



C.M.A.(MD)No.939 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.10.2023

CORAM :

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

C.M.A.(MD)No.939 of 2022 &
C.M.P.(MD)No.12918 of 2023

Reliance General Insurance Company Limited,
15-A, PLA Kanagu Towers,
Thillainagar, 11th Cross, Trichy - 18.

...Appellant

vs.

1.Kalyanasundaram
2.Shanthi
3.Sivaranjani
4.Maruthakasi

... Respondents

Prayer: Petition under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgement and Decree dated 29.03.2022 in M.C.O.P.No.44 of 2019 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Thuraiyur.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.N.Sudhagar Nagaraj for R1 to R3 No appearance for R4



JUDGEMENT

[Judgement of the Court was delivered by RMT. TEEKAA RAMAN, J.]

This Appeal is filed by the Reliance General Insurance Company Limited challenging the Judgment and Decree passed in M.C.O.P.No.44 of 2019 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Thuraiyur, questioning the liability and the quantum of compensation awarded by the Tribunal.

2. The brief case of the respondents 1 to 3 / claimants is as follows:

(i) The 1st respondent / 1st claimant is the father of the deceased, 2nd respondent / 2nd claimant is the mother of the deceased and the 3rd respondent / 3rd claimant is the unmarried sister of the deceased.

(ii) The deceased was aged about 19 years on the date of the accident. He was studying III year B.E (Mechanical Engineering) and was earning a sum of Rs.20,000/- per month by taking tuition classes for 9th to 12th standard students.

(iii) On 26.08.2018, the deceased Sriram was riding his two wheeler bearing Registration No.TN 48 AH 8262 along with his friend one



VENKATESH as pillion rider on Chennai - Trichy bypass road. A Government bus was proceeding ahead of the two wheeler. When they were proceeding near Kondayampettai four road, the driver of the Government bus applied sudden brake. The deceased Sriram also applied brake and stopped his two wheeler. At that time, the fourth respondent / first respondent's lorry bearing Registration No.TN 61 C 5321 which was proceeding in the same direction and driven by its driver in a rash and negligent manner came behind the two wheeler with hectic and uncontrollable speed and dashed against the two wheeler, due to which, Sriram fell down and in consequence to the same, the tyre of the lorry ran over his head. Due to this accident, Sriram sustained fatal injuries all over his body, particularly, severe crush injury in his head and died on the spot.

(iv) According to the respondents 1 to 3 / claimants, the accident occurred only due to the rash and negligent driving of the driver of the said lorry. The fourth respondent herein is the owner of the lorry and the Reliance General Insurance Company Limited, who is the present appellant is the insurer of the lorry. Therefore, the owner and insurer of the said lorry are jointly and severally liable to pay compensation to them.



3. The fourth respondent / owner of the lorry was absent before the Tribunal and therefore, he was set ex-parte. The Reliance General Insurance Company Limited contested the claim petition.

4. Before the Tribunal, on the side of the respondents 1 to 3 / claimants, PW1 & PW2 were examined and exhibits P1 to P14 were marked. On the side of the Insurance Company, no documentary or oral evidence was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the fourth respondent / first respondent's lorry insured with the appellant / second respondent and awarded a sum of Rs.30,74,000/- together with interest at the rate of 7.5% per annum and directed the Insurance Company to pay the same. Aggrieved over the award passed by the Tribunal, the Insurance Company has preferred this appeal.



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6. Heard both sides and perused the materials on record.

7. On going through the oral evidence of PW2 coupled with the documentary evidence of Ex.P1 FIR and Ex.P3 Charge Sheet, it is seen that the two wheeler ridden by the deceased was preceded by the Transport Corporation bus and followed by a lorry. The driver of the said bus suddenly applied brake, thereby, the deceased Sriram has also applied brake. However, the driver of the lorry who drove the vehicle rashly and negligently, failed to apply brake, as a result, the lorry dashed against the two wheeler, thereby, the deceased Sriram fell down and the tyre of the lorry ran over the head of the deceased. Therefore, appropriate oral and documentary evidences are available to prove the rash and negligence driving on the part of the driver of the lorry. The lorry was insured with the appellant / second respondent. In view of the above, the liability fixed by the Tribunal on the part of the appellant / second respondent is just and fair and the same does not require any interference in this appeal.



8. As far as quantum of compensation is concerned, the Tribunal considering the facts that the deceased was studying III year B.E. (Mechanical Engineering) and taking tuition for 9th to 12th standards, fixed the notional income of the deceased at Rs.20,000/-. The respondents 1 to 3 / claimants have filed Ex.P12 IV Semester Mark Sheet of the deceased, wherein, it is seen that the deceased completed the IV Semester with I class distinction. No evidence has been adduced by the respondents 1 to 3 / claimants to prove that the deceased was taking tuition to 9th to 12th standard students. Considering the above, we feel that the notional income fixed by the Tribunal at Rs.20,000/- is slightly on the higher side and hence the same is refixed at Rs.18,000/-. The deceased was a bachelor and therefore, the Tribunal deducted 50% of his income towards his personal expenses. The multiplier of 18 fixed by the Tribunal following the decision in *Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121* is hereby confirmed. Further, the Tribunal had added 40% towards the future prospects of the deceased as per the decision laid down in *National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601*, and the same is also hereby confirmed.



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Calculation:

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Notional income = Rs.18,000/-

40% Future Prospects = Rs.7,200/-

Total = Rs.18,000/- + Rs.7,200 = Rs.25,200/-

Loss of Income = Rs. 25,200/- x 12 x 18 x 50/100 = Rs.27,21,600/-

9. The compensation awarded by the Tribunal towards funeral expenses and transportation are just and fair and the same are hereby confirmed. However, this Court feels that the compensation awarded towards loss of love and affection is on the lower side and is inclined to enhance the same. There are three dependents to the deceased. Each of the dependent is awarded Rs.40,000/- towards loss of love and affection and therefore, in total Rs.40,000/- x 3 = Rs.1,20,000/- is awarded towards love and affection.

10. Accordingly, the award passed by the Tribunal in M.C.O.P.No.44 of 2019 is modified as follows:



Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of Income	Rs.30,24,000/-	Rs.27,21,600/-
2.	Loss of love and affection	Rs.20,000/-	Rs.1,20,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs. 15,000/-
4.	Transportation	Rs.15,000/-	Rs.15,000/-
	Total	Rs.30,74,000/-	Rs.28,71,600/-

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.30,74,000/- to Rs.28,71,600/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant / second respondent is directed to deposit the entire compensation amount awarded by this Court, i.e., Rs.28,71,600/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 44 of 2019 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Thuraiyur within a period of eight weeks from the date of receipt of a copy of this order.



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(iv) On such deposit being made, the respondents 1 to 3 / claimants are permitted to withdraw the same, as per the apportionment made by the Tribunal in the manner known to law.

(v) If the appellant / second respondent had already deposited the compensation awarded by the Tribunal to the credit of the said MCOP, then, they are at liberty to withdraw the balance amount which is in excess of the amount awarded by this Court after following due process of law.

(T.K.R., J.) (P.B.B., J.)

06.10.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order

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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Thuraiyur.

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



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