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CMA.No.880 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.880 of 2024

1. Manimegalai
2. Selvakani
3. Minor Senthamilselvi
4. Minor Tarunavel

... Appellants

vs.

1. Jayagopal
2. The Divisional Manager
The Oriental Insurance company Limited,
No.4, Bharathidasan Road,
2nd Floor, Cantonment, Trichy 1

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Award dated 05.09.2023 in M.C.O.P.445/2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mrs. C. Sangamithirai
for M/s. C. Vidhusan
R1 : Notice dispensed with.
For R2 : Mr. N. Sampath



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JUDGMENT

The appellants are the claimants in M.C.O.P.445/2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur, and they filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.60,00,000/- for the death of one Kathirvel (husband of the first claimant and father of the claimants 2 to 4) in a road accident that occurred on 07.05.2019.

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

2.1. On 07.05.2019 Kathirvel (since deceased) was riding his TVS Star City two wheeler bearing Registration Number TN-54-Y-0607 on Trichy-Chennai National Highway. When he was nearing Irur Junction, at about 1.30 p.m., a bus bearing Registration Number TN-45-BF-8985, belonging to the first respondent, that was going ahead of the two wheeler suddenly applied brake as a result of which Kathirvel hit the bus from behind and died on the spot.



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3. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN-45-BF-8985, was the cause of the accident and that since the said bus 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 first respondent, the owner of the bus remained absent and was set *ex parte*. 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 offending bus bearing Registration Number TN-45-BF-8985 and the deceased in the ratio 50:50 and directed the second respondent to pay compensation of 11,19,876/- (50% of the total compensation of Rs.22,39,751/-) to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of the



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petition till the date of realisation. The Tribunal also held that the liability of the respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mrs.C. Sangamithirai, learned counsel appearing for the appellants and Mr.N. Sampath, learned counsel for the second respondent Insurance Company.

8. Mrs.C. Sangamithirai, learned counsel appearing for the appellants contended that the Tribunal had fastened negligence on the part of the deceased to an extent of 50% even though the driver of the bus drove in a rash and negligent manner and suddenly applied brake on the middle of the road. She also contended that the Tribunal had not awarded just compensation to the claimants. She therefore prayed for enhancement of compensation.



9. Per contra, Mr.N. Sampath, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order. He also contended that the deceased drove his motorcycle with more than one person on the pillion and also did not keep a minimum distance between his vehicle and the bus which was going ahead of him. According to him, the victim also did not have a valid driving license and in these circumstances, deducting 50% towards contributory negligence on the part of the victim by the Tribunal is perfectly in order.

10. The accident, in the instant case, took place on Trichy-Chennai National highways. An FIR (ExP1) was registered against the driver of the bus bearing Registration Number TN-45-BF-8985 belonging to the first respondent. The Tribunal after considering the manner of accident fastened negligence on the part of the driver of the bus and the rider of the two wheeler (deceased) in the ratio 50:50. However, it is to be pointed out that as per the FIR, the driver of the bus was responsible for the accident. At the same time, the rider of the two wheeler should have



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kept a minimum distance between his vehicle and the vehicles that are going ahead of him. A perusal of the FIR shows that the driver of the bus suddenly applied brake on the middle of the road as a result of which the two wheeler hit the bus. The damage is also on the rear portion of the bus as per the Motor Vehicle Inspector's reports (Ex.P2 and Ex.P3). In the circumstances, fastening negligence in the ratio 50: 50 on the part of the driver of the bus and the deceased by the Tribunal cannot be justified. The driver of the bus has also not been examined as a witness. There is nothing on record to show that the driver of the bus was going in a moderate speed. In the circumstances, the negligence on the part of the deceased and the driver of the bus is fixed in the ratio 20:80.

10.1. According to the claimants, the deceased was aged 48 years then and was working as a driver for NTC Logistics India Private Limited, Chennai, earning a sum of Rs.35,000/- per month. They filed the salary certificate issued by the employer for the period from August 2015 to April 2019. However, the person who issued the salary certificate has not been examined by the claimants. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as



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Rs.14,562.01/- based on the cost inflation index for the year 2019-2020.

The accident took place in the year 2019 and the deceased was aged 48 years on the date of accident. In the circumstances, this Court is of the view that fixing the notional income as Rs.15,000/- per month 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**, 25% is added towards future prospects of the deceased. Since the deceased had four dependents, 1/4 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation

Notional Income = Rs.15,000/-

25% Future Prospects = Rs.18,750/-

After 1/4 deduction = Rs.14,063/-

Loss of dependency

= Rs.14,063/- x 12 x 13

= Rs.21,93,828/-



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In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for '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).

10.2 The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	21,93,828/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	23,83,828/-
	Less 20% contributory negligence	4,76,766/-
	Compensation amount	19,07,062/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



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11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to an extent of 50% is reduced to 20%.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.11,19,876/- to Rs.19,07,062/-.
- 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, Trichy, is directed to deposit the enhanced compensation amount of Rs.19,07,062/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.445 of 2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.



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vi. The enhanced compensation amount of Rs.19,07,062/, is apportioned to the claimants as below:

Manimegalai (first claimant)	Rs.7,07,062/- with costs and interest
Selvakani (second claimant)	Rs.4,00,000/-
Minor Senthamilselvi (third claimant)	Rs.4,00,000/-
Minor Tarunavel (fourth claimant)	Rs.4,00,000/-

vii. On such deposit being made, the appellants 1 and 2 are at liberty to withdraw their share as per the apportionment made by this Court, with costs and interest, after filing a proper petition for withdrawal. Since the appellants 3 and 4 are minors, their share, shall be deposited in a fixed deposit in any one of the Nationalised bank until they attain majority.

11.09.2024

Index : Yes/No
Speaking/Non-speaking order
bga



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To

1. Motor Accident Claims Tribunal, Principal District Court, Perambalur
2. The Divisional Manager
The Oriental Insurance company Limited,
No.4, Bharathidasan Road,
2nd Floor, Cantonment, Trichy 1
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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