



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:22.12.2022

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.697 of 2019

and

C.M.P(MD)No.8715 of 2019

The Branch Manager,
The Oriental Insurance Company Limited,
Door No.6-A, West Veli Street,
III Floor,
Bangur Dharmasala Building,
Madurai- 625 001.

.. Appellant/3rd Respondent

Vs.

1.Jeyashree

2.Minor Dhananya

3.Minor Mahamithireswaran

4.Boomeeswaran

5.Kanagavalli

.. Respondents 1-5/ 1-5 Petitioners

6.Chandran

.. 6th Respondent/1st Respondent's

7.M.Gandhi

.. 7th Respondent/2nd Respondent



[R6 & R7 remained exparte before lower Court]

[Minors 2nd and 3rd respondents are rep.
through their mother and natural
guardian R1, Jeyashrai]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 11.04.2019 made in M.C.O.P.No.115 of 2017, on the file of the Motor Accidents Claims Tribunal/Sub Judge, Devakottai.

For Appellant : Mr.K.Balasubramanian

For Respondents : Mr.R.Balakrishnan

for R1 to R5

R6 & R7 – Exparte in lower Court.

JUDGMENT

DR.G.JAYACHANDRAN, J.

and

SUNDER MOHAN, J.

The appeal is filed under Motor Vehicle Act by the Insurance Company being aggrieved by the award passed by the Tribunal on the ground of contributory negligence and excess compensation.



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2. As per the claim petition, Karthick the deceased, who is an EEE graduate but has been professing his family tradition of 'Archahar' was run over by the bus bearing registration No.TN-59-AX-7086 while he was driving his two wheeler (Pulsor bike) bearing Registration No.TN-63-AW-4192. The FIR indicates that the bus hit the two wheeler and the rider lost his balance and fell to ground, suddenly, the rear wheel of the bus run over the head of the rider causing instant death. Alleging that the accident took place due to the rash and negligent driving of the bus driver, a petition seeking compensation of Rs. 50,00,000/- was filed. The said claim was opposed by the insurance company stating that the accident occurred only due to the negligence of the deceased since he tried to take turn near the accident spot without following the road rule. If the rider is followed the motor vehicle rule on wearing the helmet, fatal injury could have been avoided and further it is also contended that the claim of Rs.50,00,000/- is excessive.

3. The Tribunal, taking note of the fact that from the FIR and the eyewitnesses, the negligence of the offending vehicle bearing Registration No.TN-59-AX-7086 been proved and the valid insurance under the appellant company is also admitted. The said circumstances, the deceased, who died leaving behind his wife, two children and parents as his dependence, an EEE



graduate and a qualified 'Archahar', fixed the monthly income of Rs.15,000/- per month by adding 40% as prospective income ie. Rs.6000/- arrived at Rs. 21,000/- as notional monthly income. After applying the multiplier 16 arrived at a compensation of Rs.30,24,000/- by applying the guidelines of the Hon'ble Supreme Court rendered in Sarla Verma's case as well as Praney Sethi's case.

4. In this appeal, it is contended by the learned counsel for the appellant that the Tribunal erred in fixing the monthly income as Rs.15,000/- and arriving at Rs.21,000/- as notional monthly income by adding prospective income and also erred in not deducting 50% for the contributory negligence since the deceased was not wearing helmet. The learned counsel for the appellant would also contend that if no deduction in the compensation is effected, it will be a premium of the violator of the Motor Vehicle Rules. Further, fixing notional income is also on the higher side which requires reconsideration.

5. The learned counsel for the claimants would submit that 34 years man died leaving behind 5 dependants and his educational qualification been proved through Ex.P10. He was wearing the helmet and ocular evidence has spoken about that. Since his head been run over by rear wheel of the bus, it was



completely crushed and the same is proved through Ex.P2-the postmortem certificate.

6. Heard Mr.K.Balasubramanian, learned counsel for the appellant and Mr.R.Balakrishnan, learned counsel for the respondents 1 to 5/claimants.

7. The Tribunal has arrived at the compensation of Rs.30,94,000/- as per the following break up.

Sl. No.	Particulars	Amount granted
1	Loss of Income	Rs.30,24,000/-
2.	Funeral Expenses	Rs.15,000/-
3.	Transport Expenses	Rs.15,000 /-
4.	Loss of Consortium	Rs.40,000/-
	Total	Rs.30,94,000/-

8. The age of the deceased been proved 34 years for which the multiplier 16 has to be applied as per Sarla Verma's case. The only dispute is regarding the notional income. The EEE graduate, aged 34 years, also proved to be an 'Archahar' having substantial income, the Tribunal has fixed Rs.15,000/- as monthly income after deducting 1/4th towards his personal expenses, has



arrived at loss of income as Rs.30,24,000/- by applying appropriate multiplier.

Therefore, this Court finds no error in the fixation of compensation. Regarding the contributory negligence, the postmortem certificate indicates the following external injuries.

“1. Crush involving the Entire skull, face, neck and upper chest with underlying Bones, muscles, vessels and nerves Crushed corresponding to the injury with parts of brain absent.

2. Abrasion measuring 10 x 8 cms over right shoulder.

3. Grazed abrasion measuring 20 x 15 cms present over front of abdomen.”

9. It is palpable from the postmortem certificate that the head of the deceased was run over by the rear wheel of the offending vehicle resulting in crush of entire skull, face, neck and upper chest. Even bone muscles fails, nerves were crushed corresponding to the injury and parts of brain absent. Such a huge crush on the head leading the death of the deceased whether he was wearing helmet or not has been inevitable. Therefore, the said plea is insignificant. Further more, the eyewitnesses had deposed that the deceased was wearing helmet at the time of the accident and there is no contra evidence to disbelieve the same. In the said circumstances, this Court finds no merits in the



appeal and hence, this Civil Miscellaneous Appeal is dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [S.M., J.]
22.12.2022

Index : Yes/No
Internet : Yes
PJJ

To
The Sub Judge,
Motor Accidents Claims Tribunal,
Devakottai.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

PJL

Judgment made in
C.M.A(MD)No.697 of 2019

22.12.2022