



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1240 of 2022

and

C.M.P(MD)Nos.4197 of 2023 and 12701 of 2022

M/s.National Insurance Company Limited,
through its Branch Manager Office,
19/B, S.R.Complex,
Rajamani Thottam,
Salem Bhavani Road,
Shankari

:Appellant/Respondent No.2

/vs/

1.Jeya

2.Minor Elakkiya

3.Minor Selvarani

(minor respondents 2 and 3 are represented by their mother and guardian, the first respondent herein Jeya)

S.Esakkimuthu(died)

4.E.Mariammal

5.E.Arumugavadivu

6.E.Selvi

7.E.Santhakumari

8.E.Karuppasamy :Respondents 1 to 8/Petitioners

9.V.Shanmugavalli :Respondent No.9/Respondent No.



PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree made in M.C.O.P.No.298 of 2018, dated 18.08.2022, on the file of the Motor Accidents Claims Tribunal/Special Sub-Court, Tirunelveli.

For Appellant :Ms.P.Malini
For Respondents :Mr.T.Selvakumaran
1 to 8
For Respondent-9 :Insufficient Address

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Tribunal on the ground of liability and also on quantum.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The Tribunal has awarded the following compensation:

1.Loss of Dependency	-Rs.28,35,000/-
2.Loss of consortium to the wife	-Rs.44,000/-
3.Loss of Estate	-Rs.16,500/-
4.Funeral expenses	-Rs.16,500/-

total	-Rs.29,12,000/-



4.The brief facts leading to the filing of this appeal is as follows:

The deceased Balasubramanian, aged about 41 years, on 23.08.2017 at about 23.45 hours, driving his Tata Ace vehicle bearing Registration No. TN 72 AL 8329 in Sathur NH 7 Eastern side service Road, 200 metre south to Sathur Chek Post in front of Raj Complex from north to south and at that time, a lorry bearing Registration No. TN 52 F 4666 belonging to the first respondent, insured with the second respondent, driven by its driver ahead of TATA Ace Vehicle in a rash and negligent manner in a high speed and without observing the traffic rules of the road, suddenly turned the lorry on the right side track. On seeing the same, the deceased Balasubramanian applied the brake in order to avoid the accident but the TATA Ace Vehicle dashed on the left rear side of the lorry. As a result, the deceased Balasubramanian sustained grievous injuries. Immediately he was taken to Government Hospital, Sattur for treatment and then to Tirunelveli Medical College Hospital for further treatment and succumbed to injuries. He was earning a sum of Rs.30,000/-. A crime was registered against the driver of the offending vehicle.

5.It is the case of the second respondent Insurance Company



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that only the deceased has allowed four persons to travel in the goods vehicle and the entire accident is due to the negligent aspect of the deceased Balasubramanian.

6. On the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 and Ex.R2 were marked.

7. On appreciation of both oral and documentary evidence, the Tribunal found that only the driver of the offending lorry was negligent in driving the lorry in the highway and awarded the compensation as stated supra fixing the notional income of the deceased at Rs.15,000/-p.m and by applying multiplier of 15. Challenging the same the present appeal has been filed by the Insurance Company.

8. The learned counsel for the appellant Insurance Company mainly contended that the lorry was proceeding in front of the TATA Ace vehicle, however, only the deceased Balasubramanian drove the TATA Ace vehicle in a rash and negligent manner and without observing the traffic rules hit the left rear side of the



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lorry. Therefore negligence cannot be attributed against the lorry driver alone and according to her, the deceased suddenly came from the left side to the service road and hit the rear side of the lorry. That apart, without any income proof, the Tribunal has fixed Rs.15,000/- as notional income of the deceased. Further contention is that on the date of accident, the deceased had completed the age of 40 years, as evident from Ex.P5-driving licence. Therefore the Tribunal ought not to have added 40% towards future prospects and applied 15 multiplier. Hence prayed for dismissal of the claim petition.

9.The learned counsel for the respondents submitted that the lorry while going in the left side of the highway, suddenly come to the left side of the road which was established on record. Therefore the Tribunal finding that the driver of the lorry was the cause for the accident cannot be countenanced.

10.As far as the age of the deceased is concerned, the learned counsel for the respondents does not dispute the same. As per Ex.P5, he had completed the age of 40 years at the time of accident. As far as the income fixed by the Tribunal is concerned, the deceased is the owner cum driver of the Tata Ace vehicle and



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fixing of Rs.15,000/- as notional income cannot be found fault with.

