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CMA NO.3202 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 06 / 2024

JUDGMENT PRONOUNCED ON : 10 / 07 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

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- | | |
|-----------------------------|------------------|
| 1.Ananthi | |
| 2.Minor Janarthanan | |
| Minor Rep. by next friend / | |
| Mother Ananthi | |
| 3.Kowsalya | ... Appellants / |
| | Petitioners |

Versus

- | | |
|--|-------------------|
| 1.C.Selvaraju | |
| 2.The National Insurance Company Limited | |
| D.No.74-A, Paramathy Road, | |
| Namakkal Town & District – 637 001. | ... Respondents / |
| | Respondents |

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 20.11.2019 made in M.C.O.P.No.366 of 2018 on the file of MACT / Fast Track Mahila Court at Namakkal.

For Appellants : Ms.Harini



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for Mr.MA.P.Thangavel

For Respondent-1 : Notice dispensed with
vide SR No.90080 dated 01.10.2021

For Respondent-2 : Ms.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Award dated November 20, 2019 made in M.C.O.P.No.366 of 2018 on the file of 'Motor Vehicle Accident Claims Tribunal, Sessions (Fast Track Mahila) Court, Namakkal' [henceforth 'Tribunal' for brevity].

2.The appellants herein are the petitioners before the Tribunal. The petitioners filed Claim Petition against the respondents seeking compensation for the death caused by the first respondent's Driver to one Panneerselvam who is the husband of the first petitioner, father of the second petitioner and son of the third petitioner.

Petitioners' case



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3.The case of the petitioners is that on March 28, 2017, at about 06.45 p.m., first petitioner's husband namely Panneerselvam was riding Yamaha Libro Two Wheeler bearing Registration No.TN28-M-4687 on the left side of the Bodinaickanpetty Road in south to north direction. At that time, an Excavator (JCB) bearing Registration No.TN28-AP-5206 owned by the first respondent was proceeding in front of Panneerselvam's Two Wheeler. The first respondent's Driver without observing the traffic rules, drove the Excavator (JCB) in a rash and negligent manner and due to which an accident occurred and the first petitioner's husband - Panneerselvam sustained grievous injuries and died on the spot. According to the petitioners, the accident took place only due to the rash and negligent driving of the first respondent's Driver. At the time of accident, the first petitioner's husband Panneerselvam was 35 years old and he was a Lorry Driver and was earning a sum of Rs.15,000/- per month. The first petitioner is the wife and second petitioner is the minor son born to the first petitioner and Panneerselvam and third petitioner is the mother of Panneerselvam. A criminal case was registered in Crime No.334 of 2017 under Sections 279 and 304(A) of the Indian Penal



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Code, 1860 against the first respondent's Driver.

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First Respondent's case

4.Though notice was served on the first respondent, the first respondent did not choose to contest the petition and he remained absent and hence, he was set *ex parte* before the Tribunal.

Second Respondent's case

5.The second respondent - Insurance Company filed a counter, wherein it is averred that the accident occurred due to the rash and negligent riding of the first petitioner's husband - Panneerselvam. The place of occurrence is stated to be in the middle of the road which proves that the deceased was not riding his motorcycle on the left side of the road. It is not true that the first respondent's Driver applied the brake suddenly and that he is responsible for the accident. The first respondent's Driver was driving the Excavator [JCB] at a normal speed and when the deceased - Panneerselvam tried to overtake the Excavator [JCB] on its right side and lost control of his vehicle suddenly and collided with the back side of the Excavator [JCB]. At the



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time of accident, the deceased was not wearing Helmet and he sustained severe head injury. The accident had taken place due to the negligent act of the deceased - Panneerselvam. Further, the Driver of the first respondent [JCB] was not having proper driving license to drive such vehicle. Hence, the second respondent – Insurance Company is not liable to pay any compensation to the petitioners. Accordingly, the second respondent prayed to dismiss the Original Petition.

6.At trial, on the side of the petitioners, the first petitioner was examined as P.W.1 and one Anbalagan was examined as P.W.2 and Ex-P.1 to Ex-P.12 were marked. On the side of the respondents, one Manimozhi was examined as R.W.1 and Ex-R.1 and Ex-R.2 were marked.

7.After analyzing the oral and documentary evidence, the Tribunal found that the first respondent's Driver was responsible for the accident. The Tribunal did not accept the argument that the deceased- Panneerselvam also contributed to the accident. Further, the Tribunal found that at the time of accident, first respondent's vehicle was insured with the



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second respondent and the insurance policy was in force. Since the first respondent's Driver was not having a valid driving license to drive the Excavator [JCB], the Tribunal held that the second respondent is liable to pay compensation to the petitioners and then recover the same from the first respondent. As regards the quantum of compensation, the Tribunal fixed notional income at Rs.10,000/- and applied multiplier of 16 and thus arrived at a sum of Rs.12,80,000/- towards loss of dependency. The Tribunal also awarded compensation under various heads as hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of dependency (Rs.10,000 X 12 X 16 X 2/3)	Rs.12,80,000.00
2	Loss of Consortium	Rs.1,00,000.00
3	Loss of Love and Affection	Rs.1,00,000.00
4	Funeral expenses	Rs.10,000.00
5	Transport	Rs.10,000.00
	Total	**Rs.15,00,000.00
	(**Tribunal wrongly calculated the amount as Rs.14,80,000/-)	

8. Feeling aggrieved with the Award, the petitioners preferred this Civil Miscellaneous Appeal.

Arguments



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9.This Court has heard the submissions made on either side.

