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C.M.A.No.705 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

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

C.M.A.No.705 of 2011

1. Aaran
2. Palanal
3. Minor Ramachandran
4. Minor Mohanraj

(Minors 3rd and 4th appellants represented by
Next friend, guardian and grand father, Aaran)

...Appellants

Vs.

1. P.Ramasamy
2. The National Insurance Co. Ltd.,
Branch Office, Rajaji Street,
Kangeyam, Erode District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree passed in M.C.O.P.No.247 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur dated 09.08.2004.



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For Appellants : Mr.B.Singaravelu

For Respondents : Mr.P.Narayana Prasad, for R1
Mr.D.Baskaran, for R2

JUDGEMENT

Challenging the award and decree dated 09.08.2004 made in M.C.O.P.No.247 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur, the claimants are before this Court.

2. The case of the appellants is that, on 17.11.2001, when the deceased Rani @ Kannakutty was travelling as a pillion rider in the Moped bearing Regn.No.39-L-0994 along with her husband, a lorry bearing Regn.No.TN-51-3949, owned by the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner, came from the opposite direction and dashed against the said Moped, as a result of which, both of them sustained fatal injuries and the said Rani died on spot. Thereby, the appellants/dependents of the deceased filed a claim petition claiming a compensation of Rs.9,00,000/-. After contest, the tribunal, vide impugned judgment dismissed



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the claim made by the appellants. Aggrieved with the said order, the present appeal has been filed by the claimants.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to rash and negligent driving of the driver of the 1st respondent, due to which, the deceased, who is the daughter of the 1st & 2nd appellants and mother of the 3rd & 4th appellants lost her life and for the above said accident, FIR came to be registered as against the driver of the 1st respondent vehicle. Whiles, the tribunal, without considering any of the above said facts, dismissed the claim petition on the ground that, one Chandrasekar, father of the 3rd & 4th appellants, who travelled in the above said Moped vehicle along with the deceased Rani at the time of the accident was not examined as a witness and was not impleaded as a necessary party in the claim made by the appellants. The further ground on which the tribunal rejected the claim is that, though the natural guardian, father of the 3rd and 4th respondents was alive at the time of filing the claim petition, however, the 3rd & 4th appellants were not represented by their father, and were represented by their maternal grand parents. It is the submission of the learned



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counsel that the father of 3rd and 4th appellants suffered fatal injuries and was under hospitalisation and he continuously took treatment and was not in a position to appear and depose before the tribunal and he was not able to represent the 3rd and 4th appellants. It is the further submission of the learned counsel that the finding of the Tribunal that no documents were submitted to prove the negligence on the part of the driver of the 1st respondent vehicle and not bringing the father to the court is only with a *malafide* intention to hide the original facts which finding is not supported by any proper reasoning. In such a backdrop, the findings recorded by the Tribunal is grossly erroneous and perverse and requires interference at the hands of this Court. It is further submitted that the aged old appellants 1 and 2 and the minor appellants 3 & 4 have filed the claim petition under Section 163-A of the Motor vehicles Act, 1988 (in short 'MV Act'), which mandates that, there is no necessity for the claimants to prove that they are affected, for the purpose of claiming compensation, however, without appreciating the said provision of law, the tribunal had mechanically dismissed the claim made by the claimants, which required to be interfered with and necessary compensation has to be granted in favour of the appellants.



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4. Per contra, the learned counsel appearing for the 2nd respondents submitted that, by considering all the relevant documents, the Tribunal has rightly dismissed the claim made by the appellants, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

5. On the above said contentions, heard the learned counsel appearing for the 1st respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the appellants/claimants is that the findings recorded by the Tribunal are perverse and arbitrary and not based on any proper material.

7. The first ground of rejection by the Tribunal is that the claim made by the minor appellants 3 and 4 seeking compensation for the death of one Rani @ Kannakutty, without being represented by father and natural guardian, but by appellants 1 and 2, who are the maternal grand parents and, therefore, the said petition cannot be maintained.



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8. It is an admitted fact that the father of appellants 3 and 4 was driving the vehicle, which met with the accident in which the father of appellants 3 and 4 also sustained greivous injuries and was hospitalised, while the mother passed away. Therefore, at the time the children were under the care and custody of the grand parents, who were the guardian of the appellants 3 and 4. Therefore, in their capacity as grand parents the claim petition had been presented on behalf of the minors.

