BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.1099 of 2023
and
C.M.P(MD)No.15012 of 2023

The Oriental Insurance Company Ltd.,
Represented by its Branch Manager,
Near Canara Bank,
No.94-E,South Kaliayamman Kovil Street,
Pattukkottai Nagar,
Thanjavur District. ...Appellant/2nd Respondent

.vs.

1.Kala
2.Vellaithurai
3.Pavya
4.Divya ...Respondents 1 to 4/
Petitioners 1 to 4
5.Periyasamy ...5th Respondent /1st Respondent
6.A.Syed Alam ...6th Respondent/ 3rd Respondent
7.The Branch Manager,
IFFCO Tokiyo General
Insurance Company Ltd.,
No.82, Preetham Plaza 1st Floor,
Chandrakandhi Nagar,
Ponmeni, Madurai Nagar,
Madurai District. ...7th Respondent
(Cause title is amended by including R7
as per the order of this Court dated 18.10.2023)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 15.12.2022 made in M.C.O.P.No.264 of 2017 on the file of the learned Principal District Judge, Sivagangai.

For Appellant	:Mr.A.Ilango
For R1 to R3	:Mr.S.Muthumalai Raja

JUDGMENT
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[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

This Civil Miscellaneous Appeal is directed againt the judgement and award made in M.C.O.P.No.264 of 2017, dated 15.12.2022, on the file of the Principal District Judge, Sivagangai.

2. Heard Mr.A.Ilango, learned counsel appearing for the appellant and Mr.S.Muthumalai Raja, learned counsel appearing for the respondents 1 to 3.

3. By consent of both sides, this Civil Miscellaneous Appeal itself is taken up for final disposal.

4. The Insurance Company is the appellant herein. The appeal has been preferred by the appellant challenging the negligence, liability and quantum.

5. The respondents 1 to 4 are the legal representatives of the deceased Saravanakumar, who was the bachelor and studying BCA second year at the time of accident. The college has arranged for educational tour and they were travelled in a NNL bus from Karaikudi to Thanjavur. In the meantime, based on certain issues in the bus, the batch of students were transferred from the NNL bus to two Maxi Cap vehicles. The deceased Saravanakumar and other students were travelling in a Maxi cap car bearing registration No.TN-49-AA-9204. The driver of the Maxi cap car has driven the vehicle in a rash and negligent manner and dashed behind the lorry bearing registration No.TN-28-AW-9091 parked in the left side of the road. The Maxi-cap car was insured with the appellant Insurance Company and the lorry was insured with the 7th respondent herein.

6. Before the Tribunal, the appellant insurance compnay, who is the insurer of the Maxicap car in which the deceased has travelled, has

taken a stand that due to sudden brake applied by the driver of the lorry insured with the 7th respondent herein, the accident has taken place.

7. Per contra, the 7th respondent herein has filed a counter stating that the lorry was parked on the left side of the road and the driver of the Maxicap car has not observed the principles of road discipline and dashed behind the parked lorry.

8. During trial, on behalf of the claimants, the father of the deceased was examined as P.W.1 and the occurrence witness was examined as P.W.2 and Ex.P1 to Ex.P25 were marked. On behalf of the respondent, namely, IFCO Tokiya Insurance, one Lakshmanan was examined as R.W.1 and the insurance policy of the lorry was marked as Ex.R1. The appellant insurance company has not getting any oral and documentary evidence.

9. On consideration of both oral and documentary evidence, the tribunal has come to the conclusion that the very accident has taken place due to the rash and negligent driving on the part of the driver of the Maxicap car, in which the deceased was travelled and accordingly, held

that the owner of the vehicle and the insurance company are jointly and severally liable to pay the compensation and awarded a compensation of Rs.28,71,600/-.

10. The tribunal has fixed the notional of the deceased at Rs.18,000/- per month. Aggrieved against the same, the insruance company has preferred this appeal.

11. After perusing the evidence of P.W.2 and also the discussion rendered by the Tribunal on the point of negligence on the part of the driver of the Maxicap car, this Court finds that there is no irregularity or illegality warranting interference in the findings of the tribunal.

12. With regard to the liability, it is seen from the documentary evidence of Ex.P8 and Ex.P10 wherein we find that the driver of the Maxicap vehicle is having a valid driving licence and the policy was covered only 12 + 1, whereas, in the instant case, 15 persons were travelled as per Ex.P1-FIR. It is seen from Ex.P3 Motor Vehicle Inspector Report and also Ex.P6-charge-sheet, the permitted persons in the Maxicap car is only 12+1. In the instant case, as evident from Ex.P1

totally 15 persons were travelled and hence, we find that only 2 persons were injured and died and for the said two persons are duly covered under Ex.P8 policy and hence, on the point of liability, we do not find any error on the face of record, which cause for any interference.

13. On the point of quantum of compensation, we find that as per age of the deceased, education qualification the tribunal has rightly applied the multiplier as per the judgment in ***2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)*** and future prospects is also fixed as per the judgment in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]***. However, taking note of the fact that the deceased is studying BCA second year and the accident is of the year 2017, we find that the notional income fixed by the tribunal is higher side and therefore, this court is inclined to interfere with the same. Accordingly, notional income is fixed at Rs.15,000/- as the deceased is studying BCA second year.

Rs.15,000/- x 40% furture prospects = 6,000/-

Rs.15,000+6,000= 21,000 / 2 = 10,500/-

Rs.10,500 x 12= 1,26,000/- x 18 multiplier =22,68,000/-

The compensation awarded in all other heads are just and reasonable and the same were confirmed. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

14.The award of the Tribunal is modified as follows:

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified or enhanced or granted
1.	Loss of income	Rs.27,21,600	Rs.22,68,000	Reduced
2.	Loss of funeral expenses	Rs.20,000	Rs.20,000	confirmed
3.	Loss of parental consortium	Rs.80,000	Rs.80,000	confirmed
4.	Loss of love and affection	Rs.40,000	Rs.40,000	confirmed
5.	For Cloths	Rs.5,000	Rs.5,000	confirmed
6.	For Transportation	Rs.5,000	Rs.5,000	confirmed
	Total	Rs.28,71,600	Rs.24,18,000	reduced by Rs.4,53,600

15.The Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.28,71,600/-to Rs.24,18,000/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The appellant / Insurance company is directed to deposit the reduced award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the reduced award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any, as per the apportionment made by the tribunal, by filing necessary application before the tribunal. The Tribunal is directed to refund the excess amount, if any, to the appellant / Insurance company along with proportionate interest. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] **[P.B.B.,J.]**
07.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
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To

The Motor Accident Claims Tribunal,

Principal District Judge,

Sivagangai.

RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI,J.

am

JUDGMENT MADE IN
C.M.A(MD)No.1099 of 2023

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