampatti road located on the south. He had indicated his intention to turn and infact crossed the road. At that time, the lorry belonging to the 1st respondent registered as KA 01 F 1788 proceeding in the opposite direction on the said main road hit the said Rangarajan causing serious head and body injuries to the deceased Rangarajan. One Shanmugasundaram along with three others, namely, Vivekanandan, Karuppannan and Palanisamy arranged to take Rangarajan to Sathyamangalam Government Hospital, where first aid was given and thereafter he was shifted to the PSG Hospital, Coimbatore, where he succumbed to injuries on 02.06.2010.



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5. The petitioners had therefore filed the aforesaid claim petition seeking compensation from the respondents.

6. The 1st respondent had not entered appearance and had been set ex parte and it was the 2nd respondent Insurance Company, which is the appellant herein who had contested the proceedings. In their counter, the 2nd respondent would submit that the deceased was also guilty of contributory negligence for the occurrence of the accident. Besides the above, the 2nd respondent had put the petitioners strict proof that the 1st respondent continued to have insurable interest and that the vehicle was used as per terms and conditions of the permit and policy and that the driver who was driving at that relevant point of time had valid driving license to drive so. The 2nd respondent had reserved right to file additional counter as and when receive further information. However, an additional counter has not been filed.



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7. The Tribunal below after considering the oral and documentary evidence came to the conclusion that the driver of the 1st respondent lorry was solely responsible for the accident, which occurred on account of his rash and negligent driving.

8. As regards the quantum of compensation, though the petitioners had produced Ex.P.9 (Salary Slip) and Ex.P.12 (Salary Certificate), which indicated that the said Rangarajan earned a sum of Rs.9,751/- per month, the Tribunal below had taken into account the fact that the basic pay was only a sum of Rs.5,363/- and therefore arrived at a monthly income of Rs.5,000/-, out of which 1/3rd was deducted towards personal expenses and a sum of Rs.3,60,000/- was awarded under the head of loss of dependency. Ultimately, the Tribunal has awarded a sum of Rs.5,16,000/- as compensation to the petitioners.



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9. The Insurance Company has challenged the finding of the Tribunal below regarding the negligence and also with reference to the quantum of compensation.

10. Mrs.N.B.Surekha, learned counsel appearing on behalf of the 2nd respondent / appellant herein would submit that the deceased Rangarajan was primarily responsible for the accident as he abruptly turned right without taking into account the on coming lorry and since the deceased had suddenly swerved to the right without indicating, the driver of the lorry could not immediately take action to stop the lorry, which has resulted in the accident. She would submit that a perusal of the Rough Sketch, Ex.R.1 would clearly show the negligence on the part of the deceased.

11. Per contra, Mr.Lokesh, learned counsel appearing on behalf of the petitioners / respondents 1 to 3 herein who have also filed cross



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objection would submit that though Ex.P.9 and Ex.P.12 have been filed, the Tribunal has wrongly taken the basic salary of Rs.5,363/- and reduced it further to a sum to Rs.5,000/-. He would submit that the Tribunal ought to have taken the salary as found in Ex.P.12. He would also submit that the Tribunal has not taken into account the future prospects. He would therefore submit that the quantum of compensation has to be necessarily enhanced.

12. Heard both the learned counsels and perused the records.

13. The case of the appellant Insurance Company is that the negligence was solely on the part of the deceased Rangarajan who had suddenly swerved to the right on to the other half of the main road, where vehicles from opposite direction, i.e., from east to west, were plying which is the primary cause for the accident. A perusal of Ex.R.1, Rough Sketch would indicate that the said Rangarajan had



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come nearly half way on the other side of the road where the traffic was moving from east to west. The area where the accident had taken place is a junction. Therefore, the driver of the 1st respondent lorry also should have driven his vehicle slowly when reaching the junction. Had he observed this basic road rule, the accident could have been avoided.

14. The other thing that has to be considered is that the accident had taken place on 11.30 AM. Therefore, the driver of the 1st respondent lorry cannot contend that he did not see the deceased Rangarajan turning to the right. Further, the FIR has been lodged against the driver of the lorry. The Tribunal has taken into account the evidence of the eye witness, P.W.1 who has deposed that after the accident, the driver of the 1st respondent lorry had ran away. The eye witness has also deposed that the lorry had dragged the two wheeler nearly 200 ft. before stopping.



