



C.M.A.No.2025 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.03.2023
Pronounced on	06.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

**C.M.A.No2025 of 2021
and C.M.P.No.10956 of 2021**

New India Assurance Company Limited,
"Claims HUB", 594, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore- 641 002.

...Appellant

Vs.

1.S.S.Arumugam
2.R.Parthasarathy
3.N.Bhuvaneswari
4.Minor.N.B.Sarulatha
5.Minor.N.B.Hemalatha
6.S.Vellingiri
Velmani (died)



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...Respondents

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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the award and decree dated 17.02.202 made in M.C.O.P.No.255 of 2016 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge) Coimbatore .

For Appellant : M/s.S.R.Sumathy
For R1 : No appearance
For R2 : Mr.R.Divya Preethika
for Mr.R.Bharathkumar
For R3 to R6 : Mr.S.Hameed Ismail

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The 3rd respondent/Insurance Company has before the Motor Accident Claims Tribunal(IV Additional District Judge), Coimbatore, in M.C.O.P.No.255 of 2016 is the appellant in this Civil Miscellaneous Appeal.



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2. Aggrieved by the quantum of the compensation awarded by the Tribunal, the Insurance company has brought forth the above said civil miscellaneous appeal. C.M.A.No.2025 of 2021 is directed against the award dated 17.02.2020 passed by the Motor Accident Claims Tribunal ((IV Additional District Judge), Coimbatore, in M.C.O.P.No.255 of 2016 directing the respondents to pay a sum of Rs.43,83,568/- with interest at the rate of 7.5% per annum from the date of presentation of the petition till the date of realization and costs for the death of one S.V.Nagarajan in an accident alleged to have been taken place on 03.12.2014 at about 4.p.m.

3. The respondents herein /claimants preferred a claim on the file of Motor Accident Claims Tribunal ((IV Additional District Judge), Coimbatore, in M.C.O.P.No.255 of 2016 praying for an award against the appellant for the death of S.V.Nagarajan who met with an accident on 03.12.2014 at about 4 p.m. The deceased S.V.Nagarajan and his friend P.Jayakumar after finishing their company work were returning home in Hero Honda Motor cycle bearing Registration



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No.TN38 AA 1685 at left side on the Therkupalayam pirivu, near Ramanarayanan Mills Bus Stop from south to north direction and at the same time a Hyundai Accent car bearing Registration No.TN38 S 6886 came from the same direction behind the deceased's motor cycle in rash and negligent manner driven by the 1st respondent and hit the deceased motor cycle bearing Registration No.TN 38 AA 1685 and the deceased S.V.Nagarajan was thrown away and sustained severe head injuries and was admitted at K.G.Hospital, Coimbatore. He was under Treatment from 30.12.2014 to 31.01.2015 and shifted to deceased's house, thereafter S.V.Nagarajan died on 27.07.2015. The 1st petitioner/3rd respondent is the wife and the 2nd and 3rd petitioners are the children and 4th and 5th petitioners are the parents of the deceased S.V.Nagarajan. Therefore, the petitioners/claimants have filed this appeal for compensation.

4.Based on the above said contentions the respondents/claimants assessed the damages at Rs.25,00,000/- and prayed for an award against the appellants directing them to pay jointly and severally the above said sum with future interest and costs from the date of till realization. In order to prove their case, the first petitioner was examined as P.W.1 and the claimants also examined two more



witnesses P.W.2 & P.W.3 and relied on 10 documents marked as EX.P.1 to E.10.

The appellant/3rd respondent filed a counter statement, resisting the claim of the respondents/claimants contending that the respondents/claimants must prove that the offending vehicle bearing Reg.No.TN-38 S-6886 was duly insured by the appellant/3rd respondent and also the first respondent driver had valid and effective licence. It is also contended that the accident has not taken place as narrated by the respondent/claimant and also stated that the quantum of compensation claimed by the respondents/claimants is exorbitant and hence, the claim petition should be dismissed with costs. In support of their claim no witness was examined. However, the appellant/3rd respondent relied on Ex.R.1 & R.2 to support their contention. Apart from this, X.1 to X.5 were marked.

