



C.M.A.No.2604 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2604 of 2019
and C.M.P.No.12561 of 2019

M/s.National Insurance Co.Ltd.,
Represented by its Divisional Office-I
Having Office at L.R.N. Complex,
Salem-7.

... Appellant/Respondents-II

Vs

1.V.Sathyalakshmi
2.S.Viswanathan
3.K.Chinnasamy
4.K.Sekar
5.M/s.United India Insurance Co.Ltd.
Represented by its Divisional Office-II
(HUB), 104-A, Peramanoor Main Road,
Salem-7.

... Respondents/Petitioner

... Respondents
/Respondents-I, II & III

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and decree dated 06.02.2017 made in M.C.O.P.No.1180 of 2015 on the file of the Motor Accident Claims Tribunal-Cum-II Additional District Judge at Salem.



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For Appellant	... Mrs.R.Shree vidhya
For Respondents	... No Appearance [R1] to [R3] ... Notice dispensed with [R4] (vide order dated 01.06.2023) ... Ms.I.Malar [R5]

JUDGMENT

Aggrieved by the impugned award dated 06.02.2017 on the file of the Motor Accident Claims Tribunal-Cum-II Additional District Judge at Salem made in M.C.O.P.No.1180 of 2015, the Appellant/Insurance Company has filed the present Appeal questioning the liability and the quantum of compensation fixed by the Tribunal.

2. On 14.04.2015 at about 9.15 am, when the deceased Saravanakumar was travelling in the bus bearing registration no.TN 52-D-5757 which was driven in a rash and negligent manner dashed against the stationed mini auto bearing registration no.TN-23-K-4037 due to which, the deceased sustained fatal injuries and was taken to the Government Hospital Thiruchengode whereby he was declared dead. In view of the loss incurred in view of the said accident, the respondents 1 & 2/parents of the deceased filed a claim petition



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before the Tribunal in M.C.O.P.No.1180 of 2015 claiming compensation towards the death of the deceased.

3. Before the Tribunal, the 1st respondent/claimant examined herself as P.W.1, examined P.W.2 and marked Ex.P-1 to Ex.P-11. No witnesses were examined on the side of the respondents nor any documents were marked. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.8,77,500/- to the claimants and fastened the liability against the Appellant/Insurance Company and the 3rd respondent/Owner of the vehicle. Challenging the said award, the Appellant has filed the present Appeal.

4. Learned counsel appearing for the Appellant/Insurance-Company submitted that admittedly, the deceased lost his life due to the said accident and denied their liability to indemnify the claimants on the ground that the deceased was travelling on the footboard of the bus and thus the deceased is solely responsible for the said accident. However, the Tribunal had erroneously fastened the negligence wholly on the 3rd respondent/owner of the vehicle



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which is not sustainable. He further submitted that the compensation awarded under various heads is also highly excessive which requires reconsideration. Accordingly, he prayed for allowing the appeal.

5. Learned counsel appearing for the 5th respondent submitted that the insured auto was parked on the extreme side of the road, however, the offending bus was driven in a rash and negligent manner which was the cause for the said accident. After considering the oral and documentary evidences, the Tribunal has rightly fixed the negligence on the part of the 3rd respondent which cannot be interfered with.

6. Though notice was served on the respondents 1, 2 & 3 and their name printed in the causelist none appeared on behalf of the respondents today. Considering the pendency of the appeal which is of the year 2019, this Court is inclined to dispose of the matter based on the materials available on record.

7. The factum of the accident is not disputed by the parties and so also



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the liability. Therefore, this Court is not entering into the said aspect. However, the Insurance Company has challenged the liability to pay on account of the negligence fixed on the 3rd respondent. After elaborately considering all the oral and documentary evidence, the Tribunal has passed the impugned award. It is the claim of the Appellant/Insurance that the deceased was travelling on the footboard of the bus. However, on perusal of the entire materials available on record including the award passed by the Court below, it is seen that no evidence has been adduced by the Insurance Company in order to substantiate the said claim. In the absence of any evidence, the Tribunal has rightly fixed the negligence on the part of the insurance company which cannot be interefered with.

8. On the question of compensation, this Court perused the impugned award passed by the Tribunal whereby the Tribunal, after considering age and qualification of the deceased, had fixed the notional income of the deceased at Rs.10,000/- by adding 50% towards future prospects and by deducting 50% personal expenses, has awarded a sum of Rs.16,20,000/- (Rs.7,500/- * 12 * 18) However, as per the decision of the Hon'ble Supreme Court in the case of



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National Insurance Company Limited Vs. Pranay sethi and others reported in **2017 (16) Supreme Court Cases 680** and in view of the fact that the deceased was a college student at the time of accident, the future prospects is computed at 40% and the total income per month is quantified at Rs.14,000/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.7,000/- per month and the deceased being aged about 19 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.7,000/- * 12 * 18 = Rs.15,12,000/-), which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	10,000
Add: Future Prospects (Rs.10,000 x 40%) (Per month)	4,000
	14,000
Less: Personal expenses (50%) (Rs.14,000/- x 50%) (Per month)	7,000
	7,000
Notional income (per annum) (Rs.7,000/- x 12)	84,000
Multiplier	18
Total	15,12,000/-

9. The Tribunal has awarded a sum of Rs.10,000/- under the head of



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“Transport charges” and Rs.25,000/- under the head of “Funeral expenses”.

This finds that the compensation awarded under above heads are just and reasonable which does not require any interference. However, a sum of Rs.1,00,000/- awarded to the Respondents 1 & 2/Claimants under the head of "Loss of love and affection" is excessive and hence the same is reduced to a sum of Rs.40,000/- each.

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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of dependency (Rs.7,500/- * 12 * 18)	Rs.16,20,000/-	Rs.15,12,000/-
Loss of love and affection (Rs.50,000/- * 2)	Rs.1,00,000/-	Rs.80,000/- (reduced) (Rs.40,000/- * 2)
Transport charges	Rs.10,000/-	Rs.10,000/-
Funeral Expenses	Rs.25,000/-	Rs.25,000/-
Total	Rs.17,55,000/-	Rs.16,27,000/-

11. The appeal is allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.17,55,000/-** to



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Rs.16,27,000/-. The Appellant-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1180 of 2015 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. The said award amount is apportioned in equal share between the Respondents 1 & 2/claimants. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the Respondents 1 & 2/claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition is closed.

09.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal -Cum-



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II Additional District Judge, Salem.

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



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M.DHANDAPANI, J

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