



WEB COPY



C.M.A.No.2570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2570 of 2023

and

C.M.P.No.23757 of 2023

The Oriental Insurance Co.Ltd.,
The Divisional Manager,
No.4, United India Life Building,
4th Floor, Esplanade, Broadway,
(near High Court and Kuralagam and
opposite to esplanade police station)
Chennai – 600 108.

...Appellant/Respondent No.2

vs.

1.Vandarkuzhali	...Respondent / Petitioner No.1
2.Minor Lakshanya	...Respondent / Petitioner No.2
3.Minor Senajitha	...Respondent / Petitioner No.3
4.C.Ravindran	...Respondent / Respondent
5.Poorani	...Respondent /Respondent



C.M.A.No.2570 of 2023

6.Kanthasamy

...Respondent /Respondent

7.Vetriselvam

...Respondent /Respondent

8.Sivagamy

...Respondent /Respondent

9.Banuchitra

...Respondent /Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree passed in M.C.O.P.No.910 of 2017 dated 28.11.2022 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Puducherry.

For Appellant : Mr.J.Chandran

For Respondent : Mr.Prakash Adiapadam

for Mr.P.Krishnamurthi for R1 to R5

JUDGMENT

(Judgment was made by Mrs.R.Kalaimathi, J.)

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the award made in M.C.O.P.No.910 of 2017 dated 28.11.2022 on the file of Motor Accident Claims Tribunal / Principal District Court, at Pondicherry.



C.M.A.No.2570 of 2023

2. Claim petition was filed under Section 166 of Motor Vehicles Act, 1988 by the legal heirs of the deceased Rathinakumar son of Kanthasamy claiming compensation of Rs.3,00,00,000/- for the death of the above said person in a road traffic accident that occurred on 05.12.2016.

3. Facts that led to filing of O.P is set out in brief:

On 05.12.2016 at about 9.00 hours, while the deceased Rathinakumar was driving his car bearing Registration No.PY 01 BU 1266 along East Coast Road from South to North direction (from Pondicherry to Chennai), at the point of Vilampurpalayam Madam, Chunambedu, the bus which belongs to the first respondent bearing Registration No.AP 07 TF 7007 came in the opposite direction in a rash and negligent manner with high speed dashed against the deceased car. In the result, the said Rathinakumar sustained serious injuries and died on the spot. Due to the rash and negligent driving of the driver of the said bus the accident occurred. The deceased was working as Software Engineer in TATA Consultancy Services (TCS) in Chennai with monthly salary of Rs.1,70,000/-. The erred vehicle namely the above said bus is owned by the first respondent and the policy of insurance was alive with the second respondent. Thereby, both the respondents are jointly and severally liable



C.M.A.No.2570 of 2023

to pay compensation to the claimants.

WEB COPY

4. The details of the counter is given in a nutshell:

The claimants are put to strict proof of the manner in which the accident took place. Due to the negligence of the deceased, he has contributed to the accident. The claimants are also put to strict proof of income of the deceased.

5. Upon consideration, the Tribunal concluded that due to the rash and negligent driving of the driver of the bus, the accident occurred and liability was fixed on the owner of the bus, namely the first respondent and the insurer of the bus namely the second respondent and an amount of Rs.2,46,64,840/- was awarded as compensation with the following details.



C.M.A.No.2570 of 2023

Loss of income Rs.1,34,951/- (1,34,951/- +50% (Future Prospects) = Rs.67,476/-) total Rs.2,02,427/-. Less 1/4 th deduction towards personal expenses = Rs.50,607/-. The remaining 3/4 th income is Rs.1,51,821/-. Less 10% income towards income tax = Rs.15,183/-. The remaining income comes to Rs.1,36,638/- x 12 x 15	Rs.2,45,94,840/-
Loss of Consortium to the first claimant	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Total	Rs.2,46,64,840/-

6. Mr.J.Chandran, learned counsel appearing for the Insurance Company would vehemently argue that it is a head on collision and the driver of the bus was not negligent while driving the bus and the deceased has also contributed to the accident. He would further contend that the monthly salary fixed by the Tribunal is on the higher side.

7. This civil miscellaneous appeal is preferred on the question of liability and quantum, especially fixation of income.

8. Heard Mr.J.Chandran, learned counsel appearing for the Insurance Company / Respondent No.2 and Mr.Prakash Adiapadam for Mr.P.Krishnamurthi, learned counsel appearing for the respondents No.



