



C.M.A.(MD)Nos.982 and 983 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2023

Pronounced on : 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)Nos.982 and 983 of 2012

Bajaj Allianz General Insurance Co. Ltd.,
2nd Block, White House
Begumput, Hyderabad Town
Andhra Pradesh

... Appellant/
2nd Respondent in
both appeals

Vs.

1. Periyasamy

2. Saraswathi

3. Raja

4. Gayathri

5. S.R.R.Project (P) Ltd.,
Vedasanthur Road, Vadamadurai Village,
Vedasanthur Taluk, Dindigul District,
through its Manager, Seenivasu

... Respondents in
C.M.A.(MD)No.
982 of 2012

*(cause title amended vide Court order dated
15.02.2022 made in C.M.P.(MD)No.940 of
2022 in C.M.A.(MD)No.982 of 2012)*



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1. Murugesan

2. Shanthi

3. Sivakumar

4. S.R.R.Project (P) Ltd.,
Vedasanthur Road,
Vadamadurai Village,
Vedasanthur Taluk,
Dindigul District,
through its Manager, Seenivasu

... Respondents in
C.M.A.(MD)No.
983 of 2012

*(cause title amended vide Court order dated
15.02.2022 made in C.M.P.(MD)No.974 of
2022 in C.M.A.(MD)No.983 of 2012)*

COMMON PRAYER : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 31.10.2011 made in M.C.O.P.Nos.897 and 898 of 2009 on the file of Motor Accident Claims (Addl. District Judge/Fast Track Court), Dindigul and allow these appeals.

(in C.M.A.(MD)No.982 of 2012)

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R4 : Mr.R.Ramadurai

For R5 : No appearance



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(in C.M.A.(MD)No.983 of 2012)

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For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R3	: Mr.R.Ramadurai
For R4	: No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the common award passed in M.C.O.P.Nos.897 of 2009 and 898 of 2009 dated 31.10.2011 on the file of the Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Dindigul.

2. The appellant/insurer, who was made liable to pay compensation of Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) and Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) with interest at 7.5% per annum to the respondents 1 to 4 in C.M.A.(MD)No. 982 of 2012 and the respondents 1 to 3 in C.M.A.(MD)No.983 of 2012 respectively, for the death of Karthick and Saravana Kumar, consequent to an accident occurred on 12.11.2009, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 12.11.2009 at about 02.15 p.m., when the deceased Saravana Kumar was riding a Hero Honda Splendor bearing Registration No.TN-58-K-6549 with his relative Karthick as a pillion rider in Dindigul – Trichy main road near Murugan Temple, a tipper lorry bearing Registration No.TN-57-M-9018, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, both the rider and the pillion rider were thrown out and sustained injuries, that both of them subsequently succumbed to the injuries and that the accident was occurred only due to the rash and negligent driving of the tipper lorry driver.

4. It is the further case of the claimants that the deceased Karthick was aged 23 years and the deceased Saravana Kumar was aged 22 years at the time of accident and that both of them were doing carpentry work and were earning Rs.7,500/- each per month.



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5. The main defence of the second respondent/insurer is that the driver of the first respondent has no valid and effective licence to drive the tipper lorry at the time of accident and hence, the second respondent is not liable for the claim. No doubt, they have also taken a defence that the accident was occurred only due to the rash and negligent driving of the two wheeler rider and the driver of the tipper lorry was not at fault. The first respondent/owner of the vehicle has filed a formal counter.

6. During trial, the claimants have examined the first claimant in both the petition as P.W.1 and P.W.2 and 2 other witnesses Thiru.Chandran and Thiru.Arumugam as P.W.3 and P.W.4 respectively and exhibited 4 documents as Ex.P.1 to Ex.P.4. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 9 documents were exhibited as Ex.R.1 to Ex.R.9.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned common award dated 31.10.2011 by holding that the accident was occurred only due to the rash and negligent driving of the



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tipper lorry driver, mulcted liability on the respondents and directed them to pay compensation above referred with interest and costs. Aggrieved by the impugned common award, the second respondent has preferred the present appeals.

8. The second respondent, in order to prove their main contention that the first respondent's driver was not possessing valid driving licence to drive the tipper lorry at the time of accident, has summoned and examined the staff attached with the Regional Transport Office (RTO), Anahapalli, Visakhapattinam District, Andhra Pradesh as R.W.2 and their own official as R.W.3.

9. It is evident from Ex.R.5-Registration Certificate of the offending vehicle that the vehicle is a multi axle goods vehicle and the same is owned by the first respondent. It is not in dispute that the person, who had driven the tipper lorry at the time of accident, was working under the first respondent. It is pertinent to note that though the first respondent has been contesting the claim petitions, they have not chosen to produce the original licence or the copy of the licence possessed by their driver, who had driven the offending vehicle at that time.



