



C.M.A. (MD)No.914 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.09.2023

Pronounced on : 31.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.914 of 2019
and
C.M.P.(MD)No.12260 of 2019

M/s.United India Insurance Company Limited,
Kumbakonam,
represented through its
Divisional Manager

... Appellant/
2nd Respondent

Vs.

1. Lakshmi

2. Dhiyaku

3. Dhivakar

... Respondents 1to3/
Petitioners 1 to 3

4. M/s.Kannan Lorry Service
Kumbakonam,
Office at : No.90,
Sarangapani South Street,
(First Floor),
Kumbakonam.

... 4th Respondent/
1st Respondent



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5. M/s. National Insurance Company Ltd.,
Kumbakonam,
represented by its Branch Manager

... 5th Respondent/
3rd Respondent

(Respondent Nos. 4 and 5 given up)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the Tribunal of Motor Accident Claims Tribunal cum Additional District Court, (Fast Track Court), Kumbakonam made in M.C.O.P.No.206 of 2015 dated 16.07.2018 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.H.Lakshmi Shankar

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.206 of 2015 dated 16.07.2018 on the file of the Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Kumbakonam.

2. The appellant/insurer, who was made liable to pay compensation of Rs.34,02,180/- (Rupees Thirty Four Lakhs Two Thousand One Hundred and Eighty only) with interest at 7.5% per annum to the respondents 1 to



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3/claimants, for the death of Rajan, consequent to an accident occurred on 24.03.2015, 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 24.03.2015 at about 10.30 p.m., one Rajan was riding his Hero Honda Splendor motor cycle bearing Registration No.TN-68-H-4183 from Kumbakonam to Sakkottai, that when the said Rajan was crossing N.A.H. Petrol bunk in Needamangalam main road, one Ashok Leyland lorry bearing Registration No.TN-49-T-8595 was proceeding in front of the motor cycle and all of a sudden, without giving any signal, the lorry driver applied sudden brake and stopped his lorry and as a result of which, the motor cycle hit the lorry behind and the two wheeler rider fell down on the road and sustained severe head injuries, that the injured Rajan was immediately taken to Government Hospital, Kumbakonam, but he was declared as dead and that the accident was occurred only due to the rash and negligent driving of the lorry driver.



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4. It is the further case of the claimants that the deceased Rajan was aged 52 years at the time of accident and that he was working as a Special Technical Mechanic in Tamil Nadu State Transport Corporation and was getting monthly salary of Rs.32,432/-.

5. The defence of the second respondent is that the deceased Rajan was proceeding in his two wheeler towards Sakkottai after consuming alcohol in a rash and negligent manner and at the place near N.A.H. Petrol bunk at Sakkottai, he dashed against the standing lorry bearing Registration No.TN-49-T-8595, that his brother has lodged a complaint falsely against the lorry driver and on that basis, FIR was registered and that the accident was occurred only due to the rash and negligent riding of the deceased Rajan and the lorry driver was not at fault.

6. During trial, the claimants have examined the first claimant as P.W.1 and one Rajendran-brother of the deceased Rajan alleged to be occurrence witness as P.W.2 and the Staff Michael attached to the State Transport Corporation as P.W.3 and exhibited 17 documents as Ex.P.1 to Ex.P.17. The respondents 1 and 3 had remained *ex parte*. The second



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respondent has examined 4 witnesses as R.W.1 to R.W.4 and exhibited one document as Ex.R.1 and 6 witness documents as Ex.X.1 to Ex.X6.

7. 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 16.07.2018, by holding that the accident was occurred only due to the negligence on the part of the lorry driver, mulcted liability on the second respondent and directed them to pay compensation of Rs.34,02,180/- with interest and costs. Aggrieved by the impugned award, the second respondent has preferred the present appeal.

8. The learned counsel appearing for the second respondent would submit that the first respondent's lorry was parked on the extreme left side of the road and the lorry driver was standing in a nearby petrol bunk near the cashier counter, that the deceased Rajan, after consuming alcohol, in a drunken mode, rode the two wheeler in a rash and negligent manner and dashed behind the parked lorry, that the Tribunal has miserably failed to consider the evidence of the lorry driver R.W.2 and the police officials R.W.3 and R.W.4, that the deceased Rajan rode the two wheeler without



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wearing helmet and that the second respondent through the ample evidence has proved that the deceased Rajan was responsible for the accident and the lorry driver was not at fault.

