



C.M.A.Nos.2738 and 2741 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.2738 and 2741 of 2021

and

C.M.P.Nos.15698 and 15709 of 2021

Oriental Insurance Co.Ltd.
Rep. By its Branch Manager,
3rd Party Claim HUB,
No.32/312, Vijayalakshmi Complex 13th Street,
Phase – II, Sathuvacahri,
Vellore District. ... Appellant in both C.M.A.'s

Vs.

1. Veena
2. Dhanasekaran
3. The Secretary Islamiah Girls,
Hr.Secondary School,
Vaniyambadi. ... Respondents in C.M.A.No.2738 of 2021

1. Gnanam
2. Nathiya
3. Minor Ravichandran
4. Govindammal
5. The Secretary Islamiah Girls,
Hr.Secondary School,
Vaniyambadi. ... Respondents in C.M.A.No.2741 of 2021
(The 3rd respondent in CMA.No.2741 of 2021 is suo motu declared as
major vide order dated 13.12.2024 in CMA.No.2741 of 2021)



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Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.Nos.203 and 205 of 2017 respectively on 05.03.2020 on the file of learned Motor Accidents Claims Tribunal, (Subordinate Judge) Vaniyambadi.

For Appellant : Mr.J.Chandran (in both appeals)

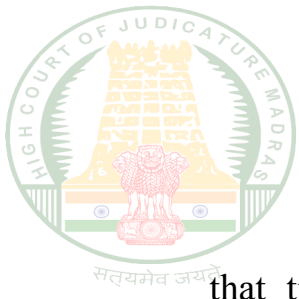
For Respondents : Mr.N.A.Nissar Ahmed for R3
(C.M.A.No.2738 Mr.T.S.Baskaran for R1 and R2
of 2021)

For Respondents : Mr.N.A.Nissar Ahmed for R5
(C.M.A.No.2741 Mr.T.S.Baskaran for R1 to R4
of 2021)

COMMON JUDGMENT

Since the above appeals arise out of the very same accident, they are disposed of by way of this Court judgment.

2. It is the case of the appellant / insurer of the Bus that, on 31.10.2017 at about 8:50 hours, when the respective deceased in M.C.O.P.Nos.203 and 205 of 2017 were travelling as pillion riders in an unregistered motor cycle, driven by its driver namely Santhoshkumar, at



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that time a bus bearing Regn.No.TN 23 BZ 4330 belonging to the Secretary Islamiah Girls Higher Secondary School, Vaniyambadi driven by one Dhanasekaran came in a rash and negligent manner and dashed the motor cycle in which the respective deceased were travelling. Thereby, the respective deceased sustained grievous injuries all over their body and succumbed to death. Claiming a sum of Rs.50,00,000/-, the dependents of the deceased have filed the respective claim petitions.

3. Before the Tribunal, the claimants in respective MCOP's have examined P.W.1 and P.W.2 respectively and marked Exs.P.1 to Ex.P.19 and Exs.P1 to P.22 respectively. On the side of the appellant / insurer of the Bus, they have examined R.W.1 and has not marked any documents. After adjudication, the Tribunal awarded a sum of Rs.19,46,540/- to the claimants in M.C.O.P.No.203 of 2017 and a sum of Rs.19,53,340/- as compensation to the claimants in M.C.O.P.No.205 of 2017. Questioning the negligence fixed on the part of the respective deceased and the quantum of compensation awarded by the Tribunal, the present appeals have been filed by the appellant / insurer of the bus.



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4. The learned counsel appearing for the appellant / insurer of the bus submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the two wheeler. Moreso, the claimants themselves admitted that rider of the two wheeler had driven his two wheeler along with the respective deceased herein as pillion riders, which is a major violation of Motor Vehicles Rules and in addition to that, the said vehicle was not properly registered and the rider of the two wheeler was not in possession of a valid driving license. When the rider of the two wheeler has violated the Motor Vehicles Rules, the Tribunal ought to have fixed 50% negligence on the part of the respective deceased and 50% negligence on the part of the driver of the Bus, however, without doing so, it had mechanically fixed 15% : 85% on the part of the drivers of the two wheeler and bus which is *per se* unsustainable.

5. He further contends that though the age of the respective deceased is below 40 years, however, the Tribunal has added 50% towards future prospects instead of 40% in respective MCOP's which is



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contrary to the decision rendered by the constitutional Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**. In support of his contention, he relied upon the decision rendered by the Hon'ble Apex Court reported in **2018 (2) TN MAC 45 (SC)** in the case of *Mohar Sai & anr. V. Gayarti Devi & ors.*

6. Per contra the learned counsel appearing on behalf of the claimants / respondents 1 to 4 in C.M.A.No.2741 of 2021 and respondents 1 and 2 in C.M.A.No.2738 of 2021 submitted that, though the rider of the motorcycle has violated the Motor Vehicle Rules as alleged by the learned counsel for the appellant, however, it has to be decided only by the competent Court as to whether the offender shall be punished under the Motor Vehicles Act and Rules or not ?

