



C.M.A. (MD)No.582 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.08.2023

Pronounced on : 11.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.582 of 2020

M/s.United India Insurance Company Ltd.,
through it's Branch Manager,
D.No.284/3, Vani Complex,
Kovai – Pollachi Main Road,
Kinathukadavu,
Coimbatore District.

... Appellant/
2nd Respondent

Vs.

1. Kavitha
2. Minor Santhosh
3. Minor Karthik

(Minor Respondents No.2 & 3 are represented by
their mother and natural guardian 1st respondent
herein)

4. Valliammal

... Respondents 1to4/
Petitioners

5. Ashok Kumar

... 5th Respondent/
1st Respondent



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6. M/s. National Insurance Company Ltd.,
represented by its Branch Manager,
D.No.5A (opposite to court buildings)
Sub-Collector office Road,
Dindigul Town and District.

... 6th Respondent/
3rd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 19.06.2020 made in M.C.O.P.No.84 of 2017 on the file of the Motor Accident Claims Tribunal, Palani (In the court of Additional District Judge, Palani).

For Appellant	: Mr.C.Karthik
For R1 to R4	: Mr.D.Venkatesh
For R5	: No appearance
For R6	: Mr.D.Rajkumar

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.84 of 2017 dated 19.06.2020 on the file of the Motor Accident Claims Tribunal/Additional District Court, Palani.

2. The appellant/insurer, who was made liable to pay compensation of Rs.24,64,000/- (Rupees Twenty Four Lakhs and Sixty Four Thousand



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only) with interest at 7.5% per annum to the respondents 1 to 4/claimants, for the death of Raja, consequent to an accident occurred on 14.06.2015, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

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 14.06.2015, when the deceased Raja, after completing his work of taking photographs and video for the marriage reception at ARC marriage hall, Kaniyur, Palani, was returning at about 10.00 p.m. in his Hero Honda Plus two wheeler bearing Registration No.TN-57-AX-0528 in Palani – Udumalai road and at the place near Madathukulam, Aathupalam old toll gate, a Qualis car bearing Registration No.TN-43-A-4995, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the two wheeler rider Raja was thrown out and sustained serious injuries and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the Qualis car driver.



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4. It is the further case of the claimants that the deceased Raja was aged 41 years at the time of accident, that he had studied 12th standard and thereafter, he has been running a Studio by name Saha Studio in the building owned by Sri Thondaiman Pudukottai 32 Patti Therkathi Kallarkal Madam, that he was having modern video cameras and mixing instrument and engaged 3 persons to work under him and that he was getting not less than Rs.30,000/- per month.

5. Admittedly, the first respondent is the owner of the Qualis car, the second respondent is the insurer of the Qualis car and the third respondent is the insurer of the two wheeler.

6. The defence of the second respondent is that the deceased Raja has driven the bike in a zigzag manner and negligently and carelessly set down in the road pit and lost his control and wrongly came to the right side of the road and dashed against the Qualis car and that the accident was occurred only due to the rash and negligent driving of the deceased Raja and the car driver was not at fault.



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7. The second respondent has also taken a stand that the compensation claimed is highly excessive and out of proportion and that they are denying the work done by the deceased Raja and the income allegedly earned by him.

8. During trial, the claimants have examined the first claimant as P.W.1 and one Aathimoolam alleged to be the occurrence witness as P.W.2 and exhibited 17 documents as Ex.P.1 to Ex.P.17. The first respondent had remained ex parte. The second respondent, who is the present appellant, has adduced neither oral nor documentary evidence. The third respondent has examined its official as R.W.1 and exhibited their policy copy under Ex.R.1.

9. 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 award dated 19.06.2020 by holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver, mulcted liability on the second respondent and directed them to pay compensation of Rs.24,64,000/- with interest and



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costs. Aggrieved by the impugned award, the second respondent has preferred the present appeal.

10. The learned counsel appearing for the second respondent would submit that the accident was occurred on 14.06.2015 at Palani to Udumalpet road, when the deceased Raja was proceeding from West to East in that road and thereby dashed against the Qualis car, which was coming in the opposite direction at that time, that it is not a direct and head on collision, but the motor bike driven by the deceased Raja had dashed against the right side of the Qualis car, in a negligent manner, which was coming from the opposite direction, that the accident was occurred only due to the rash and negligent driving of the deceased Raja and as such, the deceased Raja has committed the contributory negligence and that the deceased Raja did not wear the helmet at the time of accident and that is why, he succumbed to the head injury.

