



C.M.A. (MD) No. 184 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2023

Pronounced on : 29.08.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.184 of 2019

and

C.M.P.(MD)No.2466 of 2019

Liberty Vuideocon General Insurance Company Limited
through its Branch Manager,
Office at 10th Floor,
Tower A.Peninsula Business Park,
Ganpath Rao Kadam Marg,
Lower Parcel,
Mumbai – 400 013.

... Appellant/
2nd Respondent

Vs.

1. Mariappan
2. Arumugam
3. Devendiran

... Respondents 1&2/
Petitioners
... 3rd Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal/Special Subordinate Judge of



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Thirunelveli in M.C.O.P.No.1277 of 2014 dated 03.03.2017 by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For R1 & R2 : Mr.V.Sasi Kumar
For R3 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1277 of 2014 dated 03.03.2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli.

2. The appellant/insurer, who was made liable to pay compensation of Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) with interest at 9% per annum and costs to the respondents 1 and 2/claimants for the death of their son Udayakumar, consequent to an accident occurred on 10.07.2014, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The appellant/insurer has taken a defence that the deceased, who was in a drunken stage, has invited the accident due to his own negligence



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and that the contention of the respondents 1 and 2/claimants that the deceased was thrown out of the milk lorry bearing Registration No.TN-20-CY-1005, which was driven by its driver in rash and negligently, is not true.

4. The respondents 1 and 2/claimants, in order to prove the mode of accident, have examined P.W.2 alleged to be the occurrence witness. P.W.2, in his evidence, would say that on 10.07.2014 at about 08.30 p.m., when he was attending natural call by stopping his car near Pilaiporuthankulam, he had seen a milk lorry bearing Registration No.TN-20-CY-1005 came in rash and negligent and in zigzag manner, that a person in the cabin of the lorry was thrown out of the lorry and he fell down and sustained head injury and injuries all over his body, that the injured was immediately sent to hospital through 108 ambulance and that he had immediately informed to the father of the injured about the accident. In cross-examination, he would say that the milk van came with speed and in zigzag manner, that the milk van was proceeding from South to North without control and that suddenly, cabin door got opened and a person fell down. No doubt, P.W.2 would say that he does not know as to



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who was responsible for the accident. But he would admit that he had seen the said Udayakumar was thrown out of the milk lorry.

5. Admittedly, FIR came to be registered against the lorry driver. Though the appellant/insurer has taken a stand that the deceased alone was at fault and the lorry driver was not responsible, they have not chosen to examine the lorry driver or any other witness, who had allegedly witnessed the occurrence. In the absence of any contra evidence and taking note of the evidence of P.W.2 and Ex.P.1, the Tribunal has rightly come to a decision that the accident was occurred only due to the rash and negligent driving of the lorry driver and as such, the finding of the Tribunal cannot be found fault with.

6. The main defence of the appellant/insurer is that the deceased has travelled in the goods vehicle as an unauthorized passenger at the time of alleged accident, that the deceased was neither recruited as a driver, helper, mechanic nor cleaner, that the deceased was only an employee of M/s. Vijay Diary and Farm Products Private Limited, that the deceased was not engaged by the lorry driver and that therefore, the appellant/insurer is not liable for the claim.



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7. No doubt, the respondents 1 and 2/claimants have not produced any records or evidence to show that the deceased was engaged as a cleaner to the milk lorry by the lorry driver or was employed by M/s.Vijay Diary and Farm Products Private Limited. The Tribunal, considering the evidence available on record, has given a finding that the respondents 1 and 2/claimants have failed to prove that the deceased was neither a cleaner nor an employee of M/s.Vijay Diary and Farm Products Private Limited. But considering the evidence of R.W.1-Manager of M/s.Vijay Diary and Farm Products Private Limited and Ex.P.1, the Tribunal has come to a decision that the deceased had travelled in the milk lorry as a load man at the time of accident.

8. As rightly contended by the learned counsel appearing for the respondents 1 and 2/claimants, except the deceased, no other person travelled in the milk lorry along with the driver and that the deceased was engaged as a load man for deloading the milk cans at the specified places. Considering the evidence available on record, the finding of the Tribunal that the deceased was travelling as a load man in the milk lorry, cannot be found fault with.



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9. The learned counsel appearing for the appellant/insurer would submit that even assuming that the deceased has travelled as a load man, he was not covered under the policy under Ex.R.3, that additional premium was paid only for the driver/cleaner/conductor-IMT 28 and that therefore, the said coverage cannot be extended to the deceased.

