



C.M.A.(MD).No.925 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.10.2023

Delivered on: 20.10.2023

CORAM:

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

**C.M.A.(MD).No.925 of 2018
and
C.M.P.(MD)No.10114 of 2023**

The Divisional Manager,
National Insurance Co. Ltd.,
Dindigul.

.. Appellant / Respondent No.2

Vs.

1.M.Amutha

2.Minor M.Jegan

3.A.Regammal

4.A.Aundiappan

(R2 rep. by mother R1 -Amutha) .. Respondents 1 to 4 / Petitioners

5.A.Nallusamy ... Respondent No.5/ Respondent 2

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order, dated 15.07.2016 made in M.C.O.P.No.282 of 2013, on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai.



C.M.A.(MD).No.925 of 2018

WEB COPY

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr. N.Sudhagar Nagaraj for R1 to R4

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Insurance Company, aggrieved by the award in M.C.O.P.No.282 of 2013, on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai, is the appellant before us.

2. The respondents 1 to 4, as claimants filed the M.C.O.P., seeking compensation arising out of the accident that occurred on 27.09.2013, resulting in the death of one A.Manivel, the husband of the first claimant and the father of the second claimant and the son of the claimants 3 and 4. It was the case of the claimants that the deceased was working as a loadman, earning Rs.9,000/- per month and that he was aged about 27 years at the time of the accident. According to the claimants, the accident occurred only because of the rash and negligent driving of the driver of the fifth respondent's vehicle driver.



C.M.A.(MD).No.925 of 2018

WEB COPY

3. The appellant, as second respondent in M.C.O.P., filed a counter stating that the deceased was riding as a pillion rider in a two wheeler, which was driven in a rash and negligent manner and that too, with totally 3 persons riding the said two wheeler and moreover, the deceased who was driving the two wheeler did not possess any driving licence also. According to the appellant, the owner of the two wheeler as well as the insurer of the two wheeler were also jointly and severally liable to compensate the claimants, in view of the negligence on the part of the two wheeler's driver. In short, a case of contributory negligence was put forth.

4. Before the Tribunal, the first claimant examined herself as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4 and 18 documents were marked as Ex.P1 to Ex.P18. On the side of the respondents, no oral or documentary evidence was adduced. Three documents were marked as Ex.X1 to Ex.X3, Court exhibits.

5. The Tribunal, after considering the oral and documentary evidence adduced by the parties, found that the driver of the fifth



C.M.A.(MD).No.925 of 2018

WEB COPY

respondent's driver alone was the cause of the accident and that the driver of the two wheeler did not contribute to the same. Insofar as compensation, the Tribunal awarded a sum of Rs.27,80,700/-, taking the salary of the deceased as Rs.9,000/- per month and giving 50% for future prospects and applying a multiplier of '17'.

6. Aggrieved by the said award, the appellant has challenged the same on the grounds that the Tribunal failed to see that three adult persons were travelling in the two wheeler and therefore, that alone would have been a cause for the accident and it was definitely a case of contributory negligence. Further, the Tribunal erred in fixing Rs.9,000/- as the monthly income of the deceased and providing 50% for future prospects, as the same is not in line with the ratio laid down by the Hon'ble Supreme Court. The appellant also challenges the deduction of 1/5th towards personal expenses as all the claimants were not dependents of the deceased, for livelihood.

7. We have heard Mr.S.Srinivasa Ragavan, learned counsel for the appellant and Mr.N.Sudhagar Nagaraj, learned counsel for the



C.M.A.(MD).No.925 of 2018

WEB COPY

respondents 1 to 4. We have also perused the records placed before us, including the impugned award of the Tribunal.

8. The learned counsel for the appellant would submit that three adult members were travelling in a two wheeler and that the rider of the two wheeler did not possess driving licence also and therefore, the Tribunal ought to have treated the case as one of contributory negligence and accordingly, apportioned compensation. Though the arguments of the learned counsel for the appellant appears to be attractive at first blush, on perusing the oral and documentary evidence available before the Tribunal, we do not find it a fit case, where the rider of the two wheeler would have to be found fault with and the principle of contributory negligence being applied.

9. The Tribunal has elaborately discussed the manner of accident and also taking note of the fact that the appellant has not chosen to lead any evidence oral or documentary before the Tribunal, has rightly come to the conclusion that the negligence is that only on the part of the driver of the fifth respondent's vehicle and not the rider of the two wheeler, in



C.M.A.(MD).No.925 of 2018

WEB COPY

which, the deceased was travelling. The very same contentions were also raised before the Tribunal and on appreciation of the oral and documentary, the Tribunal has found that the appellant has not proved that it was a case of contributory negligence, by letting any evidence in that regard. P.W.2, who was the witness to the accident has spoken about the manner of accident and clearly stated that the driver of the fifth respondent's vehicle was driving in a rash and negligent manner and came at a high speed and dashed against the two wheeler in the opposite direction, in which, the deceased was approaching. There is no contra evidence to rebut the evidence adduced by the said eyewitness.