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15. This clearly demonstrates not only the rash and negligence driving but also the excess speed with which the lorry has been driven. Though under Ex.R.2, Final Report the case has been closed, however, it is also seen that the closure report has been challenged by the petitioners and no further action has been taken thereafter. As rightly pointed out by the Tribunal below, the evidence of P.W.2 would clinch the negligence on the driver of the 1st respondent vehicle.

16. Therefore, I see no reason to set aside the findings of the Tribunal below. The appellant Insurance Company has not seriously contested the quantum of compensation granted. However, in the cross objection, the petitioners / respondents 1 to 3 herein had challenged the quantum of compensation. It is their contention that the Tribunal has failed to take note of Ex.P.9 and Ex.P.12, which would show that gross salary of the deceased Rangarajan was a sum of Rs.9,751/-, of which



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basic pay was a sum of Rs.5,363/-. The Tribunal has erroneously relied upon only the basic pay. However, the evidence of P.W.3 would indicate that the said Rangarajan had two months prior to his death, stopped coming for work. P.W.3 has deposed as follows:

எக்சிபிட் பி12ல் ரங்கராஜன் குறிப்பாக
என்ன மெக்கானிக் என்று போடவில்லை.
10.03.2010ம் தேதி ரங்கராஜன் எந்த தகவலும்
கொடுக்காமல் பணியை விட்டு நின்றுவிட்டார்
அதன்பிறகு பணிக்கு வரவில்லை"

17. Considering the fact that just two months prior to his death, the said Rangarajan was drawing a salary of Rs.9,751/- the income adopted by the Tribunal has to be set aside. Since Rangarajan had stopped coming for work, from 10.03.2010 and taking into account, the fact that he is a Mechanic and had been working with Chettinad Builders, a notional income of Rs.7,000/- can be adopted to which 10%



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has to added towards future prospects considering the age of the deceased which was 57. Therefore, the notional income would be a sum of **Rs.7,700/-**. After deducting $1/3^{\text{rd}}$ towards his personal expenses a sum of **Rs.5,133/-** would be a contribution per month to the family. Considering his age, the multiplier to be adopted is 9. Therefore, the income under the head of loss of dependency would be a sum of **Rs.5,133/- X 12 X 9 = Rs.5,54,364/-**.

18. It is further seen that a sum of Rs.25,000/- has been awarded under the head of Loss of Consortium to the 1st petitioner, which has to be enhanced to a sum of **Rs.40,000/-**. The amount granted under the head of Loss of Love and Affection is Rs.30,000/- (Rs.15,000/- each to the petitioners 2 and 3), which has to be enhanced to a sum of **Rs.80,000/-** (Rs.40,000/- each to the petitioners 2 and 3).



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19. A sum of Rs.10,000/- has been granted under the head of Funeral Expenses, which has to be enhanced to a sum of **Rs.15,000/-**. A sum of Rs.40,000/- granted under the head of loss of Estate has to be reduced to a sum of **Rs.15,000/-**. Therefore, the award of the Tribunal below is modified as follows:

<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Modified Award</i>
Loss of Dependency	Rs.3,60,000/-	Rs.5,54,364/-
Loss of Consortium to the 1 st petitioner	Rs.25,000/-	Rs.40,000/-
Loss of Love and Affection to the 2 nd and 3 rd petitioners	Rs.30,000/-	Rs.80,000/-
Medical Expenses	Rs.46,000/-	Rs.46,000/-
Transportation Charges	Rs.5,000/-	Rs.5,000/-
Funeral Expenses	Rs.10,000/-	Rs.15,000/-
Loss of Estate	Rs.40,000/-	Rs.15,000/-
Total	Rs.5,16,000/-	Rs.7,55,364/-

20. In the result, the Cross Objection filed by the petitioners is allowed and the Civil Miscellaneous Appeal filed by the 2nd respondent



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Insurance Company is dismissed. The Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.A.C.T.O.P.No.728 of 2010. The petitioners shall show proof of payment of the Court fees and only on such proof the petitioners are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

20.06.2022

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Index : Yes/No
Speaking order/non-speaking order

To,

1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Sathyamangalam.

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P.T.ASHA, J.,

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