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C.M.A.Nos.1926 of 2022 & 3941 of 2019
and C.M.P.No.22365 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.1926 of 2022 & 3941 of 2019
and C.M.P.No.22365 of 2019

C.M.A.No.1926 of 2022

1.Rajalakshmi @ Amulu
2.Minor Arunagiri
3.Minor Gurumoorthy
4.Minor Gayathri
(Minors rep. By their mother Rajalakshmi @ Amulu)
5.Bhanumathi

... Appellants

Vs.

1.Ramesh
(Since R1-remained exparte before Tribunal
his presence may be dispensed with)
2.The Manager,
The Oriental Insurance Co. Ltd.,
No.32/312, Vijayalakshmi Complex, 13th Street,
Sathuvacharry, Vellore.

... Respondents



C.M.A.Nos.1926 of 2022 & 3941 of 2019
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Prayer in C.M.A.No.1926 of 2022: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgement dated 18.07.2017 passed in M.A.C.T.O.P.No.181 of 2016 by the Motor Accident Claims Tribunal(Special Subordinate Court) at Tiruvannamalai

For Appellants : Mrs.A.Subadra
For R2 : Mr.M.Krishnamoorthy

C.M.A.No.3941 of 2022

The Manager,
The Oriental Insurance Co. Ltd.,
No.32/312, Vijayalakshmi Complex, 13th Street,
Sathuvacharry, Vellore.

... Appellant

Vs.

1.Rajalakshmi @ Amulu
2.Minor Arunagiri
3.Minor Gurumoorthy
4.Minor Gayathri
Minors rep. By their mother Rajalakshmi @ Amulu
5.Bhanumathi
6.Ramesh
(R-6 Remained exparte before Tribunal.
Hence notice to R-6 is dispensed with)

... Respondents



C.M.A.Nos.1926 of 2022 & 3941 of 2019
and C.M.P.No.22365 of 2019

Prayer in C.M.A.No.3941 of 2022: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgement dated 18.07.2017 passed in M.C.O.P.No.181 of 2016 by the Motor Accident Claims Tribunal(Special Subordinate Court) at Tiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy
For R1 to R5 : Mrs.A.Subadra
for M/s.M.Malar

COMMON JUDGMENT

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

The above Civil Miscellaneous Appeals have been filed by both the Insurance Company and by the claimants against the Judgment and Decree dated 18.07.2017 made in M.C.O.P.No.181 of 2016 on the file of Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.

2.Both the appeals arise out of the same award and hence disposed of by this Common Judgment. Parties are referred to as per their rank in the claim petition for the sake of convenience.



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3.C.M.A.No.1926 of 2022 has been preferred by the claimants for enhancement of compensation. C.M.A.No.3941 of 2019 has been filed by the Insurance Company challenging the finding on negligence and the quantum.

4. The claimants/appellants in C.M.A.No.1926 of 2022 in the claim petition claimed a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation for the death of one Saravanan who died in the accident that took place on 31.03.2015.

5. According to the claimants on 31.03.2015, while the deceased saravanan was travelling as a cleaner in the lorry bearing Registration No.TAX-7629, the first respondent drove the same in a rash and negligent manner and dashed against a lamp post. Due to this accident, the lorry capsized and the deceased sustained injuries and died on the spot. Since the deceased died due to the negligent act of the first respondent, the claimants filed the claim petition against the first respondent and the Insurance Company who is the insurer of the said Lorry.



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6.The Insurance Company filed counter statement denying the averments made in the claim petition. The deceased Mr.Saravanan who is the cleaner drove the lorry without any driving licence and caused the accident. The deceased is a tort-feasor and hence the legal heirs are not entitled to any compensation. The deceased was working only as a cleaner with the 1st respondent. A complaint was registered in Crime No.187 of 2015 on the file of Arakonam, Town Police Station, Vellore which discloses that the deceased drove the offending vehicle. In any event, the compensation awarded by the Tribunal is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the claimants examined two witnesses on their side. The first claimant was examined as P.W.1 and one Raja eye witness to the accident was examined as P.W.2. Six documents Ex.P.1 to Ex.P.6 were marked. The 2nd respondent / Insurance Company examined two witnesses as R.W.1 and R.W.2 and marked four documents as Exs.R.1 to R.4.

8. The Tribunal considering the pleadings oral and documentary evidence held that the accident occurred due to rash and negligent driving by



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the driver of the lorry and directed the Insurance Company to pay a sum Rs.16,27,904/- (Rupees Sixteen Lakhs Twenty Seven Thousand Nine Hundred and Four only) as compensation to the claimants.

9.The learned counsel for the 2nd respondent/ Insurance Company submitted that the claimants have not established that the first respondent drove the Lorry. The deceased Mr.Saravanan is a tort-feasor and as per Ex.P.1, FIR marked by the claimants, deceased drove the lorry in a rash and negligent manner and hence no compensation is payable to the claimants. The learned counsel for the 2nd Respondent / Insurance Company further submitted that the FIR has been relied upon by the claimants to establish the accident and the claimants cannot rely upon a portion of FIR and contend that the other portions are inadmissible. Since the FIR shows the deceased is the driver of the Lorry, the Tribunal ought to have accepted the case of the 2nd respondent/ Insurance Company that the first respondent was not the driver of the vehicle. The learned counsel further submitted that the Tribunal erroneously awarded 50% enhancement towards future prospects as against



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40%. The learned counsel for the appellant relied up on the following judgments in support of his contention.

(a) ***Oriental Insurance Company Ltd. Vs. Premlata Shukla and others*** reported in ***(2007) 13 SCC 476***

“13. However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon them.”

“14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.”