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10. The first respondent's official R.W.1, in his chief examination, would say that the driver Govinda Rao was working in their company, but he is not working in their company at present, that generally, before recruiting the drivers, the company will verify and collect all their records for driving licence, etc., and that R.W.1 joined in that company in February 2010 and he had no personal knowledge of the prior incidents. In cross-examination, he would say that he did not bring the licence of the driver, who caused the accident and when it was suggested that their driver has no DL and that is why he did not bring the same, he would deny the said suggestion. R.W.2, in his chief examination, would say that Govinda Rao, S/o.Nookaraju was not eligible to drive HGV Transport vehicle on 12.11.2009 and he was given HGV Transport driving licence on 04.06.2010 and produced the extract of the driving licence of Govinda Rao as Ex.R.2. R.W.2 would further say that the copy of the DL received through Court (Ex.R.3) is a fake one. During cross-examination made on behalf of the first respondent, R.W.2 would say that the signature and the emblem are found in Ex.R.3, that he does not know whether the signature found therein is true or not, but the emblem is true and correct, that their code numbers are 331, 131, but in Ex.R.3, the code number is shown as



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332 and that they have come to a decision that Ex.R.3 is a fake one.

During re-examination, R.W.2 would say that the code number given in Ex.R.3 differs with their code, that they were not able to find out Ex.R.3 details in their record and the computer record and that since the badge number is not tallied, they have come to a conclusion that Ex.R.3 is a fake one. He would further say that he could not say that the emblem is a genuine one in the absence of originals and that they have issued Ex.R.2 on the basis of the original records. Despite the specific stand of the second respondent and the examination of R.W.2, the first respondent has not chosen to examine their driver nor for production of the original driving licence of their driver.

11. It is not the case of the first respondent that their driver has not obtained any driving licence from Anahapalli Regional Transport Office and that Ex.R.2 was not at all connected with their driver.

12. As rightly contended by the learned counsel appearing for the second respondent, since the code number and other details found in Ex.R.3 were not tallied with the manual records and the computer records



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maintained in the Regional Transport Office, Anahapalli, where the first respondent's driver had taken driving licence and taking note of Ex.R.1 and Ex.R.2, it is clearly evident that Govinda Rao, S/o.Nookaraju was given driving licence to drive LMV Non-Transport vehicles from 28.07.2008 and was given licence to drive HGV Transport Vehicles only from 04.06.2010 and hence, the consequent inference would be that the said driver was not possessing any licence to drive HGV Transport Vehicles on the date of accident.

13. The Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Co. Ltd.***, reported in ***AIR 2017 SC 3668*** has held that a light motor vehicle includes a transport vehicle as well and therefore, the driver holding a light motor vehicle licence can also drive all the vehicles of the class including a transport vehicle, the gross vehicle weight of which does not exceed 7500 kgs and the relevant passage is extracted hereunder:-

“45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private



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service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.”



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14. In the case of ***The Divisional Manager, Reliance General Insurance Co. Ltd., Vs. Kokila and others (C.M.A.No.2495 of 2018 dated 16.09.2019)***, a Division Bench of this Court, while considering the contention of the insurer that the driver of the offending vehicle did not possess the valid driving licence with badge endorsement, by following the judgment of the Hon'ble Supreme Court in ***Mukund Dewangan's*** case above referred, has upheld the decision of the Tribunal rejecting the pay and recovery claim made by the insurer. Admittedly, the vehicle involved in the case decided by the Division Bench of this Court above referred, is a van.

15. The Hon'ble Supreme Court in ***Mukund Dewangan's*** case has specifically observed that the persons holding licence to drive the light motor vehicles are entitled to drive transport vehicles provided the gross vehicle weight does not exceed 7500 kgs. In the case on hand, as per the Ex.R.5, unladen weight of the offending vehicle is shown as 10445 kgs. Considering the above, this Court has no hesitation to hold that the doctrine of pay and recovery is clearly applicable to the case on hand and as such, the finding of the Tribunal mulcting the joint and severe liability on the respondents 1 and 2 is not proper.



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16. Now turning to the quantum of compensation, as already pointed out, the case of the claimants is that both the deceased were working as carpenters and were earning Rs.7,500/- each per month. Admittedly, they have not produced any iota of evidence to prove the same. The Tribunal, considering the evidence available on record, has fixed the monthly income of both the deceased at Rs.4,000/-, but the Tribunal has failed to add any amount towards future prospects. The Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609 (SC)**, has concluded that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The Tribunal, taking note of the evidence available on record, has fixed the age of both the deceased as 23 years. Considering the age of the deceased and on applying the above decision of the Hon'ble Apex Court, 40% of the income is to be added towards future prospects



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and after such addition, it comes to Rs.5,600/- (Rs.4,000/- + Rs.1,600/- (40% of the income)).

