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C.M.A.Nos.847, 849, 852 & 1951 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.847, 849, 852 & 1951 of 2021
and C.M.P.Nos.4900, 4905 & 4911 of 2021

The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.33, Bharathidasan Street,
Contonment, Trichy – 1. ... Appellant in C.M.A.Nos.847,
849 & 852 of 2021 & 2nd Respondent in C.M.A.No.1951 of 2021

Vs.

1.Shanthi ... 1st Respondent in C.M.A.No.847 of 2021

2.Sivasankar
[*suo-motu* declared as major and her mother viz., Shanthi
is discharged from guardianship vide order dated 21.12.2023
made in C.M.A.Nos.847, 849, 852 & 1951 of 2021
and C.M.P.Nos.4900, 4905 & 4911 of 2021]
... 1st Respondent in C.M.A.No.849 of 2021

3.Ponnumani ... 1st Respondent in C.M.A.No.852 of
2021 & 1st Appellant in C.M.A.No.1951 of 2021

4.Minor Kanishka
[Minor rep. by her natural guardian next friend
mother Ponnumani] ... 2nd Respondent in C.M.A.No.852 of
2021 & 2nd Appellant in C.M.A.No.1951 of 2021

5.Muthusamy ... 3rd Respondent in C.M.A.No.852 of 2021 & 3rd



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Appellant in C.M.A.No.1951 of 2021

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6.Sanjammal ... 2nd Respondent in C.M.A.Nos.847 & 849 of 2021
& 4th respondent in C.M.A.No.852 of 2021 &
1st Respondent in C.M.A.No.1951 of 2021

Prayer in C.M.A.No.847 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.09.2020 made in M.C.O.P.No.14 of 2017 on the file of the Court of Motor Accidents Claims Tribunal, (Principal District Judge, Perambalur).

Prayer in C.M.A.No.849 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.09.2020 made in M.C.O.P.No.15 of 2017 on the file of the Court of Motor Accidents Claims Tribunal, (Principal District Judge, Perambalur).

Prayer in C.M.A.No.852 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.09.2020 made in M.C.O.P.No.18 of 2017 on the file of the Court of Motor Accidents Claims Tribunal, (Principal District Judge, Perambalur).

Prayer in C.M.A.No.1951 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the award passed in judgment and decree dated 30.09.2020 made in M.C.O.P.No.18 of 2017 on the file of the Court of Motor Accidents Claims Tribunal and Principal District Judge, Perambalur.



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C.M.A.Nos.847 & 849 of 2021:

For Appellant : Mr.S.Vadivel
For Respondents : Mr.S.P.Yuaraj [R1]
No appearance [R2]

C.M.A.No.852 of 2021:

For Appellant : Mr.S.Vadivel
For Respondents : Mr.S.P.Yuaraj [R1 to R3]
No appearance [R4]

C.M.A.No.1951 of 2021:

For Appellants : Mr.S.P.Yuaraj
For Respondents : No appearance [R1]
Mr.S.Vadivel [R2]

COMMON JUDGEMENT

All the appeals arise out of a single accident.

2. C.M.A.Nos.847, 849 and 852 of 2021 are filed by the insurance company challenging the award in M.C.O.P.Nos.14, 15 and 18 of 2017, which are filed by the injured claimants and dependants of the deceased



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Dharmaraj claiming compensation of a sum of Rs.10,00,000/-, Rs.10,00,000/- and Rs.50,00,000/-. The dependants of the deceased Dharmaraj has filed C.M.A.No.1951 of 2021 seeking enhancement of compensation awarded by the Tribunal in M.C.O.P.No.18 of 2017.

3. The facts in brief are as follows :-

As per the claim petitions, on 17.11.2016 at about 07.00 p.m., when the deceased Dharmaraj was riding his two wheeler bearing Regn.No.TN-48-AY-0383 along with injured Shanthi and Minor Sivasankar, who are the claimants in M.C.O.P.Nos.14 and 15 of 2017, as pillion riders, the motorcycle belonging to the first respondent and insured with the second respondent bearing Regn.No.TN-46-S-9957 driven by its driver in a rash and negligent manner, dashed against the two wheeler of the deceased, as a result, deceased Dharmaraj sustained fatal injuries and he was taken to Government Hospital, Perambalur for first aid and then admitted as inpatient in the Atlas Hospital, Trichy nad again he was taken to Government Hospital, Trichy for further treatment and inspite of the treatment given, the deceased died on 26.11.2016 due to accidental injuries. The pillion riders sustained multiple grievous



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injuries all over the body, for which, they were taken to the hospital for treatment. Thereafter, the pillion riders/injured claimants filed claim petitions in M.C.O.P.Nos.14 and 15 of 2017 claiming a sum of Rs.10,00,000/- each and the dependants of the deceased Dharmaraj filed a claim petition claiming a sum of Rs.50,00,000/- for the death of the deceased in M.C.O.P.No.18 of 2017.

