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C.M.A.Nos.223 & 926 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.223 & 926 of 2020
and C.M.P.No.1664 of 2020

C.M.A.No.223 of 2020

M/s.United India Insurance Co.Ltd.,
Divisional office, Kandasamy Shopping Complex,
Chitrakoodam, Kalapana Road,
Udumalpet and having Regional office at HUB,
3rd Party Claim, 3rd Floor, 361,
Dr.Nanjappa Road, Coimbatore. ... Appellant/4th Respondent

Vs

1.N.Jayamala ... 1st Respondent/Petitioner

2.G.Sakthivel ... 2nd Respondent/1st Respondent

3.R.S.Mills Pvt.Ltd.,
At No.2, Rhini Garde, Kangayam Road,
Tiruppur. ... 3rd Respondent/2nd Respondent



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4.The New India Assurance Co.Ltd.,
Post Box No.47, Kumaran Shopping Complex,
Tiruppur and having Regional office at Hub,
3rd Party Claims, 1st Floor, Obli Towers,
R.S.Puram Coimbatore.

... 4th Respondent/3rd Respondent

5.Vanjiappan

... 5th Respondent/5th Respondent

6.Rajathi

... 6th Respondent/6th Respondent

Prayer in C.M.A.No.223 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree made in M.C.O.P.No.178 of 2015, by the Hon'ble Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellants ... M/s.S.Arun Kumar

For Respondents ... Mr.C.D.Sugumar for R1
... No Appearance for R2 & R3
... Mr.S.R.Sumathy for R4
... Notice not in ready for R5 & R6



C.M.A.Nos.223 & 926 of 2020

C.M.A.No.926 of 2020

Jayamala

... Appellant/Petitioner

Vs

1.Sakthivel

2.R.S.Mills Pvt.Ltd.,
At No.2, Rhini Garde, Kangayam Road,
Tiruppur.

3.The New India Assurance Co.Ltd.,
Post Box No.47, Kumaran Shopping Complex,
Tiruppur and having Regional office at Hub,
3rd Party Claims, 1st Floor, Obli Towers,
R.S.Puram Coimbatore.

4.M/s.United India Insurance Co.Ltd.,
Divisional office, Kandasamy Shopping Complex,
Chitrakoodam, Kalapana Road,
Udumalpet and having Regional office at HUB,
3rd Party Claim, 3rd Floor, 361,
Dr.Nanjappa Road, Coimbatore.

5.Vanjiappan

6.Rajathi

... Respondents/Respondents



C.M.A.Nos.223 & 926 of 2020

Prayer in C.M.A.No.926 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 28.02.2019 passed in M.C.O.P.No.178 of 2015, on the file of the Forum of the Motor Accidents Claims Tribunal, Subordinate Judge, Coimbatore.

For Appellants ... M/s.C.D.Sugumar

For Respondents ... No Appearance for R1 & R2
... Mr.S.R.Sumathy for R3
... Mr.S.Arun Kumar for R4
... Notice not in ready for R5 & R6

COMMON JUDGMENT

Both the appeals arise out of single accident. For the sake of convenience, the parties to the present *lis* will be referred to in the same order as they were arrayed before the Tribunal in the claim petition.

2. Assailing the impugned award dated 28.02.2019, passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore. C.M.A.No.223 of 2020 has been filed by the Insurance Company questioning its liability while C.M.A.No.926 of 2020 has been filed by the claimant



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questioning the quantum of compensation awarded by the Tribunal.

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3. The Appellant/claimant in C.M.A.No.926 of 2020 is the wife and Respondents 5 & 6 are the parents of the deceased Saravanan @ Saravanakumar. It is the case of the claimant that on 16.06.2014, at about 7.00 p.m., when the deceased was riding his motor cycle bearing Reg.No.TN 57 AT 3493, at that time all of a sudden a pedestrian who was standing on the western side of the road had suddenly tried to cross the road. On seeing the motorcycle, the pedestrian suddenly withdrawn from crossing the road due to which, the deceased lost control of his motorcycle thereby the deceased fell down along with his motorcycle and dashed against the pedestrian at that time, the car bearing Reg.No.TN 33 AY 7434 which came in a rash and negligent manner, dashed against the deceased saravanan. Due to the said accident, the deceased sustained fatal injuries and died on the spot. The claimant has filed the claim petition claiming compensation towards the death of the deceased.



