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CMA.Nos.2894, 3034 & 3035 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.2894, 3034 & 3035 of 2021

and

C.M.P.Nos.17268 & 17277 of 2021

C.M.A.2894 of 2021

1. S.Pattathal

2. S.Ponmudi

3. S.Nallathambi

4. Rajaram

... Appellants

vs.

1. Thirumal Kolunthu.P

2. The Divisional Manager,

National Insurance Company Ltd.,

Do No.110, J.N.Street,

Puducherry - 605 001.

... Respondents

C.M.A.No.3034 & 3035 of 2021

The Divisional Manager,

National Insurance Company Ltd.,

Do No.110 J.N.Street,

Puducherry - 605 001.

... Appellant in both C.MAs.

vs.



CMA.Nos.2894, 3034 & 3035 of 2021

1.A.Lathif

2.Thirumal Kolunthu

... Respondents in C.M.A.No.3034 of 2021

1.S.Pattathal

2.S.Ponmudi

3. S.Nallathambi

4. S.Rajaram

5. Thirumal Kolunthu

... Respondents in C.M.A.No.3035 of 2021

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.03.2021 in M.C.O.P.2831/2014 & 2832/2014 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

In C.M.A.No. 2894 of 2021

For Appellants	: Mrs.Ramya V.Rao
For R1	: No appearance
For R2	: Mrs.R.Rathna Thara

In C.M.A.No.3034 & 3035 of 2021

For Appellant	: Mrs.R.Rathna Thara
For R1 to R4 in	
C.M.A.No.3034 of 2021	: Mrs.R.Ramya V.Rao
For R5	: No appearance



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COMMON JUDGMENT

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The appellant in C.M.A.3034 & 3035 of 2021 is the second respondent in M.C.O.P.2831/2014 & 2832/2014 on the file of the Motor Accident Claims Tribunal, Cuddalore while the appellants in C.M.A.2894 of 2021 are the claimants in the said petitions. The appellants in C.M.A.2894 of 2021 have challenged the quantum of compensation awarded by the Tribunal and the Insurance Company has questioned the negligence fastened on the part of the driver of the Hyundai car bearing Registration number T-31-BZ-8866.

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

On 20.07.2014, Sundarrajan (deceased) was riding his two wheeler bearing Registration Number TN-45-C-8141 on Cuddalore - Vridhachalam main road and when he was nearing Kuravankuppam village, a speeding Hyundai car bearing Registration Number TN-31-BZ-8866 came in the opposite direction and hit the two wheeler driven by Sundarrajan (deceased) and also another two wheeler bearing Registration number PY-01-AX-6210 driven by the claimant in M.C.O.P.2832/2014, as a result of which, Sundarrajan fell down and sustained injuries all over



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his body. He was immediately rushed to Government Hospital, Kurinjipadi. However, he succumbed to injuries on the next day i.e., 21.07.2024. The rider of the two wheeler bearing Registration number PY-01-AX-6210 sustained injuries.

3. According to the claimants, the rash and negligent driving of the driver of the Hyundai car bearing Registration Number TN-31-BZ-8866 was the cause of the accident and that since the said vehicle was insured with the National Insurance Company Limited, both the owner of the car and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the Hyundai car remained absent and was set *ex parte*. The National Insurance Company Limited resisted the claim petitions on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 30.03.2021, fastened negligence on the part of the driver of the Hyundai car bearing



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Registration Number TN-31-BZ-8866 and awarded compensation of Rs.11,73,000/- to the claimants in M.C.O.P.2831/2014 and Rs.30,000/- to the claimant in M.C.O.P.2832/2014 together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants in M.C.O.P.2831/2014, have filed C.M.A.2894 of 2021 and challenging the negligence fastened on the part of the driver of the Hyundai car, the Insurance Company has filed C.M.A.3034 & 3035 of 2021.

7. Heard Mrs.R.Rathna Thara, learned counsel appearing for the Insurance Company and Mrs.Ramya V.Rao, learned counsel appearing for the claimants in C.M.A.No.2894/2021.

8. Though notice was served on the claimant / second Respondent in C.M.A.No.3034 of 2021 and his name was also printed in the cause list, there is no representation on his behalf.



