



C.M.A.No.4445 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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1. Sattanathan (Died)

2. Kavitha

3. Atshaya

4. Kruthisha (Minor)

Rep by her Mother/Next Friend 2nd Appellant Kavitha

5. Rengam

(Appellant-1 Died Appellants 3 to 5 brought on record as

LR's of the deceased Appellant-1 made in CMA

No.10007/2022 in C.M.A.No.4445 of 2019)

.. Petitioner

-Vs-

1. Subramanian

2.National Insurance Company Ltd.,

Branch Office No.II,

Jerome Buildings,

1st Floor, Fort Station Road,

Trichy-2.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Award of the Motor Accident Claim Tribunal (PDJ) Ariyalur in M.C.O.P.No.129 of 2015 dated 28.11.2017.

For Appellant ... Mr.S.Kaithamalai Kumaran

For Respondents ... No Appearance for R1

... Mr.S.Arun Kumar for R2



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JUDGMENT

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Aggrieved by the inadequate compensation awarded by the Tribunal, the present appeal has been directed against the order of the Motor Accident Claims Tribunal (PDJ), Ariyalur, in MCOP No.129 of 2015 dated 28.11.2017 seeking enhancement.

2. Though the appeal was initially listed on 3.10.2023, on which date it was disposed of by this Court, however, before finalising the order, on going through the bundle, as this Court entertained certain doubts with regard to certain issues, at the instance of the Court, the case was listed for further hearing under the caption “For Clarification” and after hearing the learned counsel on either side, this Court proceeds to pass the following order.

3. It is the case of the claimants, who are the parents of the deceased, that on 4.2.2015, at about 9.30 p.m., when the deceased was standing adjacent to the motor cycle of the 1st claimant, the bus belonging to the 1st respondent, bearing Regn. No.TN-45-BD-6336, driven in a rash and negligent



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manner, dashed against the deceased, due to which the deceased sustained grievous injuries and succumbed to the same at KMC Hospital. Aggrieved over the death of the deceased and it being due to the act of rash and negligent driving of the bus belonging to the 1st respondent, the claimants preferred the claim petition claiming a sum of Rs.13,00,000/- as compensation.

4. Before the Tribunal, the claimants examined the 1st claimant as P.W.1 and marked Exs.P-1 to P-11. On the side of the respondents, two witnesses, viz., R.W.1 and R.W.2 were examined and Exs.R-1 and R-2 were marked. The Tribunal, based on oral and documentary evidence, while held that the offending vehicle as well as the deceased have contributed to the accident, fastened contributory negligence of 10% on the deceased while 90% was fastened on the offending vehicle and while awarded a sum of Rs.6,26,561/- in all, after deducting 10% towards contributory negligence, quantified the compensation payable to the claimants at Rs.5,63,905/. Assailing the said compensation as inadequate, the present appeal has been preferred by the claimants.



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5. Pending the appeal, the 1st appellant, viz., the father of the deceased died and, therefore, appellants 3 to 5 were brought on record as the legal heirs of the deceased 1st appellant.

6. Learned counsel appearing for the appellants submitted that the accident had happened due to the rash and negligent driving by the driver of the 1st respondent vehicle, which fact is evident from Ex.P-1, the FIR, which reveals that the deceased was standing near the two wheeler. In such a scenario, fastening 10% contributory negligence on the stationary person is wholly erroneous. It is the further submission of the learned counsel that the rash and negligent driving by the driver of the offending vehicle stands further proven by the fact that the driver was in an inebriated condition, which is even evident from Ex.R-2, showing that the driver was in a drunken state. That being the case, the liability fastened on the deceased is grossly perverse and the said facts have been lost sight of by the Tribunal while arriving at a finding, which deserves to be interfered with.



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7. It is the further submission of the learned counsel that the fixation of notional income has not been properly done on the basis of the ratio laid down by the Apex Court in ***Syed Sadiq & Ors. – Vs – Divisional Manager, United India Insurance Co. Ltd. (2014 (2) SCC 735)***. It is the further submission of the learned counsel that fixation of Rs.30,000/- as the yearly notional income by the Tribunal is against the ratio laid down in the aforesaid decision and further, without adding any future prospects the compensation has been arrived at, which is against the well settled ratio of the Constitution Bench in ***National Insurance Co. Ltd. – Vs - Pranay Sethi & Ors. (2017 (16) SCC 680)***.

8. In regard to fixation of notional income with regard to a school going student, learned counsel placed reliance on the decision of the Division Bench of this Court in the case of ***Iffco-Tokio General Insurance Co. – Vs – V.Raja & Ors. (CMA (MD) No.96/2019 – Dated 30.03.2021)***.