11. The learned counsel appearing for the second respondent would further submit that there is no sufficient proof to support that the deceased Raja was a photographer at the time of accident, that the claimants have



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not produced any income certificate or any other document to prove the income, that the Tribunal, in the absence of any evidence, has fixed the monthly income of the deceased at Rs.19,000/-, that the claimants have not exhibited the documents through proper persons, who have issued the documents in respect of the earnings of the deceased Raja and that the deceased Raja was not having any permanent job from anywhere and hence, the fixing of monthly income at Rs.19,000/- is without any basis and highly arbitrary.

12. The claimants, in order to prove the mode of accident, has examined P.W.2, who had allegedly accompanied the deceased Raja to the marriage reception for taking photographs and video. P.W.2, in his chief examination affidavit, would reiterate the contentions raised in the claim petition with regard to the mode of accident. In cross-examination, he would say that the accident was occurred in Madathukulam East West road at about 10.00 clock in night, that the accident was occurred 30 feet away from the barricade, that apart from the deceased Raja, one another person has also sustained injuries in the accident and that he has lodged the complaint on the next day morning. During cross-examination made on



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behalf of the third respondent, P.W.2 would say that the Qualis car has come from East towards West in a rash and negligent manner and dashed against the deceased Raja, who was moving in front of him and that the police has filed the final report against the first respondent's driver.

13. Admittedly, on the basis of the complaint lodged by P.W.2, FIR came to be registered in Crime No.263 of 2015 on 15.06.2015 for the offences under Sections 279, 337 and 304(A) IPC against the driver of the Qualis car and charge sheet came to be filed under Ex.P.5 against the driver of the Qualis car.

14. Though the second respondent has taken a specific stand in the counter statement that the deceased Raja had driven the bike in a zigzag manner and negligently and carelessly set down in the road pit and lost his control and came into the right side of the road wrongly and dashed against the Qualis car, which was coming on the opposite direction, they have not chosen to examine the driver of the Qualis car or any other person, who had allegedly witnessed the occurrence. As rightly pointed out by the learned counsel appearing for the claimants, there is absolutely



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no contra evidence with regard to the rash and negligence aspects.

Considering the evidence of P.W.2 and taking note of Ex.P.1 and Ex.P.5 and also the fact that there was no contra evidence from the second respondent's side, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the Qualis car driver, cannot be found fault with and hence, this Court is in entire agreement with the finding recorded by the Tribunal.

15. It is the specific contention of the second respondent that the deceased Raja did not wear helmet (headgear) at the time of accident and that is why, he sustained serious head injuries and died on the spot itself. P.W.1, in her cross-examination, would admit that the deceased Raja did not wear helmet at the time of accident. It is not the case of the claimants that the deceased was wearing headgear at the time of accident. As per the decision of the Hon'ble Division Bench of this Court in *M/s. United India Insurance Co. Ltd., Vs. M. Ravikumar and another (C.M.A. No. 1739 of 2016 dated 27.06.2018)*, 10% has to be deducted from the total compensation for not wearing the helmet at the time of accident.



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16. Now turning to the quantum of compensation, the claimants have produced Ex.P.9 to Ex.P.15 to show that the deceased Raja was running a photo studio and was earning not less than Rs.30,000/- per month. The Tribunal, taking note of Ex.P.11 and Ex.P.12, has come to a decision that the deceased Raja was getting Rs.4,000/- or Rs.4,500/- for every function and that since he was using high tech cameras and other equipment and was running a photo studio, has fixed the monthly income at Rs.19,000/-. It is evident from Ex.P.11 and Ex.P.12 that two concerns Kavi Digital Studio and Suriya Studio have issued the documents, as if, they have paid Rs.4,000/- and Rs.4,500/- respectively for covering the marriage reception and ear piercing function on behalf of the said two studios. As rightly contended by the learned counsel appearing for the second respondent, as per Ex.P.11 and Ex.P.12, the deceased Raja has worked under the said two studios and received the amounts. Moreover, the claimants have not chosen to examine the owners of the said studios, who have issued the above certificates nor any other persons attached to the said studios. Moreover, the claimants have also not produced any other documents to corroborate the contents of Ex.P.11 and Ex.P.12.



