



C.M.A(MD)No.166 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.01.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN  
AND  
THE HON'BLE MR JUSTICE SUNDER MOHAN**

C.M.A(MD)No.166 of 2020  
and  
C.M.P(MD)Nos.2755 of 2020 and 8014 of 2022

The New India Assurance Company Limited,  
Through its Branch Manager Pudukkottai  
PPK Complex, 1<sup>st</sup> Floor, South Main Street,  
Pudukkottai Town,  
Pudukkottai District.

.. Appellant/2<sup>nd</sup> Respondent

Vs.

1.Dhanam

.. 1<sup>st</sup> Respondent/Petitioner

2.Vellaifather

.. 2<sup>nd</sup> Respondent/1<sup>st</sup> respondent

3.Mathiyalagan

.. 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying this Court, against the judgment and decree in M.C.O.P.No.86 of 2018 dated 30.09.2019 on the file of the Motor Accidents Claims Tribunal, Third Additional District and Sessions Court, Thanjavur at Pudukkottai.



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C.M.A(MD)No.166 of 2020

For Appellant :Mr.J.S.Murali  
For R1 :Mr.Dr.S.Gnanasekaran

### **JUDGMENT**

**DR G.JAYACHANDRAN,J.**  
and  
**SUNDER MOHAN,J.**

C.M.P(MD)No.8014 of 2022 is filed to permit the petitioner to withdraw 50 percentage of the award amount deposited by the appellant/Insurance Company.

2.Since the appeal itself is ripe for final disposal, on consent of both parties appeal itself is taken up for hearing and the following order is passed.

3.This appeal is preferred by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal both on the ground of quantum as well as the liability.



*C.M.A(MD)No.166 of 2020*

4. One Mr. Rajakumaran, son of Palanivelu, met with an accident, on 17.01.2017 at about 09.00 p.m., on Aranthangi Road opposite to Hotel Orange and he was on the pillion of a two wheeler driven by one Mathiyalagan, who is arrayed as third respondent in the claim petition. According to the FIR, the said Mathiyalagan drove the two wheeler in a rash and negligent manner and dashed against the TATA Ace van bearing Registration No. TN-55-AE-4964. In the said collision, Rajakumaran and Mathiyalagan both sustained injuries and admitted to the hospital. While Mathiyalagan suffered grievous injuries, Rajakumaran died on 20.02.2017. The FIR came to be registered on 21.02.2017, based on the complaint given by the brother of the deceased.

5. Claiming compensation of Rs.16,60,000/-, filed petition before the Motor Accidents Claims Tribunal, Thanjavur, by the mother of the said Rajakumaran and the same was taken up for consideration by the Motor Accidents Claims Tribunal. The Tribunal, after considering the evidence, awarded a sum of Rs.27,21,600/- as compensation with 7.5% interest from the date of claim petition till the date of realization.



*C.M.A(MD)No.166 of 2020*

6.The award is challenged by the Insurance Company on the following two grounds:

(i)Firstly, while Ex.P.1-FIR clearly indicates that the accident had occurred due to the rash and negligent driving of the two wheeler rider, in which, the deceased was travelling on the pillion. The trial Court, without proper appreciation of evidence regarding the negligence on the part of the driver of TATA Ace van, insured under the appellant Insurance Company, directed the Insurance Company to pay compensation, even though there was no negligence on the part of the driver of the vehicle insured under the Insurance Company.

(ii)Secondly, though the claimant herself has claimed compensation of Rs.15 lakhs and the Tribunal has awarded Rs.27 lakhs as compensation, without any basis. Particularly, the Tribunal has fixed the notional income of the deceased at Rs.18,000/- per month on the presumption that the deceased is a Diploma Holder.