4. Before the Tribunal, the claimants have examined three witnesses viz., P.W.1 to P.W.3 and marked 19 documents viz., Ex.P.1 to Ex.P.19. On the side of the respondents, they have examined three witnesses viz., R.W.1 to R.W.3 and marked 4 document viz., Ex.R.1 to Ex.R.4. The Tribunal has marked the disability certificate of Shanthi issued by Medical Board, Perambalur as Ex.C.1. After adjudication, the Tribunal allowed the petitions in part by awarding a sum of Rs.79,665/-, Rs.36,370/- and Rs.10,22,000/- as compensation in favour of the claimants. Aggrieved by the same, the insurance company has filed the appeals C.M.A.Nos.847, 849 and 852 of 2021. Not satisfied with the compensation awarded by the Tribunal in M.C.O.P.No.18 of 2017, the claimants have filed C.M.A.No.1951 of 2021 seeking enhancement of



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compensation.

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5. The learned counsel appearing for the appellant/insurer in C.M.A.No.847, 849 and 852 of 2021 submitted that, over loading of the vehicle in which the deceased was riding was the cause of the accident and further, the evidence of R.W.1, driver of the offending vehicle, shows that it was the deceased, who has driven the two wheeler in a rash and negligent manner. It is the further submission of the learned counsel that, the driver of the offending vehicle was not possessed of a valid driving licence and therefore, the appellant/insurer is not liable to compensate the claimants.

6. Per contra, the learned counsel appearing for the claimants submitted that, the Tribunal, on appreciating the evidences of P.W.1 and P.W.3 coupled with Ex.P.1/FIR has fixed the negligence on the part of the driver of the offending vehicle for the accident and therefore, the appellant being the insurer of the offending vehicle is liable to compensate the claimants. The Tribunal has rightly appreciated the materials and had fixed the negligence on the part of the driver of the



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offending vehicle, which does not suffer any illegality. Further, he submitted that the compensation awarded in respect of the death of the deceased, more particularly, fixation of notional income is wholly erroneous and considering the fact that the accident had taken place in the year 2016, the notional income ought to have been fixed at a higher side.

7. Heard the learned counsel appearing on behalf of the insurance company as well as the claimants and also perused the materials available on record.

8. The manner in which the accident had happened is not put in issue. The only contention advanced on behalf of the appellant/insurer, the rash and negligent driving was by the deceased and not by the driver of the offending vehicle and further, the driver of the offending vehicle not possessed of a valid driving licence and therefore, the liability cannot be fastened on the appellant/insurance company to pay the compensation. In this regard, a perusal of the order impugned herein reveals that the Tribunal while appreciating Ex.P.1/FIR had taken into consideration the



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evidence of P.W.1, who was the injured claimant, who had travelled along with the deceased and also the evidence of P.W.3, who was an eye-witness to the occurrence. Both of whom had spoken in unison in the same manner as to what has been recorded in the FIR. The evidence of P.W.1 and P.W.3 corroborates the FIR though R.W.1 who is the driver of the offending vehicle was examined by the respondents to show that the rash the negligent driving was by the deceased, however, the evidence of R.W.2 is contrary to the evidence of R.W.3. R.W.1, who was examined has further deposed that R.W.2 was not possessed of a valid driving licence. Further, there is admission by R.W.3 that third party premium was paid in respect of the offending vehicle by the owner of the vehicle. From the above, it is clearly evident that the accident had happened due to the negligence of the driver of the offending vehicle in driving the vehicle and the Tribunal has clearly distinguished the over loading of passengers in the vehicle driven by the deceased and held that no contribution to the accident was on account of the deceased and the full negligence has been fastened only on the driver of the offending vehicle and therefore, the insurance company as insurer of the offending vehicle is liable to indemnify the insured and pay the compensation to the



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claimants and the said finding recorded by the Tribunal is fair and reasonable and which does not suffer any perversity and the same is confirmed.

9. Now, coming to the question of quantum of compensation awarded by the Tribunal. In this regard, it is seen that the appellant/insurance company in C.M.A.Nos.847 and 849 of 2021 had not assailed the quantum of compensation awarded by the Tribunal. Therefore, this Court confirms the award passed by the Tribunal in M.C.O.P.Nos.14 and 15 of 2017, since this Court had confirmed the findings of the Tribunal with regard to rash and negligent driving of the offending vehicle.