9. The learned counsel appearing for the second respondent would further submit that the Tribunal, after recording a finding that the deceased Rajan was aged 52 years, has failed to adopt split multiplier, that the Tribunal, without any basis, has awarded Rs.32,82,180/- for loss of dependency, which is highly excessive and out of proportion and that therefore, the total compensation awarded is liable to be interfered with.

10. The points that arise for consideration are :

- 1) *Whether the Tribunal erred in rendering a finding that the accident was occurred due to the negligence of the first respondent's lorry driver, despite showing through the evidence of R.W.1 to R.W.3 that the deceased Rajan alone in a drunken mode has driven the two wheeler in a rash and negligent manner and dashed behind the parked lorry and that he was alone at fault?*
- 2) *Whether the Tribunal erred in calculating the compensation without invoking split multiplier method, even after giving a finding that the deceased Rajan was aged 52 years at the time of*



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accident and was working in State Transport Corporation?

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3) *Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?*

Points 1 to 3:

11. As already pointed out, it is the specific case of the claimants that the lorry driver, while proceeding in front of the deceased Rajan's two wheeler, applied sudden brake and stopped the lorry without any signal or indicators and as a result of which, the deceased Rajan had dashed against the back side of the lorry, but according to the second respondent, the lorry was parked on the extreme left side of the road and the lorry driver was standing in a nearby petrol bunk and that the deceased Rajan in a drunken mode rode the two wheeler in a rash and negligent manner and dashed behind the parked lorry.

12. The claimants, in order to prove the mode of accident, have examined P.W.2 alleged to be the occurrence witness, who is none other than the brother of the deceased Rajan. P.W.2, in his evidence, would say that on 24.03.2015 at about 10.50 p.m., after completing his work, he was proceeding towards Sakkottai in his two wheeler behind his brother and



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that since a lorry, which was proceeding in front of his brother's two wheeler, was stopped suddenly without any signal in the middle of the road, his brother had dashed against the back side of the lorry and fell down. In cross-examination, he would say that he was proceeding behind his brother at a distance of 50 feet, that the petrol bunk was situated on the West of the road and the occurrence road is North – South road and that the lorry was proceeding at that time. He would deny the suggestion that his brother had dashed against the parked lorry.

13. Admittedly, on the basis of the complaint lodged by P.W.2 on 25.03.2015 at about 09.30 a.m., FIR came to be registered. As already pointed out, the accident was occurred at 10.50 p.m. on 24.03.2015. P.W.2 would say that after completing his work in Transport Corporation, he was returning to his home at Sakkottai at the time of accident, but admittedly, he has not produced any document to show that he attended work on that day and after completion of the said work, he was returning to his home at that time. As rightly pointed out by the learned counsel appearing for the second respondent, P.W.2 has not offered any reason or explanation for not preferring any complaint on that day itself, if he was very much available at the time of accident and witnessed the occurrence.



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14. The second respondent has examined the lorry driver as R.W.1 and he would say that after taking diesel, he parked the lorry on the opposite side of the petrol bunk, that since his owner was having account in the petrol bunk, he visited the petrol bunk to put his signature and at that time, he heard a dashing sound and that he had seen a two wheeler dashing against the back side of the parked lorry. No doubt, he would admit that he has not preferred any complaint and due to fear, he left the place immediately. He would deny the suggestion that he was proceeding in a lorry and applied sudden brake and as a result of which only, the deceased Rajan had dashed against the back side of the lorry.

15. The second respondent has also summoned and examined two police officials as R.W.2 and R.W.3. R.W.2 would say that on 25.03.2015 at about 09.30 a.m., after coming to know about the registration of the FIR, he went to the occurrence place and prepared Observation Mahazar and Rough Sketch and he examined the witnesses available in that place and he came to know that the lorry was parked near a petrol bunk on the right side, that a two wheeler had dashed against the parked lorry and that since the regular Inspector joined duty, he was relieved from that case. In



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cross-examination, he would say that he examined the witnesses available in the petrol bunk, that he came to know that the incident was true and that the two wheeler had dashed against the back side of the lorry. R.W.3 has produced the copy of the final report, wherein, they have closed the case as 'Mistake of Fact'. As rightly pointed out by the learned counsel appearing for the second respondent, though the FIR was registered against the lorry driver, the jurisdictional police, after completing the investigation, has filed the final report as 'Mistake of Fact' by coming to a conclusion that the mode of accident alleged in the FIR is not true.

16. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in *Nishan Singh and others Vs. Oriental Insurance Company Limited through Regional Manager and others* reported in **(2018) 6 SCC 765**, wherein also, a defence was taken that the truck driver suddenly applied brake while the truck was in the centre of the road, the maruti car, which was proceeding behind the truck, collided with the truck from the back and the relevant passages are extracted hereunder:-



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“10. The finding so recorded by the Tribunal has been affirmed by the High Court, by observing that the evidence was clearly indicative of the fact that the maruti car was being driven in a rash and negligent manner, which was the cause for accident of this nature and resulting in death of one of the passengers in the maruti car. The maruti car was driven by none other than PW-2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the maruti car for quite some time about one kilometre and at the time of accident, the distance between the truck and maruti car was only 10-15 feet. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which the two vehicles were moving was only about 14 feet wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the maruti car which was following the truck was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

“23. Distance from vehicles in front.-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient



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distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

The expression ‘sufficient distance’ has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10–15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.

11. The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding on issue No.1 recorded by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey. Therefore, the issue under consideration was answered against the appellants (claimants), namely, that the subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the centre of the road at right side or applied sudden brake as being the cause of



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the accident. Being a concurrent finding of fact and a possible view, needs no interference.”

17. The learned counsel appearing for the second respondent has also relied on the judgment of the Hon'ble Division Bench of this Court in ***Divisional Manager, United India Insurance Co. Ltd., Vs. Premavathi and others*** reported in ***2018 (2) TN MAC 705***,

“22. It is not in dispute that this FIR was lodged on the basis of the Report of the Driver of the Lorry. It is, therefore, clear that the Lorry had suffered a mechanical defect and was attempting to go to the left side of the road when the accident occurred. A close reading of the above FIR would show that the damage to the Lorry was on its right side, it is, thus, clear that the Lorry, which had suffered a mechanical defect was attempting to the shift to the left side of the road, the Car driven by RWI came from behind and dashed against the right side of the Lorry. This crucial fact, namely the fact that the Lorry was attempting to go towards the left side of the road has been totally was overlooked by the Tribunal when it came to the conclusion that the Car Driver was negligent. This statement in the FIR is also corroborated by the evidence of PW2, who admits that the Driver of the Lorry had given a complaint



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in which he had in fact stated that the accident occurred, when he was attempting to go to the left side of the road.

23. We are, therefore, of the considered opinion that the Driver of the Lorry had also contributed to the accident. Unfortunately, the Motor Vehicle Inspector Reports of the both the vehicles have not been produced before the Tribunal. We would be justified in drawing an adverse interference against both the Insurance Companies for non-production of the Motor Vehicle Inspector Reports, which would have thrown much more light on the contents of the Lorry as well as the effect of the mechanical defect, namely breaking of the plate/joint of the Lorry, would have had on condition of the vehicle at the time of the accident. We, therefore, conclude that it would be just and proper to apportion the negligence between the Driver of the Car and the Lorry at 50% each.”

18. Regulation 23 of the Rules of the Road Regulations, 1989 contemplates that the driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop. The Honble Apex Court, in the decision above referred, by holding that



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sufficient distance i.e., a safe distance of two to three seconds gap in ideal condition is necessary to avert collision, has observed that the distance of 10–15 feet between the truck and maruti car was certainly not a safe distance, for which, the driver of the maruti car must take the blame.

19. Even assuming for arguments sake that the mode of accident as alleged by the claimants is true, it is not the case of the claimants that the deceased Rajan was proceeding behind the lorry by keeping sufficient distance.

20. It is evident from Ex.P.2-Motor Vehicle Inspection report of the lorry that the lorry has sustained the following damages (1) RHS rear danger light broken and (2) RHS rear grill bend. The claimants have not chosen to produce any Motor Vehicle Inspection report of the two wheeler, but even according to them, the two wheeler had dashed against the back side of the lorry. It is not the case of both the parties that the accident was due to any mechanical defect of the vehicles.

21. Except P.W.2, who is an interested witness, the claimants have not chosen to examine any other persons, who have witnessed the alleged



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occurrence. But at the same time, it is not the specific case of the second respondent that the lorry was stopped with necessary indicators on the backside of the lorry so as to caution the vehicles coming behind.