9. It is the further submission of the learned counsel that compensation



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awarded by the Tribunal under the various other conventional heads like 'Loss of Love & Affection', 'Funeral Expenses' are on the lower side and no compensation has been awarded under the head 'Loss of Estate'. Therefore, he prayed that the compensation awarded by the Tribunal may be suitably modified accordingly, by enhancing the compensation payable.

10. Per contra, learned standing counsel appearing for the 2nd respondent/insurance company submitted that the contributory negligence fixed on the deceased is just and reasonable, as the deceased was driving the vehicle at the time of the occurrence, which has been deposed by R.W.1 and it also evident from FIR, Ex.R-1, that too without possessing valid driving licence. Therefore, no interference is warranted with regard to the contributory negligence fixed on the deceased to the extent of 10%.

11. It is the further submission of the learned counsel that the deceased, though alleged to be a school going student, however, no materials



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evidencing the same has been placed by the claimants and, therefore, the Tribunal had fixed the notional income at Rs.30,000/- per annum, which cannot be said to be against the ratio laid down in the aforesaid decisions. However, he fairly conceded that no future prospects have been awarded and, therefore, this Court may consider awarding future prospects. Further, learned counsel submitted that the compensation awarded under the head 'Loss of Love and Affection' is not on the basis of the decision in *Pranay Sethi case* and, therefore, this Court may award appropriate enhancement under the said head.

12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the claimants/appellants and the learned standing counsel appearing for the 2nd respondent and perused the material available on record.

13. The factum of the accident is not in dispute. The dispute is with regard to the contributory negligence, which has been fastened on the



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deceased at 10% and the inadequate compensation awarded by the Tribunal.

Therefore, this Court would address only the aforesaid two aspects.

14. Insofar as the contributory negligence is concerned, which the Tribunal has fixed at 10% on the deceased, though it is the stand of the claimants that deceased was merely standing near the vehicle and was not driving the same, however, Ex.R-1, the final report reveals that the deceased was driving the vehicle at the material point of time. Though in Ex.P-1, the FIR, the deceased has not been shown to be driving the vehicle, however, it is to be pointed out that the FIR is not an encyclopedia to contain all the details relating to the accident. The material parts, which would come out only during investigation, which has been done in this case, leading to the filing of the final report, Ex.R-1 reveals that the vehicle was driving the vehicle at the material point of time.

15. In fact, it is the deposition of R.W.1, the Sub-Inspector of Police,



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who had caused the investigation, in his examination in chief, had deposed that the eye witnesses to the occurrence, who have been examined by the investigating officer, have spoken in unison that the deceased was riding the motor cycle. In this backdrop, it is the case of the insurance company that the deceased was not in possession of a valid driving licence, as he was only aged about 16 years and is a school going student. The said factum as to the deceased being a school going student is not disputed by the claimants and such being the case, the deceased would definitely not be in possession of a valid driving licence and coupled with the aforesaid fact, the deceased was driving the vehicle, which met with the accident, though the driver of the offending vehicle was at fault in driving the vehicle in an inebriated state in a rash and negligent manner would not completely absolve the accused from the contributory part to the accident. Considering the fact that the driver of the offending vehicle was in a drunken state, the Tribunal had rightly fastened 90% liability on the offending vehicle, while fixing 10% contributory negligence on the deceased, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said finding does not require any interference at the hands of



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this Court.

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16. Now the only issue that requires determination of this Court is the quantum of compensation awarded by the Tribunal.

17. There could be no quarrel about the fact that a school going student is entitled to fixation of notional income, that too, the deceased being aged about 17 years on the date of the accident. Definitely the claimants, as parents of the deceased would have laid great aspirations on the deceased coming up in life and supporting them, but for the untimely demise of the deceased and, therefore, the claimants needs to be atleast suitably compensated monetarily.

18. In this regard, the decision of the Apex Court in *Syed Sadiq* throws light with regard to fixation of notional income. In respect of an accident relating to a labour in the unorganised sector like fruit/vegetable selling, daily wager, etc., in respect of an accident which took place in the year 2007, the



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Supreme Court had fixed the notional income at Rs.6,500/-. In the case on hand, the deceased, as claimed by the claimants, is a school going student.

Though the said fact is disputed by the 2nd respondent, however, the same pales into insignificance considering the fact that Ex.P-11 series relates to the sports certificates of the deceased, which he had obtained in the school, which shows that the deceased was not only a school going student, but was studious in sports and definitely had a good career in his later part of life.