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17. According to the claimants, Ex.P.13 are the rent receipts issued by Sri Thondaiman Pudukottai 32 Patti Therkathi Kallarkal Madam, one dated 25.03.2013 for Rs.575/- and the second one dated 14.05.2015 for Rs.750/-, but the name of the deceased nor his studio name finds place in the receipts. Similarly, the claimants have produced Ex.P.14-receipts to show the payment of electricity consumption and wherein also, the name of the deceased and his studio does not find place. Though the claimants have produced two photographs to show the name board of Saha Studio affixed in the first floor of the building, they have not produced any material to show that the deceased was the proprietor of the said studio or that he was only running the said studio. As rightly contended by the learned counsel appearing for the second respondent, the claimants have not produced any records to show that the deceased Raja was engaged directly for covering the functions and payments were made therefor. Considering the above, as rightly contended by the learned counsel appearing for the second respondent, the fixing of monthly income at Rs.19,000/-, in the absence of clinching evidence is definitely on higher side. The Hon'ble Supreme Court in *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TN MAC 459** has fixed the



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monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and that the Hon'ble Division Bench of this Court in *Andal and others Vs. Avinav Kannan and another* reported in **2019 1 TN MAC 54 (DB)**, by taking into the amount fixed by the Hon'ble Supreme Court in *Syed Sadiq's case* at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above index, the cost of inflation index for the year 2008-2009 is 137 and for the year 2015-2016 is 254. Hence, the notional income of the claimant would be Rs.12,051/- rounded off to Rs.12,000/-. Hence, this Court fixes the monthly income of the claimant at Rs.12,000/-.

18. The Tribunal has not added 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%



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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, 40% of the income is to be added towards future prospects and after such addition, it comes to Rs.16,800/- (Rs.12,000/- + Rs.4,800/- (40% of the income)).

19. The Tribunal, taking note of the number of the claimants, has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.12,600/- (Rs.16,800/- - Rs.4,200/-).

20. The Tribunal, taking note of the death certificate and the postmortem certificate, has fixed the age of the deceased as 41 years and the same was not disputed by the second respondent. 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 the multiplier 14 and hence, the loss of dependency would be Rs.21,16,800/- (Rs.12,600/- x 12 x 14).



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21. The Tribunal has awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate. Our Hon'ble Supreme Court in *Pranay Sethi's case* 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 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.



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22. The first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards loss of spousal consortium, the claimants 2 and 3 being the sons of the deceased are entitled to get Rs.40,000/- each towards loss of parental consortium and the fourth claimant being the mother of the deceased is entitled to get Rs.40,000/- 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, as granted by the Tribunal. Considering the above, the claimants are entitled to get total compensation of Rs.23,06,800/-. 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	23,94,000	21,16,800	Reduced
2.	Consortium	40,000	1,60,000	Enhanced
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
	Total	24,64,000	23,06,800	



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23. As decided earlier, for not wearing the helmet, this Court has to deduct 10% of the total compensation awarded to the claimants. After such deduction, the total amount of compensation would be Rs.20,76,120/- (Rs.23,06,800/- - Rs.2,30,680/-).

24. 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.

25. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded at Rs.24,64,000/- (Rupees Twenty Four Lakhs and Sixth Four Thousand only) is hereby reduced to **Rs.20,76,120/- (Rupees Twenty Lakhs Seventy Six Thousand One Hundred and Twenty only)**. The appellant/insurer is directed the deposit modified award amount with interest at 7.5% per annum from the date of petition till the date of payment, excluding the default period, if any, to the credit of M.C.O.P.No.84 of 2017 on the file of the Motor Accident Claims Tribunal/Additional District Court, Palani, less the amount already deposited, if any, within a period of four weeks from the date of receipt of



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a copy of this judgment. On such deposit being made, the first respondent/first claimant is entitled to get **Rs.8,76,120/- (Rupees Eight Lakhs Seventy Six Thousand One Hundred and Twenty only)** and the respondents 2 to 4/claimants 2 to 4 are entitled to get **Rs.4,00,000/- (Rupees Four Laksh only)** each. Accordingly, the respondents 1 and 4/claimants 1 and 4 are permitted to withdraw their shares along with interest and costs and the share of the minor respondents 2 and 3/claimants 2 and 3 shall be deposited in any one of the Nationalised Banks till they attain majority. The first respondent/first claimant, who is the mother of the minor respondents 2 and 3/claimants 2 and 3, is permitted to withdraw the interest of minors once in three months directly from the Bank. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. The parties are directed to bear their own costs.

11.10.2023

NCC : Yes/No
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K.MURALI SHANKAR,J.

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To:

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

Pre-Delivery Order made in
C.M.A.(MD)No.582 of 2020

Dated : 11.10.2023