22. As rightly contended by the learned counsel appearing for the second respondent, the Tribunal, by relying only on the evidence of P.W.2, has recorded a finding that the accident was occurred as alleged by the claimants and the Tribunal has miserably failed to consider the evidence of the lorry driver and the other supporting evidence given by the police officials. As already pointed out, the police authorities, after completing the investigation, have come to a decision that the accident was not occurred as alleged by the claimants and on that basis, they have closed the FIR as 'Mistake of Fact'. Considering the entire evidence available on records, this Court has no hesitation to hold that the deceased Rajan has also mainly contributed to the accident and this Court fixes the same at 50%. Hence, the finding of the Tribunal that the lorry driver alone was responsible for the accident cannot be sustained.

23. Now turning to the quantum of compensation, the main objection raised by the learned counsel appearing for the second



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respondent is that the Tribunal, after fixing the age of the deceased at 52 years, has failed to apply the split multiplier. It is necessary to refer the decision of the Hon'ble Supreme Court in ***R. Valli and others Vs. Tamil Nadu State Transport Corporation Ltd.*** reported in ***2022 LiveLaw (SC) 152***, wherein, the Hon'ble Apex Court has specifically held that the method of determination of compensation applying two multipliers is clearly erroneous and disapproved the application of split multiplier and the relevant passage is extracted hereunder:-

“11. Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi.”

24. A Division Bench of this Court in ***The Manager, National Insurance Company Limited, Karur Vs. Kalyani and others*** in ***C.M.A. (MD) No. 452 of 2019 dated 28.02.2023***, relying on the judgment of the



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Hon'ble Supreme Court, has also disapproved the application of the split multiplier and the relevant passage is extracted hereunder:-

“6. Therefore, this Court is of the view that the error in fixing the salary of the deceased person and the multiplier applied needs to be interfered. However, the claim of the Insurance Company that split multiplier should be applied since the deceased is salaried Government servant and he is supposed to retire of attaining superannuation within a period of three years is not tenable in view of the Supreme Court judgment which has disapproved applying split multiplier.”

25. The Tribunal, taking note of the evidence of P.W.3 and the service register and the salary slips produced, has rightly fixed the monthly income of the deceased as Rs.32,432/-. The Tribunal, taking note of the driving licence of the deceased, has rightly fixed the age of the deceased as 52 years at the time of accident and the same was not disputed by the second respondent. Since the deceased was aged 52 years, the Tribunal has rightly added 15% of the income towards future prospects and after such addition, the monthly income would come to Rs.37,297/-. The Tribunal, taking note of the number of the claimants, has rightly



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deducted 1/3rd of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.24,865/-. As per the dictum laid down in ***Sarla Verma's case and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly applied multiplier 11 and as such, the loss of dependency would be Rs.32,82,180/-.

26. The Tribunal has awarded Rs.40,000/- for loss of consortium to the first claimant and Rs.25,000/- each to the claimants 2 and 3 for loss of love and affection. 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 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



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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.

27. The first claimant being the wife of the deceased is entitled to get Rs.40,000/- for loss of spousal consortium and the claimants 2 and 3 being the sons of the deceased are entitled to get Rs.40,000/- each for loss of parental consortium. The Tribunal has rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads, all totalling Rs.34,32,180/-.

28. After deducting 50% for contributory negligence, the claimants are entitled to get total compensation of Rs.17,16,090/- (Rs.34,32,180/- - Rs.17,16,090/-)



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29. 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 and the above points are answered accordingly.

30. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded at Rs.34,02,180/- (Rupees Thirty Four Lakhs Two Thousand One Hundred and Eighty only) is reduced to **Rs.17,16,090/- (Rupees Seventeen Lakhs Sixteen Thousand and Ninety only)**. The appellant/insurer is directed to deposit the modified amount with interest at 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.206 of 2015 on the file of Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Kumbakonam, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment and on such deposit being made, the first respondent/first claimant is entitled to get **Rs.10,16,090/- (Rupees Ten Lakhs Sixteen Thousand and Ninety only)** and the respondents 2 and 3/claimants 2 and 3 are entitled to get **Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only)** each. Accordingly, the respondents 1 to 3/claimants are permitted to withdraw



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their shares along 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.

31.10.2023

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

To:

1. The Motor Accident Claims Tribunal/
Additional District Court (Fast Track Court),
Kumbakonam.
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.914 of 2019
and
C.M.P.(MD)No.12260 of 2019

Dated : 31.10.2023