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CMA.No.1278 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1278 of 2023

Sampath (Died)
(Amended as per order in I.A.No.3/2021
dated 07.12.2021 impleaded the legal heir
as Kogila)

Kogila

... Appellant

vs.

1. Balakrishnan

2. Cholamandalam MS General Insurance Company Limited,
Represented by its Branch Manager,
Bharathidasan Salai,
Tiruchirapalli - 620 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 08.02.2023 in M.C.O.P.No.110 of 2020 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.C.Vidhusan

For R2 : Ms.C.Harini



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J U D G M E N T

The appellant is the second claimant in M.C.O.P.No.110 of 2020 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur. The first claimant died even during the pendency of the claim petition before the Tribunal.

2. The claimants filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.30,00,000/- for the death of their son Azhakuraja, in a road accident that took place on 02.09.2019.

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

On 02.09.2019 at about 12.00 noon, Azhakuraja (deceased) was riding a Hero HF Delux motorcycle bearing Registration Number TN-91-S-6259 on Sendhurai - Thittakudi Road. When he was nearing Reddikudikadu, a speeding Tata Ace Light Goods Vehicle bearing Registration Number TN-46-P-1719 belonging to the first respondent came in the opposite direction and hit the motorcycle, as a result of which, Azhakuraja fell down and sustained injuries all over his body. He was



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immediately rushed to the Government Hospital, Thittakudi. However, he succumbed to injuries on the same day.

4. According to the claimants, the rash and negligent driving of the driver of the Tata Ace Light Goods Vehicle bearing Registration Number TN-46-P-1719 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Cholamandalam MS General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record fixed negligence on the part of the deceased and dismissed the entire claim petition, vide its orders dated 08.02.2023.



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7. Aggrieved over the same, the present appeal is filed by the claimants under Section 173 of the Motor Vehicles Act, 1988.

8. Heard Mr.C.Vidhusan, learned counsel appearing for the appellant and Ms.C.Harini, learned counsel for the second respondent.

9. The Tribunal had mainly relied on the final report (Ex.R4) filed by the Inspector of Police, Kunnam Police Station, Perambalur District, to conclude that the deceased was the wrong doer. The Tribunal had not adverted its attention to the evidence of Thiru.Vijayaraja (P.W.2) who is the eyewitness to the occurrence. P.W.2 in his evidence had deposed that he was coming behind the two wheeler of the deceased and that the deceased was riding his two wheeler at a moderate speed. He had also stated that the driver of Tata Ace vehicle drove the vehicle rashly and negligently and hit the two wheeler. Nothing useful was suggested to P.W.2 during the course of cross examination to discredit or disbelieve his version.



10. The Tribunal ought to have taken into consideration the evidence of the eyewitness. But instead fixed the entire negligence on the part of the deceased. Such a hasty conclusion by the trial court is viewed with disfavour. The thumb rule in such cases is that the heavier vehicle should be careful on the road. Fastening the negligence on the victim defies logic in the light of the deposition of the eyewitness. Moreover, FIR (Ex.P1) was lodged based on the information given by the driver of Tata Ace vehicle and therefore, obviously it was against the rider of the two wheeler. The police had, of course, conducted investigation and had filed a final report and concluded that the rider of the two wheeler was the wrong doer.

11. Ms.C.Harini, learned counsel appearing for the second respondent, the Cholamandalam Ms General Insurance Company Limited drew attention of this court to a copy of the Accident Register (Ex.X1) in which the doctor had mentioned that the deceased was also under the influence of alcohol. However, Dr.Pari Selvi (R.W.3) admitted that they did not conduct any blood test to confirm whether the deceased had actually consumed alcohol at the time of the accident. Therefore, in the



absence of medical records, it cannot be concluded that the rider of the two wheeler (deceased) was driving his two wheeler in an inebriated condition. The rough sketch (Ex.R1) which is filed along with the final report (Ex.R4) shows that Sendhurai - Thittakudi is a broad road and it is a busy locality. The scene of occurrence has not been clearly shown in the rough sketch (Ex.R1).

12. In the circumstances, fastening negligence on the part of the rider of the two wheeler alone is totally erroneous and accordingly, the same is liable to be set aside. Consequently, negligence is fixed on the part of the driver of the Tata Ace Light Goods Vehicle bearing Registration Number TN-46-P-1719 and that since the said vehicle was insured with the second respondent, the Cholamandalam Ms General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to the claimants.

13. According to the claimants, the deceased was aged about 25 years on the date of accident and was working as a cashier in a tea shop earning a sum of Rs.15,000/- per month. Since no proof of income is filed



by the claimants a sum of Rs.12,000/- is fixed as notional monthly income of the deceased. 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 deceased was aged 25 years on the date of accident and 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**.

Calculation

Notional Income = Rs.12,000/-

40% Future Prospects = Rs.16,800/-

After 1/2 deduction = Rs.8,400/-

Loss of dependency

= Rs.8,400/- x 12 x 18

= Rs.18,14,400/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), 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). Thus, the claimants are entitled to a total compensation of Rs.19,24,400/- (18,14,400 + 80,000 + 15,000 + 15,000= 19,24,400) as shown in the following tabular column.

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.18,14,400/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.19,24,400/-

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

14. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders dated 08.02.2023 in M.C.O.P.No.110 of 2020 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, is set aside.
- iii. The first respondent and the second respondent, the Cholamandalam MS General Insurance Company Limited are



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directed to deposit the compensation amount of Rs.19,24,400/-,
jointly and severally, together with interest at the rate of 7.5% per
annum, within a period of four weeks from the date of receipt of a
copy of this order.

iv. On such deposit being made by the respondents, the appellant/
claimant is entitled to withdraw the same, after following due
process of law.

22.08.2024

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



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To

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- 1.The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.
2. Cholamandalam Ms General Insurance Company Limited,
Represented by its Branch Manager,
Bharathidasan Salai,
Tiruchirapalli - 620 001.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.



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