7. In support of his contention he relied upon the decision rendered by this Court reported in **2024 (2) TN MAC 76** in the case of *Naveen and ors. Vs. Sampath and ors* wherein it was held that riding a two



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wheeler without a license or carrying more persons as pillion rider in a motorcycle though is not permitted in law, it will only tantamount to violation of relevant provisions of the Motor Vehicles Act, which results in imposition of punishment / penalty. It was also held that unless it is established that the very act of riding without a license or carrying more than one person as a pillion rider had contributed either to the accident or to the impact of the accident upon the victim, the said violation, by itself, cannot lead to giving a finding on contributory negligence. Though the Tribunal has already fixed 15% contributory negligence on the part of the respective deceased for not wearing helmet, however, in view of the above decision rendered by this Court, the grounds canvassed by the learned counsel for the appellant for fixation of contributory negligence on the aspect of Triple driving and driving license is wholly unsustainable. Hence, 15% negligence fixed on the part of the respective deceased for non-wearing of helmet does not require any interference.

8. He further submitted that the said accident had happened only due to the driver of the Bus and in order to prove the negligence the respective claimants examined P.W.2 in respective M.C.O.P's, who



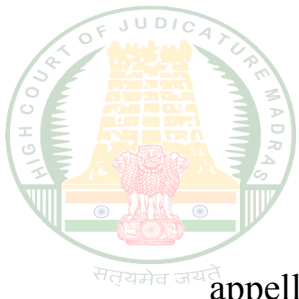
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clearly deposed the manner in which the said accident had happened, however, in order to disprove the same, the appellant insurance company has not marked any independent eye witness except the official witness. Therefore, the claim made by the appellant / insurance company is misconceived.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the respondents 1 to 4 in C.M.A.No.2741 of 2021 and respondents 1 and 2 in C.M.A.No.2738 of 2021 and perused the materials available on record.

10. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The main plank of contention of the learned counsel for the appellant / insurance company is that the two wheeler was ridden without a valid driving license and that apart, three persons were travelling in a two wheeler which is a major violation, however, the Tribunal has fixed only 15% contributory negligence on the part of the deceased for non-wearing of helmet. Though such a stand is taken by the learned counsel for the



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appellant / insurance company, however, the learned counsel for the claimants placing reliance upon the decision rendered by this Court reported in **2024 (2) TN MAC 76** in the case of **Naveen and ors. Vs. Sampath and ors** has rightly submitted that unless it is proved that the said violation of riding without a license or carrying more than one person as pillion rider, it will only tantamount to violation of the relevant provisions of the Motor Vehicles Act, which results in imposition of punishment / penalty, and the same cannot lead to giving a finding on contributory negligence.

11. On the aspect of negligence, based on the oral testimony of P.W.2 eye witnesses, coupled with the charge sheet laid against the driver of the Bus and other connected exhibits marked on the side of the respective claimants, concluded that the accident occurred only due to the rash and negligent driving of the driver of the bus by fixing the 85% liability as against the appellant / insurance company, which, in the opinion of this Court, is based on sound reasoning and hence, does not warrant interference. On the basis of the decision rendered by this Court



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reported in **2017 1 TNMAC 423**, the Tribunal has rightly fixed **15% contributory negligence on the part of the respective deceased for non-wearing of helmet, which does not require any interference.**

12. Insofar as the quantum of compensation in respect of the respective deceased is concerned, applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, considering the age of the respective deceased as also the claimants, the Tribunal has rightly fixed a sum of Rs.13,705/- as nominal income which does not require any interference. Admittedly, the Tribunal has fixed 50% future prospectus, which is contrary to the decision of the constitutional Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**. Hence, this Court modifies the awards passed by the Tribunal in M.C.O.P.Nos.203 and 205 of 2017 by adding a component of 40% for future prospectus and therefore the income of the respective deceased per month is quantified at Rs.19,187/- (13,705/- + 5,482). Since the deceased died as

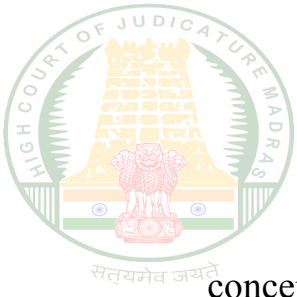


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a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the respective deceased in respective appeals would be at Rs.9,594/- (Rs.19,187 – 50% of Rs.19,187) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of income of the respective deceased in respective M.C.O.P.'s would be at Rs.20,72,304/- (Rs.9,594/- x 12 x 18).