C.M.A.No.2570 of 2023

1 to 5 / Claimants.

WEB COPY

9. At trial, on the side of the claimants, three witnesses have been examined and 23 documents have been marked. Copy of appointment order of the deceased dated 20.11.2000 is Ex.X2. Pay slips of the deceased Rathinakumar is Ex.X3. On the side of the second respondent, two witnesses have been examined and two documents were marked.

10. P.W.3 is said to be an ocular witness (Ranjithkumar). It has come on record through the evidence of P.W.3 that, on 05.12.2016 in order to visit his relative at Adayar, Chennai along with his family, he was on the way to Chennai in the car, and at about morning 9.00 a.m, when he (P.W.3) was standing along the ECR main road at Vilampurpalaym Madam (Chunambedu) taking tender coconut, a car bearing Registration No.PY 01 BU 1266 Maruti Wagon R which was proceeding to Chennai in the left side of the road and at the same time the driver of Valvo bus white in color came in a high speed and in a negligent manner, hit on the car and the car got completely damaged. The driver of the car Rathinakumar was inside the damaged car in the pool of blood. On the side of the second respondent,



C.M.A.No.2570 of 2023

motor vehicle inspector (R.W.1) and Special Sub Inspector of Police (R.W.2) have been examined. So from the evidence of P.W.3, the Tribunal has concluded that due to the rash and negligent driving of the driving of the bus the accident occurred, which is in our considered opinion is correct and needs no interference.

11. As regard to the avocation and income of the deceased, P.W.2 R.Karthikeyan who had been working as HR-Executive in TATA Consultancy Services, would state that the deceased joined in TCS on 06.04.2000 and his pay slips from January 2016 to December 2016 are Ex.X3. In the month of November 2016, his monthly salary was Rs.1,34,951/-. As regards the age of the deceased, as per the birth extract of the deceased (Ex.P6) and copy of the driving licence (Ex.P23), the date of birth of the deceased is 27.11.1978. Therefore, at the relevant point of time, the age of the deceased was 38 years. The deceased was working as Assistant Consultant Grade I in TCS and as per the law laid down by the Apex Court in *Sarala Varma -vs- Delhi Transport Corporation and another*, reported in 2009(2) TNMAC 1 (SC), 15m was adopted by the Tribunal, which is not incorrect. As regards the deduction for personal and living expenses, in the mentioned supra case, it is held that if the family members



C.M.A.No.2570 of 2023

are 4 to 6, then $1/4^{\text{th}}$ has to be deducted. Therefore, avocation and income details have been duly substantiated by examining P.W2 who is also working in TCS, Chennai.

12. The Apex Court has also standardized the future prospects details in respect of persons in self-employed, fixed salary or in permanent job in *National Insurance Co. Ltd., vs Pranay Sethi and others* reported in 2017 (2) TN MAC 609 (SC). The deceased was working in TCS Company, Chennai Branch, from the year 2000 till his death. In consideration of the said details, the Tribunal has added 50% future prospects while computing the monthly income. The salary is fixed at Rs.1,34,951/- per month, by adding 50% future prospects, the total income comes to Rs.2,02,427/-. By deducting $1/4^{\text{th}}$ for the personal and living expenses of the deceased and by adopting multiplier 15m, after the deduction towards income tax of 10% is made, the loss of income was arrived at Rs.2,45,94,840/-.

13. Based on the aforestated discussions and observations, we are of the considered opinion that the engineering graduate aged about 38 years old who was working from the inception at the TCS, Chennai in



C.M.A.No.2570 of 2023

various capacities and died in the road accident. We are reminded of the words of the Apex Court in *Mr.R.D.Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd., and others* reported in 1995 (1) SCC 551, wherein, it has been held that:

"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

14. As the Tribunal has granted a just compensation, we find no infirmity either in calculating the loss of income or in fixing the liability. Therefore, in the result, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

(J.N.B.,J.) (R.K.M.,J.)

01.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order



C.M.A.No.2570 of 2023

Neutral Citation Case : Yes/No
mac

WEB COPY

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

mac

To

1. The Motor Accident Claims Tribunal,
The Principal District Court,
Puducherry.

2. The Section Officer,

Page No.10/11



VR Section,
High Court, Madras

WEB COPY



C.M.A.No.2570 of 2023

C.M.A.No.2570 of 2023
and
C.M.P.No.23757 of 2023

01.10.2024