17. As rightly contended by the learned counsel appearing for the second respondent, the Tribunal has deducted 1/3rd of the income towards personal and living expenses of the deceased, though the deceased were bachelors at the time of accident. Since the deceased are bachelors, 50% of the income has to be deducted towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.2,800/- (Rs.5,600/- - Rs.2,800/-).

18. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the appropriate multiplier would be 18. Hence, the loss of dependency would be Rs.6,04,800/- (Rs.2,800/- x 12 x 18).

19. The Tribunal has awarded Rs.20,000/- for loss of love and affection to the claimants 1 and 2 and Rs.5,000/- for funeral expenses. Our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award



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Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

20. In M.C.O.P.No.897 of 2009, the claimants 1 and 2 being the parents and the claimants 3 and 4 being the brother and sister of the



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deceased are entitled to get Rs.40,000/- each towards loss of consortium and they are also entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads. Considering the above, the claimants are entitled to get total compensation of Rs.7,94,800/-. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	6,12,000	6,04,800	Reduced
2.	Consortium	20,000	1,60,000	Enhanced
3.	Loss of estate	Nil	15,000	Granted
4.	Funeral expenses	5,000	15,000	Enhanced
	Total	6,37,000	7,94,800	

21. In M.C.O.P.No.898 of 2009, the claimants 1 and 2 being the parents and the third claimant being the brother of the deceased are entitled to get Rs.40,000/- each towards loss of consortium and they are also entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/-



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towards loss of estate under the conventional heads. Considering the above, the claimants are entitled to get total compensation of Rs.7,54,800/-. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	6,12,000	6,04,800	Reduced
2.	Consortium	20,000	1,20,000	Enhanced
3.	Loss of estate	Nil	15,000	Granted
4.	Funeral expenses	5,000	15,000	Enhanced
	Total	6,37,000	7,54,800	

22. No doubt, the claimants in both the petitions have not challenged the quantum of compensation. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of



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Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

23. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

24. In the result,

(i) the Civil Miscellaneous Appeal in C.M.A.(MD)No.982 of 2012 is partly allowed and the compensation awarded by the Tribunal at Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) is



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hereby enhanced to **Rs.7,94,800/- (Rupees Seven Lakhs Ninety Four Thousand and Eight Hundred only)**. The appellant/Insurer is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.897 of 2009 on the file of Motor Accident Claims Tribunal/ Additional District Court, Fast Track Court, Dindigul, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant/insurer is permitted to recover the same from the fifth respondent/first respondent as per law. On such deposit being made, the first respondent is entitled to get **Rs.2,00,000/- (Rupees Two Lakhs only)**, the second respondent is entitled to get **Rs.4,44,800/- (Rupees Four Lakhs Forty Four Thousand and Eight Hundred only)** and the respondents 3 and 4 are entitled to get **Rs.75,000/- (Rupees Seventy Five Thousand only)** each. Accordingly, the respondents 1 to 4 are permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal.

(ii) the Civil Miscellaneous Appeal in C.M.A.(MD)No.983 of 2012 is partly allowed and the compensation awarded by the Tribunal at



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Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) is

hereby enhanced to **Rs.7,54,800/- (Rupees Seven Lakhs Fifty Four**

Thousand and Eight Hundred only). The appellant/Insurer is directed to

deposit the modified enhanced amount with interest at 7.5% per annum

from the date of claim petition till the date of deposit to the credit of

M.C.O.P.No.898 of 2009 on the file of Motor Accident Claims Tribunal/

Additional District Court, Fast Track Court, Dindigul, after deducting the

amount already deposited if any, within a period of four weeks from the

date of receipt of a copy of this judgment. Thereafter, the appellant/insurer

is permitted to recover the same from the fourth respondent/first

respondent as per law. On such deposit being made, the first respondent is

entitled to get **Rs.2,00,000/- (Rupees Two Lakhs only)**, the second

respondent is entitled to get **Rs.4,79,800/- (Rupees Four Lakhs Seventy**

Nine Thousand and Eight Hundred only) and the third respondent is

entitled to get **Rs.75,000/- (Rupees Seventy Five Thousand only)**.

Accordingly, the respondents 1 to 3 are permitted to withdraw the award

amount with interest and costs, less amount already withdrawn, if any, on

due application before the Tribunal.



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(iii) Parties are directed to bear their own costs.

(iv) The respondents 1 to 4 in C.M.A.(MD)No.982 of 2012 and the respondents 1 to 3 in C.M.A.(MD)No.983 of 2012 are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Additional District Court, Fast Track Court,
Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)Nos.982 and 983 of 2012

Dated : 19.10.2023