19. Considering the fact that the deceased was good at sports and was on the verge of completing his education, but for the untimely accident robbing away his life and the light of the family of the claimants, and taking into consideration the fact that the accident had happened in the year 2015, this Court is of the considered view that a sum of Rs.9,000/- per month could be safely fixed as notional income. Added to the notional income comes the future prospects, which according to the decision in *Pranay Sethi* is to be fixed at 50%, the total monthly loss of earning to the family is arrived at Rs. 13,500/- ($\text{Rs.9,000} * 50\% = \text{Rs.4,500} + \text{Rs.9,000} = \text{Rs.13,500/-}$). Therefore, the



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monthly income of the deceased including future prospects is arrived at Rs.13,500/-. The deceased being a bachelor, on the basis of the decision in ***Sarla Verma & Ors. – Vs – Delhi Transport Corporation & Ors. (2009 (6) SCC 121)***, half of the earnings should be deducted towards the personal expenses of the deceased and, thus, the contribution of the deceased to the family is arrived at Rs.6,750/- ($\text{Rs.13,500} / 2 = \text{Rs.6,750/-}$).

20. Further, the age of the deceased being 17, the proper multiplier to be adopted as per the ratio in *Sarla Verma* is 17 and adopting the said multiplier, the loss of income to the family is arrived at Rs.13,77,000/- ($\text{Rs.6750} * 12 * 17$). Therefore, this Court awards a sum of Rs.13,77,000/- under the head 'Loss of Income'.

21. Insofar as the compensation awarded under the head 'Funeral Expenses' is concerned, though the Tribunal has awarded a sum of Rs.25,000/- the same is not in consonance with the decision of the Apex Court in *Pranay Sethi* and, accordingly, the said amount is reduced to Rs.15,000/-.



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22. Insofar as the amount awarded under the head 'Loss of Love & Affection' is concerned, the Tribunal has awarded a sum of Rs.25,000/- to each of the claimants, which is, once again, not in consonance with the decision in *Pranay Sethi* and, accordingly, the same is enhanced to Rs.40,000/- to each of the claimants, in all totalling to Rs.80,000/-.

23. Further, no amount has been awarded under the head 'Loss of Estate', which is a conventional head in the case of fatal accidents and this Court is inclined to award a sum of Rs.15,000/- under the said head. The award of Rs.10,000/- under the head 'Transport Expenses' and Rs.1,561/- under the head 'Medical Expenses' are just and reasonable and, accordingly, the said compensation awarded is confirmed.

24. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-



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Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.5,40,800/=	Rs.13,77,000/=
Loss of Love & Affection	Rs.50,000/=	Rs.80,000/=
Loss of Estate	-	Rs.15,000/=
Transportation Expenses	Rs.10,000/-	Rs.10,000/=
Funeral Expenses	Rs.25,000/=	Rs.15,000/=
Medical Expenses	Rs.1,561/-	Rs.1,561/-
TOTAL	Rs.6,26,561/=	Rs.14,98,561/=

25. In the result, the civil miscellaneous appeal is allowed by enhancing the compensation payable from Rs.6,26,561 to Rs.14,98,561/- of which the insurance company/2nd respondent would be liable to pay 90% on behalf of the 1st respondent, viz., the owner of the vehicle, while the balance amount of 10% would be towards the contributory negligence on the part of the deceased. Thus, the insurance company/2nd respondent is liable to pay a sum of Rs.13,48,705/- (Rupees Thirteen Lakhs Forty Eight



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Thousand Seven Hundred and five only) along with interest at 7.5% p.a. from the date of petition till the date of deposit. As the first claimant died pending the appeal, the entire compensation amount awarded above, shall be paid to the 2nd claimant, viz., the mother of the deceased and no apportionment is made in respect of the other appellants, as the other appellants are the siblings and grandmother of the deceased.

26. The insurance company is directed to deposit its share of the award amount to the tune of Rs. 13,48,705/- (Rupees Thirteen Lakhs Forty Eight Thousand Seven Hundred and Five Only) as modified by this Court above, along with interest at 7.5% p.a. from the date of claim petition till date of deposit and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.129/2015 on the file of the Motor Accident Claims Tribunal, (PDJ), Ariyalur, within a period of four weeks from the date of receipt of a copy of this judgment.

27. On the enhanced compensation awarded by this Court, the



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appellants/claimants are liable to pay the requisite court fees. On deposit of amount being made by the insurance company/2nd respondent, after verifying the payment of requisite court fee on the enhanced compensation by the appellants, as ordered by this Court above, the Tribunal is directed to transfer the award amount directly to the bank account of the 2nd claimant/2nd appellant herein, as per the order of this Court above, through RTGS within a period of two weeks thereafter. There shall be no order as to costs in this appeal.

13.02.2024

Index : Yes / No
NHS/GLN

To

The Motor Accident Claims Tribunal,
(Principal District Judge)
Ariyalur.



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M.DHANDAPANI, J

GLN

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