5.After completion of recoding of evidence adduced on both sides, the Tribunal heard the arguments advanced on either side, framed the necessary points for consideration regarding the negligence and quantum, scrutinized the records and appreciated the evidence, held that the rash and negligent driving of the Hyundai Assent Car bearing Reg.No.TN 38-S-6886 was duly insured by the 2nd respondent/owner with the 3rd respondent/Insurance Company and that the 1st



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respondent/driver had valid and effective driving licence at the time of accident and the driver of the said offending vehicle was the sole cause of the accident and that the 2nd and 3rd respondents, as owner and insurer of the offending vehicle, were jointly and severally liable to pay compensation to the claimants, assess the damages at Rs.43,83,568/- and passed an award directing the respondents 2 and 3 to pay the said amount along with an interest at the rate of 7.5% per annum from the date of claim till realization and proportionate costs. Aggrieved by this, the appellant/Insurance Company preferred the above appeal questioning the quantum of compensation awarded by the Tribunal as excessive.

6.The learned counsel appearing for the Appellant/Insurance Company would contend that the deceased himself filed two claim petitions in M.C.O.P.Nos.897 of 2015 & 1480 of 2015 claiming compensation for the injuries sustained by him and the above petitions were dismissed for non prosecution. The present claim petition was filed by the legal heirs of the deceased S.V.Nagarajan claiming compensation for his death. It is further submitted that the alleged accident took place on 30.12.2014 and the said S.V.Nagarajan died only on 27.07.2015 and there is no nexus between the injuries caused in the accident and



the death. It is further submitted that in the claim petition filed by S.V.Nagarajan in M.C.O.P.Nos.897 of 2015 & 1480 of 2015 is income was stated in the above petitions as Rs.17,000/- per month. Whereas, in the present claim petition in M.C.O.P.No.255/2016, the legal heirs of the deceased have stated his income as Rs.32,000/-, which is false as per the deceased statement in M.C.O.P.Nos. 897 of 2015 & 1480 of 2015. On the other hand, the learned counsel appearing for the respondents/claimants would contend that there is sufficient documents on record to prove the nexus between the injuries sustained by the deceased and his death. It is submitted that the deceased was in continuous treatment after the said accident and only because of the injuries sustained by him, the deceased had died. The further contention of the learned counsel for the respondents/ claimants is that the accident was happened only due to the negligent of the 1st respondent who failed to appear before the Tribunal and adduce the evidence with regard to the manner of accident. There is no contra evidence produce to show that the accident was not happened due to the rash and negligent driving of the 1st respondent who drove the offending vehicle and also it is not established by the appellant/Insurance Company that the accident occurred due to the negligence of the deceased. The further argument put forth by the learned counsel for the respondents/claimants is



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that the Tribunal has awarded just compensation and therefore, calls for no interference.

7.This Court heard the arguments advanced in this appeal on either side and paid its anxious consideration to the same.

8.It is a fact not in controversy that there occurred an accident on 03.12.2014 at about 4 p.m while the deceased S.V.Nagarajan and his friend Jayakumar were returning home in Hero Honda Motor Cycle bearing Registration. No.TN-38-AA 1685 on the left side near Ramanarayanan Mills bus stop and the Hundai Assent Car bearing Registration No.TN-38-S-6886 came from the same direction collided with each other in which the said S.V.Nagarajan sustained grievous injury. The involvement of the offending vehicle is not disputed by the appellant/Insurance Company. In order to prove, the petition allegations on the negligence aspect, the respondents/claimants examined three witnesses. The 1st petitioner/1st respondent/wife of the deceased was examined as P.W.1. In her evidence she has stated that the accident happened only due to the negligent act of



the 1st respondent. Though P.W.1 was not an eyewitness to the alleged accident, on the side of the respondents, the driver of the offending vehicle was not examined to speak about the manner of the accident. No contra evidence produced to show that the accident was not happened due to the rash and negligent act of the driver of the offending vehicle. No evidence to prove that the alleged accident took place only due to the negligent act of the deceased. Hence, there cannot be any contributory negligence on the part of the deceased. Moreover, to prove the petition allegations on the negligence aspect Ex.A.11-copy of FIR and Ex.P.3-copy of Charge Sheet were marked on the side of the respondents/claimants. Considering the above said oral and documentary evidence, the Tribunal arrived at the conclusion that it was due to the fault of the 1st respondent/driver of the offending vehicle belonging to the 2nd respondent, the accident took place. The Tribunal has properly appreciated this evidence in this respect and has come to the correct conclusion that the rash and negligent driving of the car by the 1st respondent belonging to the 2nd respondent was the cause of the accident and that the 2nd and 3rd respondents as owner and insurer of the said vehicle were liable to pay compensation to the claimants. Thus, the findings of the Tribunal has got to be confirmed.