10. One more peculiar aspect which needs to be taken note of in the present case is that in respect of the very same accident, 3 M.C.O.Ps were filed by the other two riders of the two wheeler, who also preferred M.C.O.Ps and the appellant has chosen to settle both those cases before the Lok Adalat. Therefore, once having accepted the findings of the Tribunal with regard to the negligence and having settled two matters arising out of the very same accident, it is not open to the appellant to independently continue to canvass the question of contributory negligence on the ground



C.M.A.(MD).No.925 of 2018

WEB COPY

that three adult members were riding the two wheeler involved in the accident.

11. Therefore, we are unable to accept the argument of the learned counsel for the appellant that since three adult members were travelling and the rider of the two wheeler had no driving licence, the principle of contributory negligence would come into play. We, therefore, confirm the finding of the Tribunal with regard to the rash and negligent driving on the fifth respondent's vehicle driver.

12. The next issue is regarding the quantum of compensation. The Tribunal has found that the age of the deceased was 30 years and not 27 years as claimed by the respondents 1 to 4 herein. Regarding his monthly salary, finding that there were no documentary evidence let in, in this regard, the Tribunal has taken a notional income of Rs.300/- per day and arrived at a monthly income of Rs.9,000/-, which we find to be reasonable and the same does not call for any interference.



C.M.A.(MD).No.925 of 2018

WEB COPY

13. The next contention of the learned counsel for the appellant is that the Tribunal should not have applied 50% towards future prospects and even as per the ratio of the Hon'ble Supreme Court in ***Pranay Sethi's case (National Insurance Company Ltd., Vs. Pranay Sethi and others)***, reported in ***(2017)-16-SCC-680***, future prospects ought to have been added 40% of the income and not 50%.

14. Per contra, the learned counsel for the claimants / respondents 1 to 4 would contend that merely because the deceased was riding in a two wheeler, which was carrying 3 persons, the same was not the cause for the accident and the Tribunal had rightly negatived the plea of contributory negligence raised by the appellant. He would also place reliance on the Division Bench of this Court in the case of ***Kattabomman Transport Corporation Limited V. Vellai Duraichi*** reported in ***2004-1-CTC-677*** and the judgment of the Hon'ble Supreme Court in the case of ***Mohammed Siddique V. National Insurance Company*** reported in ***2020-1-TNMAC-161(SC)***.



C.M.A.(MD).No.925 of 2018

WEB COPY

15. In the Division Bench judgment of this Court relied on by the learned counsel for the respondents 1 to 4 / claimants cited supra, this Court held that merely because there is a violation of provisions of the Rules or the policy conditions, the principle of contributory negligence cannot be mechanically applied and it should be established before the Tribunal.

16. In the judgment rendered by the Hon'ble Supreme Court also it was a case where three persons were riding the two wheeler and the Hon'ble Supreme Court held that violation of the law would not automatically lead to contributory negligence, unless it is established that the very fact of three persons were riding a two wheeler, resulted in the accident.

17. In the present case, we have gone through the evidence of P.W.1 and P.W.2. P.W.2, who is the eyewitness has categorically stated that the accident had occurred only because of the rash and negligent driving of the fifth respondent's vehicle driver and it was not on account of any rash or negligent driving on the part of the rider of the two wheeler



C.M.A.(MD).No.925 of 2018

WEB COPY

and to rebut this evidence, there is no evidence forth coming on the side of the appellant. No doubt, as contended by the learned counsel for the appellant, three persons were riding in a two wheeler, apart from being violation of the Motor Vehicles Act, the chances of not being able to balance the vehicle might have been there. However, burden was on the appellant to establish a direct nexus between the said factum of three adult members riding in a two wheeler and the accident. Unfortunately, though a plea has been taken regarding contributory negligence, the appellant has not chosen to examine any person to rebut the evidence adduced by the eyewitness, P.W.2, examined on the side of the claimants. The Tribunal has taken note of all the factors. We do not wish to interfere with the said findings of the Tribunal.

18. The learned counsel for the respondents 1 to 4 / claimants would submit that the Tribunal had rightly taken 50% towards future prospects, considering the age of the deceased and prayed that no interference is warranted with regard to this aspect.