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10.The learned counsel for the claimants submitted that the Tribunal had rightly concluded that the first respondent was driver of the lorry who was guilty of rash and negligent driving. The contents of the FIR are not admissible and hence cannot be looked into.

11.As regards the quantum, the learned Counsel submitted that the Tribunal committed an error in fixing the monthly income at Rs.5,500/- which is very meagre. The Tribunal also did not award compensation under the head of Loss of Estate and transport charges and prayed for enhancement of compensation.

12.Heard the learned counsel for the claimants as well as 2nd respondent/Insurance Company and perused the records.

13.From the materials on record and the submissions of learned counsel on either side, we find that the Tribunal had concluded that, the first



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respondent drove the offending vehicle and caused the accident. The Tribunal came to the said conclusion on the basis of evidence of P.W.2. P.W.2 was an eye witness to the occurrence and he had deposed that he saw the lorry being driven by the first respondent in a rash and negligent manner. The evidence of P.W.2 is cogent and nothing has been elicited in the cross examination to disbelieve his evidence. As regards the FIR, we find on its perusal that, it was lodged by one Vijayakumar. The said Vijaykumar has stated in the FIR that he found the capsized lorry and he further found that the deceased in the lorry. With the help of passers-by, he lifted the lorry and took the body of the deceased to the hospital. We find that the said Vijayakumar is not an eyewitness. Further, he has not stated anywhere in the FIR that he came to know that the deceased drove the Lorry. However in the columns which are filled by the Police, the deceased is shown as accused and driver of the lorry. The said entry made by the Police appears to be on the basis of inference. It is not the statement of the complainant. We cannot hold on the basis of the FIR that the deceased drove the lorry. Hence, the contention of the learned counsel for the 2nd respondent/Insurance Company is not acceptable. The Judgments



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relied on by the learned counsel no doubt holds that the contents of the FIR can be looked into if the claimants rely upon it. In the facts of the instant case, we find that FIR does not disclose that the lorry was driven by the deceased.

14.As regards the quantum, we find that the Tribunal has fixed Rs.5,500/- (Rupees Five Thousand Five Hundred only) as monthly income. The accident took place in the year 2015. The notional income fixed by the Tribunal is very meagre. Considering the year of accident, age and nature of work, it would be just and reasonable in the circumstances of the case to fix Rs.10,000/- (Rupees Ten Thousand only) as notional monthly income of the deceased. The deceased was aged 35 years at the time of accident. As per the Judgment of Hon'ble Apex Court in **2017 (2) TN MAC 609 (SC)** [*National Insurance Co.Ltd., Vs.Pranay Sethi and others*] the claimants are entitled to 40% enhancement towards future prospects. 50% granted by the Tribunal is reduced and modified as 40%. As per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009 (2) TNMAC 1 SC)*, the applicable Multiplier is 16 and



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after deduction of $1/4^{\text{th}}$ of the income towards personal expenses, the compensation granted under the head Loss of Income comes to Rs.20,16,000/- (Rs.10,000/- + 4000/- [Rs.10,000 X 40%] X 12 X 16 X $3/4$).

15. The Tribunal has awarded a sum of Rs.3,00,000/- towards loss of love and affection to claimants 2 to 4 and Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium to first claimant which are excessive and the same are reduced to Rs.40,000/- each towards loss of love and affection to the claimants 2 to 5 and Rs.40,000/- towards loss of consortium to the 1st claimant. The Tribunal has awarded excessive amount of Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses and hence the same is reduced to Rs.15,000/- (Rupees Fifteen Thousand only). The Tribunal failed to award any amount towards loss of estate and transport charges. Hence a sum of Rs.15,000/- (Rupees Fifteen Thousand only) is awarded towards loss of estate and Rs.20,000/- (Rupees Twenty Thousand only) towards transport charges. Thus, the award is modified as follows:



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Sl. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced		
1.	Loss of Income	11,87,904	20,16,000	Enhanced		
2.	Loss of consortium to the 1 st Appellant	1,00,000	40,000	Reduced		
3.	Loss of love and affection to claimants 2 to 4	300000	1,20,000/- (40,000 X 3)	Reduced		
4				Loss of love and affection of the 5 th Appellant	15,000	40,000
5	Funeral Expenses	25,000	15,000	Reduced		
6	Loss of estate	-	15,000	Granted		
7	Transport Charges	-	20,000	Granted		
Total		16,27,904	22,66,000	Enhanced by Rs.6,38,096/		

16.In the result, C.M.A.No.3941 of 2019 is partly allowed by reducing



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the future prospects from 50% to 40%, by reducing the quantum awarded under the head loss of consortium to the 1st claimant, loss of love and affection to the claimants 2 to 4, and funeral expenses. The appeal filed by the claimants in C.M.A.No.1926 of 2022 is partly allowed by enhancing the compensation from Rs.16,27,904/- to Rs.22,66,000/- together with interest at the rate of 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 award amount now determined by this Court along with interest and costs, less the amount already deposited if any, with a period of six weeks from the date of receipt of copy of this Judgment. On such deposit, the claimants 1 and 5 are permitted to withdraw their respective share of the award amount determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant/mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest once in 3



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months for the welfare of the minors. The appellants are directed to pay the necessary Court fee on the enhanced award amount, if any. No Costs. Consequently, connected Miscellaneous Petition is closed.

[V.M.V.,J] [S.M.,J]

19.10.2022

Internet : Yes
dk

To
1.The Special Sub Judge
Motor Accidents Claims Tribunal
Tiruvannamalai

2.The Section Officer
VR Section
High Court
Madras.



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V.M.VELUMANI, J.
and
SUNDER MOHAN, J.
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