13. Insofar the other heads in M.C.O.P.No.203 of 2017 is concerned, the tribunal had awarded a compensation of Rs.5,000/- under the head transportation, which is on the lower side and the same is enhanced to a sum of Rs.10,000/- and a sum of Rs.50,000/- has been awarded under the head “loss of love and affection” which is on the lower side and the same is enhanced to a sum of Rs.1,60,000/- in which the respondents 1 to 4 are entitled to a sum of Rs.40,000/- each. No amount has been awarded under the head loss of estate, hence a sum of Rs.15,000/- is awarded under the said head. Insofar as the other head is



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concerned, the same is just and reasonable and the same need not be interfered with.

14. Insofar the other heads in M.C.O.P.No.205 of 2017 is concerned, the tribunal had awarded a compensation of Rs.13,000/- under the head transportation, which is on the higher side and the same is reduced to a sum of Rs.10,000/- and a sum of Rs.50,000/- has been awarded under the head “loss of love and affection” which is on the lower side and the same is enhanced to a sum of Rs.80,000/- in which the respondents 1 and 2 are entitled to a sum of Rs.40,000/- each. No amount has been awarded under the head loss of estate, hence a sum of Rs.15,000/- is awarded under the said head. Insofar as the other head is concerned, the same is just and reasonable and the same need not be interfered with.

15. Accordingly, the compensation awarded by the Tribunal in M.C.O.P.No.203 of 2017 is modified as under :-

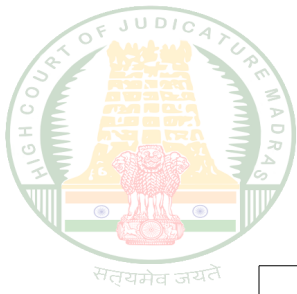


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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	22,20,048/-	20,72,304/-
Funeral expenses	15,000/-	15,000/-
Loss of love and affection to the petitioners	50,000/-	1,60,000/-
Transport expenses	5,000/-	10,000/-
Loss of estate	-	15,000/-
Total	22,90,048/-	22,72,304/-
Less 15% contributory negligence	19,46,540/-	19,31,458/-

16. The compensation awarded by the Tribunal in
M.C.O.P.No.205 of 2017 is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	22,20,048/-	20,72,304/-
Funeral expenses	15,000/-	15,000/-
Loss of love and affection to the petitioners	50,000/-	80,000/-
Transport expenses	13,000/-	10,000/-



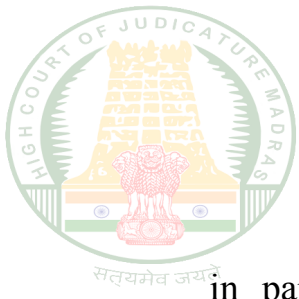
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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of estate	-	15,000/-
Total	22,98,048/-	21,92,304/-
Less 15% contributory negligence	19,53,340/-	18,63,458/-

17. When the claim petition in M.C.O.P.No.203 of 2017 was filed in the year 2017, the third respondent in C.M.A.No.2741 of 2021 was aged about 17 years. Now, third respondent in C.M.A.No.2741 of 2021 should be aged about 25 years and is therefore, major. Though no application has been taken out to declare him as major, this Court suo motu takes into account the age given in the claim petition and also taking into account the efflux of time, declares the third respondent in C.M.A.No.2741 of 2021 as major and discharges his mother namely Gnanam from the guardianship. The Registry shall carry out the necessary amendments.

18. Accordingly, these Civil Miscellaneous Appeals stand allowed



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in part and the impugned awards passed by the Tribunal in both M.C.O.P's are modified by deducting the compensation amount from Rs.19,46,540/- to **Rs.19,31,458/-** in M.C.O.P.No.203 of 2017 and **19,53,340/- to 18,63,458/-** in M.C.O.P.No.205 of 2017. The appellant in respective appeals is directed to deposit the said amount to the credit of MCOP.Nos.203 and 205 of 2017 respectively along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

19. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective claimants through RTGS within a period of two weeks thereafter. In the above compensation, the claimants in M.C.O.P.No.203 of 2017, the apportionment shall be made in the ratio of 45:20:20:15 respectively with proportionate interest and costs and the claimants in M.C.O.P.No.205 of 2017 shall apportion the above compensation in the ratio of 60:40



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respectively with proportionate interest and costs. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.12.2024

RAP

Index : Yes / No

Speaking order / Non-speaking order

Netrual Citation Case : Yes / No

To

- 1.Motor Accidents Claims Tribunal, (Subordinate Judge) Vaniyambadi.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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