9. There is no dispute about the father also being the victim of the accident and been hospitalised. Such being the case, the rejection of the claim petition by the Tribunal that appellants 3 and 4 were not represented by their father and that the father was not examined to prove that the accident had happened only due to the rash and negligent driving of the 1st respondent vehicle is wholly erroneous. The findings on the said aspect by the Tribunal is without an iota of material and is premised on mere presumptions and assumptions by the Tribunal. There is no law, which prohibit the grand parents to file claim petition on behalf of minors by acting as guardian when the parents are not in a position to file the said petition. In the case on hand, the



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mother having died and the father fighting for his life and the children thrown out to the streets due to the accident, the grand parents have stepped in to safeguard the children from becoming orphans and they have moved the claim petition, which cannot be said to be wrong or with a mala fide intent. Further the non-examination of the father, who drove the vehicle, when he was himself in his death-bed cannot be said to be with a mala fide intent when no material supporting such a conclusion is placed on record. Further, it is pertinent to note that, the appellants filed a claim petition seeking compensation for the death of the said Chandrasekar, who passed away subsequently, and the was also allowed by the Tribunal. Therefore, the aforesaid findings outrightly requires rejection.

10. In the aforesaid backdrop of the rejection of the findings recorded by the Tribunal, this Court is now ordained with the task of computing the compensation payable to the claimants/appellants.

11. It is claimed by the appellants that the deceased worked as Cook and earned a sum of Rs.4,000/- per month. Since, this Court feels that the monthly



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income claimed by the appellants is just and reasonable, the notional income of the deceased is fixed as Rs.4,000/- and as the deceased was aged about 21 years at the time of accident, 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.5,600/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.3,750/- per month and the deceased being aged about 21 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.3,750/- * 12 * 18 = Rs.8,10,000/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	4,000/-
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	5,600/-
Less: Personal expenses (1/3 rd) (Rs.5,600/- x 1/3) (Per month)	3,733.338 rounded off to 3,750/-
Notional income (per annum) (Rs.8,800/- x 12)	45,000/-
Multiplier	18
Total	8,10,000/-



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12. Further, this Court is of the view that awarding a sum of Rs.80,000/- (Rs.40,000 * 2), Rs.10,000/-, Rs.10,000/- and Rs.15,000/- under the heads “Loss of love and affection”, “Transportation and hospital charges”, “Funeral expenses” and “Loss of estate” respectively would be just and reasonable compensation.

13. Accordingly, this Court awards compensation under the following heads:

Heads	Awarded by this Court (Amount in Rs.)
Loss of Income	8,10,000/-
Loss of Estate	15,000/-
Funeral Expenses	10,000/-
Loss of love and affection (Rs.40,000/- x 2)	80,000/-
Transportation charges	10,000/-
Total	9,25,000/-

14. Further, it is pertinent to note that during the pendency of the appeal, the 1st appellant, next friend, and guardian grand father passed away. When the claim petition was filed in the year 2003, the 3rd and 4th appellants were



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minors, aged about 4 years and 2 years respectively. Now, the appellants 3 and 4 would have attained majority. 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 3rd and 4th appellants as major and in view of the death of Mr.Aaran, who is shown as guardian, there is no necessity for this Court to release him from guardianship. The Registry shall carry out the necessary amendments.

15. For the reasons aforesaid, the appeal is partly allowed and this Court awards compensation in a sum of **Rs.9,25,000/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No. 247 of 2003 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. In the above said award amount, the 2nd appellant is entitled to a sum of Rs.1,25,000/- along with proportionate interest and the 3rd and 4th appellants are entitled to a sum of



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Rs.4,00,000/-each along with proportionate interest. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants 2 to 4 through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

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(2/2)

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal, Sub Court,
Tiruppur,
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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C.M.P.No.23549 of 2023

in

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M.DHANDAPANI., J.

The present miscellaneous petition has been filed to set aside the order dated 29.10.2012, dismissing the Civil Miscellaneous Appeal in C.M.A.No.705 of 2011 for default and restore the said Appeal.

2. Heard learned counsel for the on both side.

3. The learned counsel for the respondents have no objection for the order dated 29.10.2012 being set aside and the appeal being restored to file.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is ordered and C.M.A.No.705 of 2011 **is restored to file.**

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