7.The Tribunal, without any proof to show the educational qualification and earning capacity of the deceased, has arrived at a conclusion that the notional income of 21 years old boy should be fixed at



C.M.A(MD)No.166 of 2020

the rate of Rs.18,000/- per month, and after deducting 50% for his personal expenditure and adding 40% towards future prospects, as per the judgment of the Hon'ble Apex Court in **2017 (2) TNMAC 609(SC) in the case of National Insurance Company Limited Vs. Pranay Sethi and others**, and by applying the multiplier as “18” awarded a sum of Rs.27,21,600/- as loss of income. The said award is exorbitant and without any basis.

8.The learned counsel appearing for the first respondent/claimant submitted that the claimant being the mother of the deceased, who lost her only son in the accident, was wholly depending on her son and her son had a bright prospects being a diploma holder. Therefore, the Insurance Company is liable to pay for the accident occurred due to the negligence of the driver of TATA Ace vehicle, who drove the vehicle on reverse, without proper caution and indication.

9.The trial Court, taking note of the Motor Vehicle Inspector's Report, has fixed the negligence wholly on the part of the driver of TATA Ace van, relying on the evidence given by the third respondent, who was examined by the claimant as P.W.2. The Tribunal has held that P.W.2 evidence is more



*C.M.A(MD)No.166 of 2020*

reliable than the version of the First Information, which was registered 4 days after the date of occurrence.

10.This Court, after giving anxious consideration to the facts of the case and the materials placed before the trial Court, agreed with the submission made by the learned counsel for the first respondent/claimant regarding the negligence, for the reason that the probative value of the first information given by the eye witness viz., the evidence of the victim in the accident is more relevant and reliable. Therefore, we do not find any reason to interfere with the conclusion of the Tribunal regarding the negligence fixed on the part of the driver of TATA Ace Van.

11.However, insofar as the quantum of compensation, this Court finds force in the submission made by the learned for the insurance Company/appellant. As per the claim petition, the deceased was working as a Mechanic in Simson Company, Chennai and he was earning Rs.20,000/- per month as salary. To substantiate his claim, the claimant has not produced any documents and not even a piece of material is produced to show that the deceased has educational qualification and he had the potential to earn



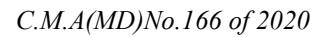
C.M.A(MD)No.166 of 2020

Rs.20,000/- per month. In the absence of material evidence, the Tribunal has fixed Rs.18,000/- per month as salary, which is without any basis.

12. Therefore, this Court, taking note of the fact that even in the absence of any document or material to prove the earning potential of 21 years old boy fix his income notionally at Rs.12,000/- per month, with 40% future prospects. Thus, the compensation is fixed as per the principles laid down by the ***Pranay Sethi*** case (cited supra).

13. The notional income is Rs.12,000/-, future prospects is Rs.4,800/- (Rs.12,000/- + Rs.4,800/- = 16,800) and deducting 50% towards personal expenditure (Rs.16,800/- x 50/100 = Rs.8,400/-) and applying the multiplier “18” the loss of income is arrived at Rs.18,14,400/- (8400 x 12 x 18= 18,14,400/-) Compensation awarded by the Tribunal under the unconventional heads are confirmed.

14. Therefore, the compensation awarded by the Tribunal stands modified from Rs.27,61,600/- to Rs.18,54,400/- in the manner stated below:



15. In view of the above, the judgment and decree of the trial Court passed in M.C.O.P.No.86 of 2018, dated 30.09.2019, are modified and the award is reduced from Rs.27,61,600/- to Rs.18,54,400/- with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization and the Civil Miscellaneous Appeal is allowed in part.

Page 8 of 10



*C.M.A(MD)No.166 of 2020*

if any, shall be refunded to the appellant/Insurance Company. No costs.

Consequently, connected miscellaneous petitions are closed.

**(G.J.,J.) (S.M.,J.)**  
**20.01.2023**

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The Motor Accident Claims Tribunal,  
Third Additional District and Sessions Court,  
Thanjavur, at Pudukkottai

2.The Section Officer,  
VR Section,  
Madurai Bench of Madras  
High Court,  
Madurai.



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