10. Insofar as the compensation awarded by the Tribunal in M.C.O.P.No.18 of 2017, the claimants have filed C.M.A.No.1951 of 2021 seeking enhancement. Therefore, this Court is inclined to interfere with the same. A perusal of the award reveals that the Tribunal has fixed the notional income of the deceased at Rs.5,000/-. To compute the income under the head loss of dependency, no document in support of proof of



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the income of the deceased has been filed. However, it is the case of the claimants that the deceased was doing agricultural work and having milchy cows and earned a sum of Rs.20,000/- per month. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.12,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.16,800/-. Deducting 50% towards the personal expenses of the deceased, since the deceased was a bachelor, the loss of income to the family is arrived at Rs.11,200/- per month and the deceased being aged about 27 years, as evidenced from the records, adopting the multiplier of 17 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, the loss of



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income to the family is arrived at Rs.11,200/- * 12 * 17 = Rs.22,84,000/-,

which is worked out as follows :-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (1/3 rd) (Rs.16,800/- x 1/3 rd)(Per month)	5,600
	11,200
Notional income (per annum) (Rs.11,200/- x 12)	1,34,400
Multiplier	17
Total	22,84,800

11. Further, Ex.P.11/ medical bills reveals that due to the fatal injuries sustained by the deceased, he had taken treatment in various hospitals and died on 26.11.2016 due to accidental injuries, for which the appellants have incurred a sum of Rs.2,69,504/- towards medical expenses. However, the Tribunal has not awarded any compensation towards medical expenses. Considering the fatal injuries sustained by the deceased, this Court awards a sum of Rs.2,69,504/- towards medical expenses.



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12. The appellants 2 and 3 are entitled to a sum of Rs.40,000/- each under the head of loss of love and affection. Therefore, this Court awards a sum of Rs.80,000/- under this head. Further, this Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

13. In the above circumstances, the compensation awarded by the Tribunal in M.C.O.P.No.18 of 2017 is modified as under :-

<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of dependency	9,52,000/-	22,84,800/- (enhanced)
2	Funeral Expenses	15,000/-	15,000/-
3	Loss of Estate	15,000/-	15,000/-
4	Loss of Consortium	40,000/-	40,000/-
5	Loss of Love and affection	-	80,000/-
	Total	10,22,000/-	24,34,800/-

14. C.M.A.No.847 of 2021



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The Civil Miscellaneous Appeal is dismissed and the judgment and decree Motor Accidents Claims Tribunal, (Principal District Judge, Perambalur) in M.C.O.P.No.14 of 2017 dated 30.09.2020 is confirmed. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.14 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of two (2) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

15.1. C.M.A.No.849 of 2021

When the claim petition was filed in the year 2017, the first respondent/claimant was aged about 15 years. Now, he should be aged about 22 years and is therefore, major. Though no application has been taken out to declare him as major, this Court *suo motu* takes into account



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the age given in the claim petition and also taking into account the efflux of time, declares the first respondent/claimant as major and discharges his mother/Shanthi from his guardianship. The Registry shall carry out the necessary amendments.

15.2. The Civil Miscellaneous Appeal is dismissed and the judgment and decree Motor Accidents Claims Tribunal, (Principal District Judge, Perambalur) in M.C.O.P.No.15 of 2017 dated 30.09.2020 is confirmed. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.15 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of two (2) weeks from the date of receipt of a copy of this judgment. On such deposit being made by the appellant/insurance company, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.



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16. C.M.A.Nos.852 of 2021 & 1951 of 2021 :

In the result, the appeal filed by the insurance company in C.M.A.No.852 of 2021 is dismissed and the appeal filed by the claimants in C.M.A.No.1951 of 2021 is partly allowed. The impugned award of the Tribunal is modified, enhancing the compensation amount from **Rs.10,22,000/-** to **Rs.24,34,800/-**. The second respondent/insurance company in C.M.A.No.1951 of 2021 is directed to deposit the said amount to the credit of M.C.O.P.No.18 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of two (2) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned amount the appellants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the share of the appellants 1 and 3 directly to the bank account of the appellants 1 and /claimants 1 and 3, through RTGS within a period of two (2) weeks thereafter. Further, the Tribunal is



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directed to deposit the share of the second appellant/second claimant in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until she attains majority and interest derived from out of the said deposit shall be paid to the mother/Ponnumani of the second appellant/second claimant every quarter to be utilised for the welfare of the said minor claimant. After attaining majority, it is open to the second appellant/second claimant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the second appellant/second claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

21.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



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- 1.The Motor Accidents Claims Tribunal,
(Principal District Judge, Perambalur).
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J.,

sp

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