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4. Before the Tribunal, the claimant examined herself as P.W.1 and examined the eye witnesses as P.W.2 & P.W.3 and marked Ex.P-1 to Ex.P-11. On the side of the Respondents 3 & 4, R.W.1 & R.W.2 were examined and marked Ex.R-1 to Ex.R-5 respectively. After considering all the oral and documentary evidence, the Tribunal has awarded a sum of Rs.1,00,000/- as compensation to the claimant and respondents 5 & 6 and has fastened the liability on the insurer of the motorcycle/Appellant in C.M.A.No.223 of 2020. Aggrieved by the said award, both the Claimant and the Insurance Company have filed the present appeals.

5. Learned counsel appearing for the appellant/Insurance Company submitted that inspite of the fact that eye witnesses to the occurrence, viz., P.W.1 and 3 have categorically spoken about the rash and negligent driving on the part of the driver of the lorry, however, erroneously, the Tribunal has fastened the negligence on the rider of the motor cycle/deceased, which is wholly unsustainable. Further, directing the appellant/insurance company to pay the compensation towards personal accident cover to the deceased,



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notwithstanding the fact that rash and negligent driving is on the part of the driver of the lorry is also perverse and liable to be interfered with.

6. Learned counsel appearing for the Claimant while sailed with the contentions advanced by the learned counsel for the appellant/insurance company, further submitted that once the negligence is held to be on the driver of the lorry, the claimants would be entitled to compensation at the hands of the 3rd respondent, viz., the insurer of the lorry and, therefore, necessary compensation needs to be awarded.

7. Learned counsel appearing for the Insurance Company, the insurer of the lorry, vehemently contended that the deceased falling on the road, while trying to negotiate the pedestrian resulting in the lorry running over him cannot be held that it was the driver of the lorry, who was rash and negligent in driving the vehicle. When the deceased, on his own, had fallen down, that too, on the main road, the vehicles coming from behind cannot be made attributable and rightly the Tribunal has fastened the rash and negligent



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driving was on the driver of the two wheeler, which does not require any interference. It is further submitted that merely because P.W.s 1 and 3 have spoken that the rash and negligent driving was on the driver of the lorry, as it had run over the deceased, who had fallen on the road, cannot be the basis to hold that the driver of he lorry was negligent, when there is no material to suggest that the vehicle was driven at uncontrollable speed. Therefore, it is submitted that no interference is warranted with the finding recorded by the Tribunal.

8. This Court heard the learned counsel appearing for the appellant/Insurance Company as well as the claimant and perused the materials available on record.

9. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company has challenged its liability to pay on account of the negligence fixed on the part of the deceased. After elaborately considering all the oral and



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documentary evidence, the Tribunal has passed an award based on the evidence of P.W.1 and P.W.3 who had categorically deposed that when the deceased was riding his two wheeler, on seeing the pedestrian suddenly trying to cross the road, had lost the control of his vehicle thereby the deceased fell down on the right side of the road at which time, the lorry which came in a rash and negligent manner dashed against the deceased resulting in the death of the deceased and that the said accident had occurred purely due to the negligence on the part of the driver of the lorry. The accident could have been averted if the driver of the lorry had come in a controlled speed. When there is a categorical deposition of P.W.3, in the absence of any contra evidence, the finding recorded by the Tribunal that it was the deceased who had entirely contributed to the said accident is wholly erroneous. Taking into consideration the evidence of P.W.s 1 and 3 this Court holds that the rash and negligent driving is attributable to the driver of the lorry, viz., the 1st respondent and, therefore, the 2nd respondent, the owner of the vehicle and the 3rd respondent, the insurer of the vehicle are jointly and severally liable to pay the compensation to the claimants and not the appellant who is the insurer of



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the two wheeler. Accordingly, the portion of the order fastening negligence on the deceased is set aside and instead the negligence is fastened on the 2nd and 3rd respondent in C.M.A.No.223 of 2020 are jointly and severally to pay the compensation to be determined by this court to the claimants.

