



C.M.A.No.53 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :27.02.2023

Judgment Pronounced on :06.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

**C.M.A.No.53 of 2023**

1.S.Gurunathan  
2.Gayathiri  
3.S.Babu

... Appellants

vs.

1.Proprietor  
M/s.Akshara Process,  
No.222, Rasi Gounder Thottam,  
P.N.Road, Boyampalayam,  
Thirupur Town & Munsif  
Thirupur Taluk and district.

2. The Branch Manager,  
Reliance General Insurance Company Ltd,  
Office having at 15-A, PLA, Kanaga Towers,  
11th Cross Main Road, Trichy Town & Munsif,  
Trichy Taluk & District.

3. Sekar

...Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.244 of 2017 dated 11.04.2022 on the file of the Motor Accident Claims Tribunal/Principal District & Sessions Court at Thiruvarur.



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For Appellants : Mr.Ma.P.Thangavel  
For R2 : Mr.P.Suresh Srinivasan  
For R1&R3 : No appearance

### J U D G M E N T

The claim petitioners are the appellants herein. They have filed M.C.O.P.No.244 of 2011 claiming compensation for the death of their mother in the road transport accident on 05.01.2014 which was dismissed by the Tribunal and hence this appeal.

2. For the sake of convenience, the parties are referred to as per ranking before the trial Court.

3. The factum of the accident, the manner of the accident and rash and negligence on the part of the driver of the first respondent herein and the fact that the vehicle in question which was duly insured with the second respondent, are not in dispute and hence the findings rendered by the Tribunal in that regard are hereby confirmed.

4. The third respondent herein is the husband of the deceased and the claim petitioners 1 to 3 are sons and daughter of the deceased.



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5. It is a specific case of the claim petitioners that the vehicle – two wheeler belonging to the first respondent herein and insured with the second respondent herein, was borrowed by the third respondent and took his wife as a pillion-rider and it had met with an accident in which the mother of the petitioners have died. She worked as a Kothanar Mason and was 35 years at the time of the accident. The Tribunal has held that since the third respondent is the borrower of the vehicle, he is not entitled for any compensation and accordingly, the Tribunal rejected the M.C.O.P and hence the appeal by the claimants.

6. Heard the respective counsel and perused the records.

7. In order to ascertain as to whether the claim petitioners are entitled for compensation under the policy condition, I have perused Ex.P-6. It is a policy copy with terms and conditions of the vehicle of the first respondent. As per the policy, I find that it is a package policy and when once Ex.P5 Registration Certificate shows that the nature and character of the policy is a package policy, the pillion rider is also covered by the same, as held in 2013 (1) SCC 731 (National Insurance Co. Ltd. Vs. Balakrishnan and another) and hence the vehicle belongs to the first



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respondent which is insured with the second respondent/insurance company are jointly and severally liable to pay the compensation and hence the contra finding recorded by the Tribunal is hereby vacated.

8. On the point of quantum of compensation, the date of the accident is 05.01.2014 and the deceased was said to be a Mason, aged 35 years and hence, notional income of Rs.400/- is fixed per day for 26 days a month and since there are 3 claim petitioners, 1/3rd should be deducted for the personal expenses as per Sarla Verma's case (Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC),) and '16' multiplier is adopted and hence, as contended by the learned counsel for the appellant, the proposition laid down by the Supreme Court in Pranay Sethi case, reported in National Insurance Company Limited Vs. Pranay Sethi and others (S.L.P.(Civil) No.25590 of 2014, dated 31.10.2017) (Reported in 2017 (16) SCC 680 has to be applied and entitled for 40% future prospects.

9. Accordingly, the calculation is made as below:

$$400 \times 26 = 10,400/-$$

$$40\% \text{ of } 10,400 = \text{Rs.}4,160/-$$

$$(10,400 + 4,160) \times 12 \times 16 \times \frac{2}{3} = \text{Rs.}18,63,680/-$$



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10. For the 'loss of love and affection' for petitioners 1 to 3, a sum of Rs.40,000/- each is hereby awarded. This Court hereby awards Rs.15,000/- and Rs.15,000/- towards 'Funeral expenses' and 'Transportation' respectively.

11. In total, the claim Petitioners is entitled to a sum of Rs.20,13,680/- (Rupees Twenty lakhs thirteen thousand six hundred and eighty only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation.

12. In fine,

(i) this Civil Miscellaneous Appeal stands allowed, awarding the compensation at Rs.20,13,680/-. No Costs.

(ii) the 2<sup>nd</sup> Respondent/Insurance Company is directed to deposit the award amount with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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(iii) on such deposit being made, claim Petitioners are permitted to withdraw the entire amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) The appellants/claim Petitioners are directed to pay the court fee, if any, for the compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

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Index : Yes / No  
Speaking Order : Yes / No  
Neutral Citation : Yes / No

To

1. The Motor Accident Claims Tribunal/  
Principal District & Sessions Court at Thiruvavarur.
2. The Section Officer,  
V.R.Section,  
High Court of Madras,  
Madras.



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**RMT.TEEKAA RAMAN, J.,**

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