19. The claimants have come forward with the case that the



C.M.A.(MD).No.925 of 2018

deceased was a loadman, earning Rs.9,000/- per month. However, no evidence has been let in by the claimants to establish the said claims regarding employment as well as the monthly earning of the deceased. In fact, the Tribunal has only arrived at a notional income taking Rs.300/- per day and it would be minimum daily income of even a daily labourer and fixed the notional monthly income at Rs.9,000/-. The Hon'ble Supreme Court in *Pranay Sethi's case* held that while determining the income, additional 50% of the actual salary can be added to the income of the deceased under the head of future prospectus only if the deceased had been in a permanent job and his age was below 40 years and in cases, where the deceased was self employed or on a fixed salary, addition of 40% should be taken towards future prospects. The Tribunal has, however, taken 50% towards future prospects and therefore, we deem it fit to interfere with the same and reduce it to 40 %. Hence, after applying 40% (Rs.3,600/-) towards future prospects, the monthly income would come to Rs.12,600/- (Rs.9,000/- + Rs.3,600/-). After deducting $\frac{1}{4}$ th (Rs.12600/4 = Rs.3,150/-) towards personal expenses and after applying a multiplier '17', the loss of income would come to Rs.19,27,800/- (Rs.9,450/- X 12 X 17).



C.M.A.(MD).No.925 of 2018

WEB COPY

20. Insofar as the other heads a Rs.5,07,200/- towards medical expenses, placing reliance on Ex.P10 and Ex.P16 and Rs.8,500/- towards transport expenses placing reliance on Ex.P17, the Tribunal has rightly arrived at compensation on the above heads and the same also do not warrant any interference.

21. The claimant is entitled to Rs.15,000/- for loss of estate. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium to the wife and Rs.25,000/- each to the claimants 2 to 4 / respondents 2 to 4 towards loss of love and affection. The Hon'ble Supreme Court in ***Pranay Sethi's*** case, held as follows:

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) *The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*



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C.M.A.(MD).No.925 of 2018

(ii) *As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

(iii) *While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

(iv) *In case 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. The established income means the income minus the tax component.*

(v) *For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.*



C.M.A.(MD).No.925 of 2018

WEB COPY

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

22. We place on record our appreciation for the fair submissions of Mr.S.Srinivasa Raghavan, learned counsel for the appellant, who brought to our notice that despite the Hon'ble Supreme Court in ***Pranay Sethi's*** case specifically ruling that the amounts set out in respect of the funeral expenses, loss of estate and loss of consortium have to be enhanced once in every three years. The same is not given effect to by the Tribunal. In the above circumstances, we have applied the said ratio of the Hon'ble Supreme Court in ***Pranay Sethi's*** case to the facts of the present case. The funeral expenses, the loss of consortium and loss of estate should be enhanced once in every three years at 10%. Since the above judgment is of the year 2017, from 2017- 2020 , 10% should be enhanced, ie. from Rs.



C.M.A.(MD).No.925 of 2018

40,000/- to Rs.44,000/- towards loss of consortium, from Rs.15,000/- to Rs.16,500/- each towards funeral expenses as well as loss of estate and from 2020- 2023, another 10% should be enhanced ie. Rs.44,000/- to Rs. 48,400/- towards loss of consortium, from Rs.16,500/- to Rs.18,150/- each towards funeral expenses as well as loss of estate. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 20,65,500/-	Rs. 19,27,800/-	reduced
2.Loss of consortium	Rs. 1,00,000/-	Rs. 48,400/-	reduced
3.Loss of love & affection (Claimants 2 to 4)	Rs. 75,000/- each Rs.25,000/-	Rs. 1,45,200/- each Rs.48,400/-	increased
4.Funeral expenses	Rs. 25,000/-	Rs. 18,150/-	reduced
5.Transportation	Rs. 8,060/-		set aside
6.Medical expenses	Rs. 5,07,200/-	Rs. 5,07,200/-	confirmed
7.Loss of estate		Rs. 18,150/-	added
Total Compensation	Rs. 27,80,760/-	Rs. 26,64,900/-	Reduced

23. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from Rs.27,80,760/- to Rs.26,64,900/-. The first claimant, who is the wife of the deceased is entitled to Rs.14,64,900/- with proportionate interest, the



C.M.A.(MD).No.925 of 2018

second claimant, who is the son of the deceased is entitled to Rs.8,00,000/-with proportionate interest, the claimants 3 and 4, who are the parents of the deceased are entitled to Rs.2,00,000/- each with proportionate interest.

24. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.26,64,900/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

25. On such deposit being made, the respondents 1, 3 & 4 / claimants are permitted to withdraw the award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. We also notice that the second respondent / second claimant was a minor aged about 9 years, when the M.C.O.P was filed and as on date he has attained the age of majority. However, no application has been



C.M.A.(MD).No.925 of 2018

moved for declaration of the second respondent /second claimant as major.

Therefore, we give liberty to the second respondent / second claimant to move the Tribunal, to get himself declared as major, before becoming entitled to withdraw his compensation amount. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
20.10.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
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To

- 1.The Motor Accident Claims Tribunal
(Sub Court), Kulithalai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.925 of 2018



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C.M.A.(MD).No.925 of 2018

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

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judgment in
C.M.A.(MD).No.925 of 2018

20.10.2023