10. At this juncture, it is necessary to refer the judgment of the Hon'ble Division Bench of this Court in *The Divisional Manager, Royal Sundaran Aliance Insurance Co. Ltd., Vellore Vs. Shabiullah and others (C.M.A.No.2183 of 2017 dated 12.09.2018)* relied on by the learned counsel appearing for the respondents 1 and 2/claimants, wherein, the Hon'ble Division Bench of this Court, in a similar set of facts, has specifically observed that since the insurance company had collected Rs.50/- as per IMT.28, two persons would be covered by the policy and as such, the deceased whether he is termed as a cleaner or a load man would be covered by the policy and the relevant passage is extracted hereunder:-

“13.As regards the 2nd contention of Mr.M.Krishnamoorthy that the deceased travelled as a passenger in the Tractor, there is evidence to show that the



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deceased was travelling as a cleaner in the tractor. It is seen from the Policy that the premium of Rs.50/- has been collected as per the IMT.28 to paid driver/cleaner. IMT.28 provides for extra premium for driver or cleaner or conductor employed in connection with the operation of insured vehicle and the premium applicable is Rs.25/- per person. From the Policy, we find that the Insurance Company had collected Rs.50/-, therefore, two persons would be covered by the <http://www.judis.nic.in> 7 Policy. Hence, the deceased whether he is termed as a cleaner or a load man would be covered by the Policy.”

11. In the case on hand, it is evident from Ex.R.3-insurance policy that the insurance company has collected Rs.50/- towards legal liability to paid driver/cleaner/conductor-IMT 28. Applying the decision of the Hon'ble Division Bench above referred, the deceased being a load man would be covered by the policy and as such, the contention of the appellant/insurer in this regard, are devoid of substances and the same is liable to be rejected.

12. The next contention of the appellant/insurer is that the milk lorry involved in the accident was not possessing fitness certificate on the date



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of accident. In order to prove the same, the appellant/insurer has summoned and examined the staff attached to the Regional Transport Office, Tirunelveli as R.W.2 and she would say that the fitness certificate for the lorry bearing Registration No.TN-20-CY-1005 was expired on 05.07.2014 and that therefore the vehicle was not having fitness certificate on the date of accident i.e., on 10.07.2014. R.W.2 has also produced the inspection report of motor vehicle involved in the accident issued for the vehicle bearing Registration No.TN-20-CY-1005 and wherein, it has been specifically mentioned that the fitness certificate expired on 05.07.2014. As already pointed out, the third respondent/first respondent/owner of the vehicle had remained *ex parte*. Considering the above, the Tribunal has rightly arrived at a finding that since the vehicle was not having fitness certificate on the date of accident, the doctrine of pay and recovery has to be applied.

13. Now turning to quantum of compensation, it is the specific case of the respondents 1 and 2/claimants that the deceased was aged 27 years at the time of accident, that he was working as a cleaner in a milk lorry and that he was earning Rs.15,000/- per month. Admittedly, the



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respondents 1 and 2/claimants have not produced any iota of evidence to prove the income of the deceased.

14. The Tribunal, taking note of Ex.P.2-post mortem certificate, has rightly fixed the age of the deceased as 27 years and the appellant/insurer has not specifically disputed the same. As already pointed out, the accident was occurred on 10.07.2014. Considering the age of the deceased, the date of accident and the nature of job, fixing the monthly income at Rs.6,500/- cannot be found fault with. But as rightly pointed out by the learned counsel appearing for the appellant/insurer, the Tribunal has added 50% of the income 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. Applying the above decision of the Hon'ble Apex Court,



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40% of the income is to be added towards future prospects and after such addition, it would come to Rs.9,100/- (Rs.6,500/- + Rs.2,600/- (40% of the income)). Since the deceased was a bachelor, the Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased and after such deduction, monthly income would come to Rs.4,550/-. 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 Tribunal has rightly applied multiplier 17. Hence, the loss of dependency would be Rs.9,28,200/- (Rs.4,550/- x 12 x 17).

15. The Tribunal has awarded Rs.2,00,000/- for loss of love and affection (Rs.1,00,000/- each), Rs.10,000/- for transport expenses, Rs.25,000/- for funeral expenses and Rs.20,000/- for mental agony. Our Hon'ble Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi and others** reported in **2017 ACJ 2700** has permitted to award 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



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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.

16. The claimants being the parents of the deceased are certainly entitled to get Rs.40,000/- each towards loss of filial consortium. The claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Considering the above, the claimants are entitled to get total compensation of



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Rs.10,38,200/- (Rupees Ten Lakhs Thirty Eight Thousand and Two Hundred only).

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17. As rightly contended by the learned counsel appearing for the appellant/insurer, the respondents 1 and 2/claimants are entitled to get interest at 7.5% per annum. 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.

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) is hereby reduced to **Rs.10,38,200/- (Rupees Ten Lakhs Thirty Eight Thousand and Two Hundred only)** together with interest at 7.5% per annum and costs from the date of petition till realization. The appellant/insurer is directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.1277 of 2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, 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



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is permitted to recover the same from the third respondent/first respondent as per law. Out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.4,00,000/- (Rupees Four Lakhs only)** and the second respondent/second claimant is entitled to get **Rs.6,38,200/- (Rupees Six Lakhs Thirty Eight Thousand and Two Hundred only).**

On such deposit being made, the respondents 1 and 2/claimants are permitted to withdraw their shares together with interest and costs, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

29.08.2023

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

To:

1. The Motor Accident Claims Tribunal/
Special Subordinate Court, Tirunelveli.
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)No.184 of 2019
and
C.M.P.(MD)No.2466 of 2019

Dated :29.08.2023