



C.M.A.No.471 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 31.01.2023	Pronounced on 07.03.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.Rajamani
W/o.Kalliyappan
Residing at No.97, Pachagoundanur,
Vairamangalam Village,
Bhavani Taluk, Erode District.

2.Sathyapriya
W/o.Senthilkumar,
D/o.Late.Kalliyappan
Residing at No.42, Karichigoundanpalayam,
Kanchikoil Village, Perundurai Taluk,
Erode District.

3.Jayaprakash, S/o.Late.Kalliyappan

4.Gopinath, S/o.Late Kalliyappan
Both are residing at No.97, Pachagoundanur
Vairamangalam Village, Bhavani Taluk,
Erode District.

... Appellants

Vs.

1.M.Ravi, S/o.Murugan
Residing at Boyer Street, Onanjagoundampalayam,
Oodathurai Village, Bhavani Taluk, Erode District.



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Murugan (Died)

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2.The United India Insurance Company Limited,
Branch Office at No.3, Giriram Building upstairs
Gobi Town, Veerapandi Village
Gobi Taluk, Erode District.

3.Sivakami, W/o.Late.Murugan

4.Minor Sandhiya @ Jagadeswari,
Rep. by her mother Sivakami, D/o.Late.Murugan
Both are residing at No.1/98, Onanjagoundampalayam
Oodathurai Village, Bhavani Taluk,
Erode District.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.10.2016 made in MCOP.No.354 of 2015 on the file of the MACT/III-Additional District cum Sessions Court at Gobichettipalayam.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.J.Chandran (for R2)

R1, R3 & R4 – No appearance

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 24.10.2016 made in MCOP.No.354 of 2015 on the file of the MACT/III-Additional District cum Sessions Court at Gobichettipalayam.



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2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.354 of 2015 on the file of the MACT/III-Additional District cum Sessions Court at Gobichettipalayam. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Kalliyappan filed MCOP.No.354 of 2015 on the file of the MACT/III-Additional District cum Sessions Court at Gobichettipalayam, seeking compensation and filed this Appeal on the point of quantum and ratio of negligence.

4.The factum of the accident and manner of the accident are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court in this regard are hereby confirmed. The negligence fixed by the Tribunal at the rate of 25 : 75 between the deceased and the driver of the offending vehicle is specifically disputed in this Appeal.

5.During the trial, on the side of the claim Petitioners, PW1 & PW2 were



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examined & Ex.P.1 to Ex.P.9 were marked and on the side of the Respondents, RW1 was examined and Ex.R.1 was marked.

6.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

7.The claim Petitioners have filed claim Petition seeking compensation for the death of the husband of the 1st claim Petitioner in a road transport accident happened on 30.09.2014. In the counter affidavit filed before the Tribunal, the Insurance Company has taken a plea that due to the sudden crossing of the deceased in the junction of the road, he has invited the accident. The trial Court on consideration of Ex.P.3/rough sketch and evidence of PW2/occurrence witness come to a conclusion that the deceased had contributed 25% of negligence and the driver of the 1st Respondent/offending vehicle had contributed 75% of negligence and accordingly rendered finding while granting the award.

8.Learned counsel for the Appellant would contend that at the time of the accident the deceased was consumed alcohol is found to be without any



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evidence and accordingly, the trial Court has rightly rejected the said contention.

In the absence of any positive evidence to show that the deceased was under the influence of alcohol, while crossing the road, the said finding rendered by the trial Court does not warrant any interference. From the answer elicited in PW2's evidence, it appears that the deceased had suddenly crossed the road at the junction, and hence the Trial Court had fixed 25% negligence on the part of the deceased. Taking into consideration the evidence adduced before the Court and Ex.P.1/FIR and also taking note of Ex.P.3/rough sketch, this Court is of the considered view to reduce the contributory negligence fixed on the deceased at 10% and hence, the negligence fixed on the deceased and the driver of the offending vehicle is fixed as 10 : 90.

9.On the point of quantum of compensation, notional income of Rs.7,000/- was fixed by the Tribunal, since the deceased was aged about 44 years at the time of the accident. As per Ex.P9/VAO certificate, the notional income of the deceased is enhanced to Rs.12,000/-. The deceased is said to be 44 years at the time of the accident and therefore, as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others .Vs. Delhi*



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Transport Corporation & another, reported in **2009 (2) TNMAC 1 (SC)**, right multiplier is “14” for the age of the deceased and as per the Constitution Bench's judgment of the Hon'ble Apex Court in **National Insurance Company Limited V. Pranay Sethi and others**, reported in **2017 (2) TN MAC 609 (SC)**, 25% has to be added towards future prospects. The Tribunal has deducted 1/3rd towards personal expenses of the deceased, the same is hereby confirmed and hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$\text{Rs.12,000/-} \times 25 \% \text{ of } 12000 = \text{Rs.15,000/-}$$

$$\text{Rs.15,000/-} \times 12 \times 14 \times 2/3 = \text{Rs.16,80,000/-}$$

10.The Tribunal has awarded a sum of Rs.1,00,000/- towards filial consortium, the same is reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,50,000/- towards Loss of love and affection, the same is reduced to Rs.1,20,000/-, The Tribunal has awarded a sum of Rs.5,000/- and Rs.10,000/- towards transportation and funeral expenses, the same are enhanced to Rs.15,000/- each and a sum of Rs.15,000/- is awarded towards loss of estate

S.No.	Head	Amount (Rs.)
1	Pecuniary loss	1680000



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S.No.	Head	Amount (Rs.)
2	Loss of consortium	40000
3	Loss Love and affection	120000
4	Funeral expenses	15000
5	Loss of Estate	15000
6	Transportation	15000
	Total	1885000
	90% of compensation	1696500

In total, the claim Petitioners are entitled to a sum of Rs.16,96,500/- (Rupees sixteen lakh ninety six thousand and five hundred only).

11.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.7,86,750/- to Rs.16,96,500/- to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced 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.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled



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to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

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

07.03.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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The III-Additional District cum Sessions Judge
III-Additional District cum Sessions Court
Motor Accident Claims Tribunal
Gobichettipalayam.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 07.03.2023