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CMA.No.656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.656 of 2023

1. Mathiyazhagan
2. Thamaraiselvi
3. Minor Ashok ... Appellant
Minor petitioner is Rep. by his father and
natural guardian Mathiyazhagan, 1st appellant

VS.

1. P.Sellamuthu
2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.107, Navaladian Complex,
2nd floor, SBI upstairs,
Dindigul main road,
Karur - 639 005.
Policy No.454203/31/2020/2023 ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 05.12.2022 in M.C.O.P.79/2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mrs.C.Sangamithira for
Mr.C.Vidhusan

For R2 : Mr.T.K.Premkumar



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J U D G M E N T

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The appellants are the claimants in M.C.O.P.79/2021 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Sections 140 & 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.50,00,000/- for the death of one Thamizhselvan (son of the claimants 1 and 2; brother of the claimant 3), in a road accident that took place on 11.11.2020.

2. The brief case of the appellants / claimants is as follows :

On 11.11.2020, Thamizhselvan (since deceased) was riding a two wheeler bearing Registration number TN 46 S 6620 on Coimbatore - Karur main road and at about 5.30 p.m., when he was nearing PSR Thirumana Mandapam, a speeding lorry bearing Registration number TN 39 H 2599 which was coming ahead of him, suddenly turned right hand side, as a result of which, Thamizhselvan hit the lorry and sustained injuries all over his body. He was immediately rushed to Government hospital, Karur. However, he died on the way to hospital.



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3. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the said vehicle was insured with the second respondent, the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record fastened negligence on the part of the driver of the lorry and the deceased in the ratio 50:50 and directed the second respondent, the Oriental Insurance Company Limited to pay compensation of Rs.12,01,636/- (50% of total compensation amount of Rs.24,03,272/-) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 05.12.2022. The Tribunal also held that the liability of the owner of the lorry and the insurer is joint and several.



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6. Aggrieved over the quantum of compensation and the contributory negligence fastened on the part of the deceased to the extent of 50% by the Tribunal, the claimants have filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mrs.C.Sangamithira, learned counsel appearing for the appellants and Mr.T.K.Premkumar, learned counsel appearing for the second respondent.

8.Negligence:

It is seen from the records that the accident took place on Coimbatore - Karur main road. The lorry bearing Registration number TN 39 H 2599 was going ahead of the two wheeler driven by Thamizhselvan (deceased). The eyewitness (P.W2) account is that the driver of the lorry suddenly turned right hand side of the road without any signal or indicator, as a result of which, the rider of the two wheeler hit the lorry. The manner of the accident clearly shows that the driver of the lorry was rash and negligent in driving his vehicle. The FIR (Ex.P1) was also registered against the driver of the lorry. In the circumstances, fastening

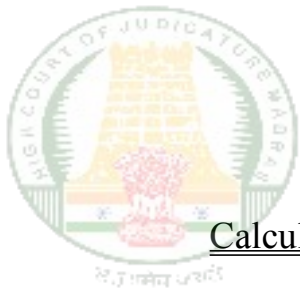


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50% of contributory negligence on the part of the rider of the two wheeler Thamizhselvan (deceased) by the Tribunal, is erroneous and the same is hereby set aside.

9. Quantum:

According to the claimants, Thamizhselvan (deceased) aged 21 years, was working as a machine operator in a private company, earning a sum of Rs.20,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.15,166/-. It is pertinent to point out that the accident took place in the year 2020. Considering the age of the deceased and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.16,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.



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Calculation :

Notional Income = Rs.16,000/-

after adding 40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-

Loss of dependency :

= Rs.11,200/- x 12 x 18

= Rs.24,19,200/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), Rs.15,000/- and Rs.15,000/- towards loss of consortium, loss of estate, and funeral expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.25,69,200 (24,19,200 + 1,20,000 + 15,000 + 15,000 = 25,69,200) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.24,19,200/-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.25,69,200/-



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10. Thus, the compensation awarded by the Tribunal is enhanced to Rs.25,69,200/- that would carry interest at the rate of 7.5% per annum.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.25,69,200/-.
- iii. 50% Contributory negligence fastened on the part of Thamizhselvan (deceased) is set aside.
- iv. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The second respondent, the Oriental Insurance Company Limited, Chennai, is directed to deposit the entire compensation amount i.e., Rs.25,69,200/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim



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petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.79/2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

vi. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

28.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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To

- 1.The Motor Accidents Claims Tribunal,
Principal District Court, Perambalur.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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