He would further submit that the tribunal has not awarded any amount towards loss of love and affection to the minor children and mother of the deceased.

11. In the light of the above facts, the points that arose for consideration in this appeal is as follows:

1. Whether the Tribunal is right in fixing the liability on the driver of the offending vehicle?

2. Whether the quantum fixed by the Tribunal is reasonable or it needs any modification?

12. The contention of the learned counsel for the appellant Insurance Company is that the deceased only drove the vehicle in a rash and negligent manner and suddenly turned to the left side of the service road cannot be countenanced. The evidence of P.W.1 and P.W.2 clearly indicates that the driver of the offending vehicle proceeding in a high speed in the left track, suddenly came to the right side without any signal and without watching that any other vehicle is coming or not and dashed against the vehicle of the deceased. This fact was spoken to by P.W.2 and evidence disclose



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the same and in the absence of any other evidence, the contention that only the deceased drove his vehicle in a rash and negligent manner and his vehicle come in the wrong side, cannot be countenanced.

13.As far the point of income is concerned, the deceased Balasubramanian is the owner cum driver of the TATA Ace vehicle and due to his death, the entire family collapsed and a person owning a commercial vehicle and driving the same on his own, can easily earn income of Rs.15,000/- p.m. In such view of the matter, this Court is of the view that the tribunal fixing the notional income at Rs.15,000/-p.m does not require any interference by this Court.However, the age of the deceased on the date of accident is more than 40 years which has been established as per Ex.P5 Driving licence. In such view of the matter , the Tribunal adding 40% towards future prospects is not in accordance with law and the Tribunal ought to have added only 25% towards future prospects and applied multiplier 14 instead of 15. Accordingly, if Rs.15,000/- is taken as notional income and if 25% is added towards future prospects it comes to Rs.15,000/-+Rs.3750/- =Rs. 18750/- if if one fourth of the monthly income is deducted towards the personal expenditure of the deceased, the monthly income



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comes to Rs.18750/- - Rs.4687 = Rs.14063/-p.m. Thus the total loss of dependency comes to Rs.14063 x 14 x 12 =23,62,584/- rounded off to Rs.23,63,000/-.The Tribunal has awarded a sum of Rs.44,000/- towards loss of consortium to the first Petitioner/wife and no amount is awarded to the 2 minor children and mother of the deceased towards loss of love and affection and hence, this Court awards a sum of Rs.40,000/- each to the two minor children and mother of the deceased, totalling to Rs.1,20,000/-. Further the loss of estate at Rs.16,500/- and for funeral expenses at Rs.16,500/-, as ordered by the Tribunal, stands confirmed and thus the total compensation is arrived at as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 28,35,000/-	Rs. 23,63,000/-	enhanced
2	Spousal consortium to the first Petitioner/wife	Rs.44,000/-	Rs.44,000/-	same
3	For loss of estate	Rs.16,500/-	Rs.16,500/-	same
4	For funeral expenses	Rs.16,500/-	Rs.16,500/-	same
5.	For loss of love and affection to the two minor children and mother of the deceased	----	Rs. 1,20,000/- (Rs.40,000/- each)	Newly awarded



6	Total	Rs. 29,12,000/-	Rs. 25,60,000/-	Reduced
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Thus the total compensation payable to the Petitioners is Rs. 25,60,000/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.

14.In the result,the Civil Miscellaneous Appeal is allowed reducing the compensation from Rs.29,12,000/- to Rs.25,60,000/- 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 above said modified award amount with accrued interest and costs, less the award amount already deposited,if any, to the credit of claim petition before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner/wife and second and third Petitioners/minor claimants are each entitled to a sum of Rs.7 lakhs and the Petitioners 4 to 8 are each entitled to equal share in the balance award amount, with proportionate accrued interest and costs, less the award amount, if any already withdrawn. The Petitioners 1 and 4 to 8 are permitted to withdraw their share in the award amount as stated supra, by filing necessary application before the Tribunal. The share of the minor



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claimants/petitioners 2 and 3 are directed to be deposited in any one of the nationalized Bank, in interest bearing fixed deposits, initially for a period of three years, renewable thereafter, till the minor attains majority. The first Petitioner/mother is permitted to withdraw interest from the said deposits directly from the bank, once in three months and utilize the same for the welfare of the children. The Petitioners/claimants are directed to pay the excess Court fee, if any, towards the excess award amount to the credit of Registry. Only on such payment being made, Registry is directed to draft the decree in the appeal. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.06.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
(Special Sub-Judge),
Tiruneveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

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