



C.M.A.No.1882 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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- 1.Mary Disalva
- 2.Minor Meena Madhumidha
- 3.Minor Sanjai Raj
[Minor petitioners 2 and 3 represented by their mother
guardian and next friend 1st petitioner Mary Disalva]
- 4.Mariyappan ... Appellants

Vs.

- 1.Prakash
[Since R1 remained exparte before the Tribunal,
his presence may be dispensed with]
- 2.The Reliance General Insurance Company Limited,
No.6, Hadas Road,
Nungambakkam,
Chennai – 34. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2019 made in M.A.C.T.O.P.No.185 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee.



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For Appellants : Ms.A.Subadra

For Respondents : Not Ready in Notice [R1]

Mr.E.Rajadurai

for M/s.M.B.Gopalan Associates [R2]

JUDGEMENT

The claimants are before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee in M.A.C.T.O.P.No.185 of 2016, dated 30.07.2019.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) The appellants are the wife, daughter, son and father of the deceased M.Amulraj. On 01.02.2016, at about 21.00 hours, the deceased was driving the lorry bearing Regn.No.NT-45-U-0741 and at that time, the lorry driven by the deceased hit a stationary lorry from behind, which was stationed on the road without any signal. In the said accident, the deceased sustained grievous injuries and died on the way to the hospital. Therefore, the claimants, who are



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the legal heirs of the deceased, have filed a claim petition claiming a sum of Rs.20,00,000/- for the death of the deceased.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. No witnesses were examined nor any documents were marked on the side of the respondents. However, the Tribunal has negated the claim of the claimants on the ground of no fault liability and had awarded only a sum of Rs.50,000/- which is put in issue by the claimants in the present appeal.

4. The learned counsel appearing for the appellants/claimants submitted that, the accident had happened only due to the fault on the stationary lorry belonging to the first respondent, which was insured with the second respondent as the said lorry was parked in the middle of the road without any signal and the period being night time, in the absence of the signal, the lorry driven by the deceased rammed against the stationary lorry leading to the death of the deceased. Therefore, the fault cannot be attributed



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on the deceased under no fault liability and compensation has to be paid jointly by the respondents 1 and 2.

5. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, the deceased had driven the lorry in a rash and negligent manner, which had lead to the lorry driven by the deceased dashing against the lorry belonging to the first respondent. There being no fault on the stationary lorry, the second respondent as insurer of the vehicle belonging to the first respondent, is not liable to pay any compensation. However, under the head no fault liability, the Tribunal has awarded compensation, which is just and reasonable and no interference is warranted.

6. Heard the learned counsel appearing for the appellants/claimants as well as the second respondent/insurance company and also perused the materials available on record.



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7. The manner in which the accident had taken place is not in dispute.

The lorry belonging to the first respondent was stationary in the middle of the road and the lorry driven by the deceased had dashed against the stationary lorry from behind. The Tribunal has held that the negligence is on the part of the deceased and therefore, the insurer is not liable to pay the compensation. However, one significant fact has been lost sight of by the Tribunal while negating the claim for compensation. A stationary lorry parked at night is supposed to exhibit a signal in the form of tail light flashing so as to enable the vehicles coming from behind to note that the said lorry is stationary. Further, no vehicle can be stationed in the middle of the road even by exhibiting its tail light and it should have been parked on the side of the road. In the case on hand, the vehicle of the first respondent was parked in the middle of the road. The above is also evidenced through the FIR/Ex.P.1. P.W.2 is an eye-witness to the occurrence, who has spoken about the fact that the lorry belonging to the first respondent was stopped in the middle of the road without any parking light and without any signal. This clearly shows



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that there is negligence on the part of the lorry belonging to the first respondent. At the same time, it cannot be lost sight of that the vehicles coming from behind also have to be cautious while driving at night, so as to avoid unnecessary accidents. Had the lorry driven by the deceased not driven in a negligent manner, the accident could not have resulted in fatality. Therefore, to some extent there is contributory negligence on the part of the deceased as well. Appreciating the materials available on record, more particularly, Ex.P.1/FIR coupled with evidence of P.W.2 and in the absence of the lorry belonging to the first respondent exhibiting parking light or any signal, major part of the negligence is on the lorry belonging to the first respondent and this Court fixes the negligence at 80% while fixing 20% contributory negligence on the part of the deceased in being a bit negligent in driving the lorry and dashing against the stationary lorry. Therefore, the finding of the Tribunal on negligence is set aside and instead, this Court holds that the vehicle of the first respondent is negligent to the extent of 80% while the deceased had contributed negligence to the extent of 20%. Therefore, to the extent of 80%, the second respondent/insurance company as



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insurer of the vehicle belonging to the first respondent is liable to pay the compensation to the claimants.

8. Since this Court had fixed 20% contributory negligence on the deceased and 80% negligence on the vehicle of the first respondent, this Court is inclined to award compensation to the claimants by adopting the multiplier method.

9. It is claimed by the claimants that at the time of death, the deceased was working as a lorry driver 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*



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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 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.12,600/- per month and the deceased being aged about 39 years, as evidenced from the records, adopting the multiplier of 15 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.12,600/- * 12 * 15 = Rs.22,68,000/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (1/4 th) (Rs.16,800/- x 1/4 th) (Per month)	4,200
	12,600
Notional income (per annum) (Rs.12,600/- x 12)	1,51,200
Multiplier	15
Total	22,68,000



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10. Further, this Court awards a sum of Rs.40,000/- is awarded towards loss of consortium and a sum of Rs.1,20,000/- towards loss of love and affection by awarding a sum of Rs.40,000/- to the appellants 2 to 4. A sum of Rs.15,000/- is awarded by this Court under the heads loss of estate and funeral expenses respectively.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	No fault liability	50,000/-	-
2	Loss of Income	-	22,68,000/-
3	Loss of consortium	-	40,000/-
4	Loss of love and affection	-	1,20,000/-
5	Funeral Expenses	-	15,000/-
6	Loss of estate	-	15,000/-
	Total	50,000/-	24,58,000/-

12. When the claim petition was filed in the year 2016, the appellants 2 and 3 were aged about 13 and 11 years. Now, they should be aged about 21



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and 19 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellants 2 and 3 as major and discharges their mother Mary Disalva from the guardianship. The Registry shall carry out the necessary amendments.

13. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned award of the Tribunal is modified, enhancing the compensation amount from **Rs.50,000/-** to **Rs.24,58,000/-**. The second respondent/ insurance company is directed to deposit 80% of the modified compensation amount to the credit of M.A.C.T.O.P.No.185 of 2016 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 six (6) weeks from the date of receipt of a copy of this judgment. From the above modified award amount, the appellants 1 and 2 are entitled to 35% each, the 3rd appellant is entitled to 20% and the 4th



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appellant is entitled to 10%. On such deposit being made by the second respondent/insurance company, the Tribunal is directed to transfer the amount as per the above apportionment made by this Court, directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee.

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



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M.DHANDAPANI,J.,

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