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9. Mrs.R.Rathna Thara, learned counsel for the Insurance Company has raised the following grounds for fastening contributory negligence on the part of the rider of the two wheelers bearing Registration numbers TN-45-C-8141 and PY-01-AX-6210:

- i. The Police after investigation laid a final report against the rider of the two wheeler bearing Registration number TN-45-C-8141 driven by Soundarrajan (deceased).
- ii. In the Accident Register (Ex.P10), it is clearly mentioned that there was a head on collision between two vehicles.
- iii. Rough Sketch (Ex.R3) shows that Soundarrajan (deceased) the rider of the two wheeler bearing Registration number TN-45-C-8141 crossed the centre median and hit the Hyndai car which was coming in the opposite direction.

10. The learned counsel for the Insurance Company also relied on the decision of the of a division bench of this Court in ***C.M.A.No.300/2022, dated 30.11.2022 in New India Assurance Co. Ltd., Vs. S.Premalatha and Ors.*** and contended that when the deceased had



crossed the centre median and the accident had occurred on the other side of the road, contributory negligence should be fixed on the part of the rider of the two wheeler bearing Registration number TN-45-C-8141.

11. Per contra, Mrs.Ramya V.Rao, learned counsel appearing for the claimants contended that the Tribunal after analysing the evidence on record, had rightly concluded that the driver of the Hyundai car was responsible for the accident and therefore there is no reason for this Court to interfere with the same. She further contended that the Tribunal has not awarded just compensation for the death of Sundarrajan (deceased) and hence prayed for enhancement of the same.

12. Negligence:

Negligence cannot be fastened on the part of Sundarrajan (deceased) the rider of the two wheeler bearing Registration number TN-45-C-8141 for the following reasons:

- i. FIR (Ex.P1) was registered against the driver of the Hyundai car bearing Registration number TN-31-BZ 8866 and he was also arrested by the Inspector of Police, Mandharakuppam Police



Station.

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- ii. In the rough sketch (Ex.R3) two places are shown as Scene of Occurrence.
- iii. Rough sketch (Ex.R3) was prepared on the next day of the accident and therefore, no credence can be attached to the same.
- iv. The driver of the Hyundai car was not examined as a witness by the Insurance Company and the owner of the Hyundai car remained absent before the Tribunal and was set exparte.
- v. The available evidence on record is the evidence of the rider of another two wheeler bearing Registration number PY-01-AX-6210. His evidence is that the driver of the Hyundai car bearing Registration number TN-31-BZ-8866 was rash and negligent in driving his vehicle.
- vi. Though referred charge sheet was filed against Sundarrajan (deceased), the Sub Inspector of Police (R.W.1) in his evidence had stated that he cannot clearly state as to who is responsible for the accident from the available records.
- vii. The Tribunal by a well reasoned order, fastened negligence on the part of the driver of the Hyundai car.



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13. Quantum:

According to the claimants, Sundarrajan (deceased) aged 28 years, was working as a Salesman, earning a sum of Rs.15,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/-. It is pertinent to point out that the accident took place in the year 2014. 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.14,000/- 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 17 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.



WEB CO Calculation :

Notional Income = Rs.14,000/-

after adding 40% Future Prospects = Rs.19,600/-

After 1/2 deduction = Rs.9,800/-

Loss of dependency :

= Rs.9,800/- x 12 x 17

= Rs.19,99,200/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000/-x4), 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.21,89,200 (19,99,200 + 1,60,000 + 15,000 + 15,000 = 21,89,200) 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.19,99,200/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
Total		Rs.21,89,200/-

14. Thus, the compensation awarded by the Tribunal in M.C.O.P.2831/2014 is enhanced to Rs.21,89,200/- that would carry interest at the rate of 7.5% per annum.

15. In the result,

- i. C.M.A.2894 of 2021 filed by the claimants is allowed.
- ii. C.M.A.3034 and 3035 of 2021 filed by the Insurance Company are dismissed. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.
- iii. The compensation awarded by the Tribunal in M.C.O.P.2831/2014 is enhanced to Rs.21,89,200/-.
- 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 liability of the owner of the Hyundai car and its insurer (the National Insurance Company Limited) is joint and several and the



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the National Insurance Company Limited is directed to deposit the enhanced award amount i.e. Rs.21,89,200/- (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 within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.2831/2021 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

- vi. On such deposit being made, the appellants, claimants are permitted to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

30.10.2024

Index : Yes/No

Speaking/Non-speaking order

Neutral citation : Yes / No

vum

To

- 1.The Motor Accidents Claims Tribunal,
Principal District Court, Cuddalore.

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2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

vum

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and C.M.P.Nos.17268 & 17277 of 2021

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