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9. The next contention of the appellant/Insurance Company is that there is no nexus between the injuries caused in the accident and the death of the deceased. In this regard, the claimants have relied upon Ex.P.2-wound certificate and Ex.P.6-discharge summary and Ex.P.9 Medical bills. The above medical records clearly establish that the deceased has taken treatment after the accident. On perusal of Ex.P.6 discharge summary it is seen that the deceased has undergone two operations in the head on 31.12.2014 and 02.01.2015. The 1st claimant P.W.1 the wife of the deceased has clearly deposed that even after discharge from the hospital on 31.01.2015 the deceased had undergone continuous treatment and he was bed ridden for 6 months after the accident and that the deceased had died on 27.07.2015 only of the consequence of the injuries sustained by him in the accident. On the side of the appellant/Insurance Company, it is contended that there is no post-mortem report to substantiate the claim of the claimants and therefore, the claim of the claimants cannot be sustained under the Legal Maxim that the personal claim dies with person. However, the Tribunal has referred to the decision cases reported in **2015(2) TN MAC 772** and **2013(1) TN MAC** and rightly held that non conducting of postmortem is not fatal and the Legal Maxim,



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"Personal action dies with person is not applicable to instant fatal case since the deceased died only due to the fatal injuries sustained in accident." Moreover, there is no contra evidence on the side of the appellant/ Insurance Company that the deceased died due to some other reason other than the alleged accident. Hence, the finding of the Tribunal regarding the death occurred only due to the injuries sustained in the accident has got to be confirmed.

10.The next challenge by the appellant/Insurance Company is about the monthly salary fixed by the Tribunal for calculating the loss of dependency. As rightly pointed out by the learned counsel for the appellant/Insurance Company in the claim petitions filed by the deceased S.V.Nagarajan the monthly salary of the deceased is stated as Rs.17,000/- whereas in the present claim petition, the claimants have stated the monthly income of the deceased as Rs.32,095/-. On the side of the claimants there is no proof to fix the monthly salary of the deceased. The Tribunal without appreciating the above facts fixed the monthly salary of the deceased as stated in the claim petition at Rs.32,095/-. Since there is no evidence on record to establish the monthly salary of the deceased and taking note of the fact that the deceased at the time of the accident was Machinist-Turner, a notional



income of Rs.12,000/- fixed as monthly salary of the deceased. The Tribunal based on Ex.P.2 wound certificate fixed the age of the deceased as 43 years old at the time of the death. There is no rebuttable evidence on the side of the appellant to disprove the same. As per *National Insurance Company limited vs. Pranay Sethi and other* reported in **217 ACJ 2700** - 30% is added for the future prospects. The monthly income is fixed as $12,000 + 30\%(3600) = 15,600$. Taking into consideration the number of dependent family members one third is deducted for personal expenses from the monthly income of Rs. $15,600(-1/3) = 10,400$ and the annual income of the deceased $10,400 \times 12 = 1,24,800$ And taking into consideration the age of the deceased, the proper multiplier is taken as '14' as per the decision case reported in **2013(1) TN MAC 481**. Applying multiplier $1,24,800 \times 14 = 17,47,200$ the petitioners are entitled to $1,24,800 \times 14 = 17,47,200$ as future loss of income of deceased S.V.Nagarajan. In the above, for income Tax deduction 20% is Rs-3,49,440 after deducting the income tax of Rs.3,49,440/- ($17,47,200 - 3,49,440$) future loss of income is Rs.13,97,760/-.

11.Further, applying the principles laid down in *Pranay Sethi case and others*, the petitioners are entitled to Rs,15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium. The



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claimants are entitled for compensation as here under:

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<i>SL. No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted</i>
1.	Total Income	43,13,568	13,97,760	Reduced
2.	Funeral Expenses	15,000	15,000	Confirmed
3.	For loss of Estate	15,000	15,000	Confirmed
4.	For loss of consortium	40,000	40,000	Confirmed
	Total	43,83,568	14,67,760	Reduced by Rs.29,15,808/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby reduced from Rs.43,83,568/- to Rs.14,67,760/- together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective share as per the



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apportionment granted by the Tribunal. The Insurance Company is permitted to withdraw the excess amount if any lying in the credit of M.C.O.P.No.255 of 2016, if the entire award amount has already been deposited by them. There shall be no order as to costs. Consequently the connected Miscellaneous Petition is closed.

(D.K.K.,J.) (K.G.T.,J.)

06 .04.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

The Motor Accident Claims Tribunal,
(IV Additional District Judge), Coimbatore.



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