10. Once this Court has come to the conclusion that negligence is on the part of the 1st respondent/driver of the lorry, the appellant is absolved of any liability and, therefore, is not required to pay any part of the compensation to the claimants, including the sum of Rs.1,00,000/- ordered by the Tribunal towards personal accident cover.

11. Insofar as the quantum of compensation awarded by the Tribunal, it is the case of the claimant that compensation which has been quantified by the Tribunal is wholly inadequate and contrary to the decision of the Hon'ble Apex Court. It is to be pointed out that it has been the view of the courts that even a vegetable vendor is to be fixed with proper notional income for the purpose of quantifying the monthly income earned by an individual. Applying the ratio



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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 the notional income at 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 1/3th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,200/- per month and the deceased being aged about 22 years, as evidenced from the records, adopting the multiplier of 18 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 income to the family is arrived at Rs.11,200/- x 12 x 18 = Rs.24,19,200/- which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	12,000
Add: Future Prospects (Rs.6,000 x 40%) (Per month)	+ 4800



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Loss of Income	Amount (in Rs.)
	16,800
Less: Personal expenses (1/3 rd) (Rs.16,800/- x 1/3) (Per month)	- 5600
	12,200
Notional income (per annum) (Rs.11,200 x 12)	1,34,400
Multiplier	x18
Total	24,19,200

12. Further, no compensation has been awarded under the heads “Loss of Consortium” and “Loss of Love & Affection”. This Court applying the ratio laid down in *Pranay Sethi case* by the Constitution Bench, awards a sum of Rs.40,000/- under the head “Loss of Consortium” to the claimant and a sum of Rs.40,000/- each under the head “Loss of love and affection” to Respondents 5 & 6 totalling to a sum of Rs.80,000/-. Further, it is to be pointed out that no compensation has been awarded under the head, “loss of estate” and therefore, this Court awards a sum of Rs.15,000/- under the said head.

13. In the above circumstances, while setting aside the order of the Tribunal awarding a sum of Rs.1,00,000/- payable by the 4th respondent, this



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Court computes the compensation payable by the 2nd and 3rd respondents jointly and severally as below :-

S.No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1.	Loss of income	-	Rs.24,19,200/-
2.	Loss of Consortium	-	Rs.40,000/-
3.	Funeral Expenses	-	Rs.12,000/-
4.	Loss of love and affection	-	Rs.80,000/-
5.	Loss of Estate	-	Rs.15,000/-
6.	Personal Accidental Cover	Rs.1,00,000/-	-
	Total	Rs.1,00,000/-	Rs.25,66,200/-

14. In the result, both the appeals are allowed in the aforesaid terms and the impugned award of the Tribunal is set aside and instead this Court awards compensation in a sum of Rs.25,66,200/- payable by the 2nd and 3rd respondents in the claim petition. The 3rd respondent-Insurance Company in claim petition, who is the 4th respondent in C.M.A.No.223 of 2020 is directed to deposit the compensation as quantified by this court to the tune of **Rs.25,66,200/-**, to the credit of M.C.O.P.No.178 of 2015 along with interest at



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the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight (8) weeks from the date of receipt of a copy of this judgment. While the claimant/wife would be entitled to a sum of Rs.15,66,200/-, the parents of the deceased, viz., respondents 5 & 6 would be entitled to a sum of Rs.5,00,000/- each. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant and the respective respondents, who are the wife and parents of the deceased, through RTGS within a period of two weeks thereafter. The claimant/wife is directed to pay the necessary Court fee towards the amount enhanced by this court, if the court fee paid by her had already been refunded as per the order of the Tribunal. The Tribunal shall disburse the compensation as apportioned by this Court upon proof of payment of Court fee by the claimant. The Appellant-Insurance Company in CMA No.223 of 2020, is permitted to withdraw the amount, if any, deposited, by filing appropriate application. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition is closed.



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Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal Cum
Special Subordinate Judge,
Coimbatore.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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