10.The learned counsel for the petitioners drew the attention of this Court to Ex-P.6 Driving license and argued that the deceased was having a valid Driving License to drive Light Motor Vehicle (LMV) with gear. Further submitted that the deceased had a valid Driving License with Badge to drive transport vehicles and Heavy Motor Vehicle (HMV).

10.1.The learned counsel further submitted that since the deceased was a Driver, he could have easily earned a sum of Rs.15,000/-; that the petitioners and deceased were residents of Namakkal District where the requirement for Driver is more. Further, the Tribunal did not consider the cost of living and the locality where the petitioners and the deceased were living and erroneously fixed notional income at Rs.10,000/- which is on the lower side. Further, the Tribunal failed to award compensation under the head 'future prospects'. Accordingly, he prayed to enhance the award amount.

11.Per contra, learned counsel for the second respondent – Insurance Company has submitted that the petitioners have not adduced any



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documents to show that the deceased was earning a sum of Rs.15,000/- per month. Hence, the Tribunal has rightly taken a sum of Rs.10,000/- as notional income and there is no warrant to interfere with the Award. Accordingly, she prayed to dismiss the Civil Miscellaneous Appeal.

12.This Court has considered both sides submissions.

13.There is no dispute with regard to the manner of the accident. The Tribunal found that the first respondent's Driver was responsible for the accident. The second respondent - Insurance Company has not filed any appeal. Hence, the findings rendered by the Tribunal in that aspect has attained finality and need not be delved into in this appeal.

14.As far as the quantum of compensation is concerned, the deceased - Panneerselvam was a Driver. The endorsement made in Ex-P.6 Driving License of the deceased - Panneerselvam reads as under:



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End.No.TN88/DI.R/0000986/2016 07/03/2016 3:59:13 PM
Licensed to drive throughout India Vehicles of the following descriptions
M/CYCL. WG 11/06/2003 TN28 LMV 11/06/2023 TN28
HTV 28/03/2011 TN28
Non-Transport Veh. Valid upto **10/06/2023**
Transport Veh. Valid upto **06/03/2019**
Prev.DL.Exp.Date – Tr. **04/02/2016**
Authorised to Drive Transport Vehicle vide Badge No.
50510 Dt. 23/12/2003 TN28
Sd/- Sd/-
Signature L.T. Asst. Licensing Authority
of the Holder RTO, NAMAKKAL, SOUTH

15. Admittedly, the deceased and the petitioners were residing in Namakkal District which is renowned for its thriving transportation business. Hence, the argument of the learned counsel for the appellants / petitioners that the demand for Drivers is on the higher side in Namakkal District is a plausible one. Considering Ex-P.6 – Driving License, this Court is of the view that the deceased - Panneerselvam was a skilled person and he could have easily earned atleast a sum of Rs.14,000/- per month. Though the petitioners were not able to produce Salary Certificate of the deceased, this Court can take judicial notice that in Namakkal District, a Driver could have easily earned a sum of Rs.14,000/- per month in or around the year 2017. Further, the Tribunal has not awarded compensation under the head 'Future Prospects' in consonance with the pronouncement of the Hon'ble Supreme Court in



National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16

SCC 680]. Deceased left three persons as his dependants. Hence, he could have contributed 2/3 of his salary to his family. Therefore, deduction of 1/3 of his salary towards his personal expenses would be reasonable. Further, at the time of accident, deceased was aged 35 years. The opt multiplier would be 16 as per *Sarla Verma's case*. Hence, loss of dependency would be Rs.25,08,864/- (Rs.14,000 + 5600 (Future prospects) = Rs.19600 – 6533 (1/3 deduction) = 13067 X 12 X 16 = Rs.25,08,864). Hence, this Court is inclined to modify the amount awarded by the Tribunal award as under:

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of dependency	Rs.25,08,864.00
2	Loss of Consortium to first petitioner	Rs.40,000.00
3	Loss of Parental Consortium to the second petitioner	Rs.40,000.00
4	Loss of Filial Consortium to the third petitioner	Rs.40,000.00
5	Loss of Estate	Rs.15,000.00
6	Funeral expenses	Rs.15,000.00
7	Transport	Rs.15,000.00
	Total	Rs.26,73,864.00
	Rounded off	Rs.26,73,870.00

16.Hence, the total compensation payable is **Rs.26,73,870 /-**

(Rupees Twenty Six Lakh Seventy Three Thousand Eight Hundred and



Seventy Only). The Tribunal found that the first respondent vehicle Driver was not possessing valid Driving License to drive Excavator (JCB) vehicle and hence, directed the second respondent to pay the compensation to the petitioner and then recover the same from the first respondent. The said finding is perfectly in order. Hence, it is confirmed. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The appellants / petitioners shall pay additional Court Fee, if any, within a period of four weeks from the date of receipt of a copy of this judgment failing which the enhancement made shall not accrue to the appellants / petitioners.

17.The second respondent – Insurance Company is directed to deposit the entire modified award amount before the Tribunal after deducting the amount deposited, if any, along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. The wife of the deceased viz., first appellant is entitled to a sum of Rs.13,00,000/- (Rupees Thirteen Lakh Only) and the son of the deceased viz., second appellant is entitled to a sum of Rs.11,00,000/- (Rupees Eleven Lakh Only) and mother-in-law viz., third appellant is entitled to Rs.2,73,870/- (Rupees Two Lakh



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Seventy Three Thousand Eight Hundred and Seventy Only). Appellants / petitioners are entitled to proportionate costs and interest. Appellants 1 and 3/ petitioners 1 and 3 are permitted to withdraw their share with proportionate costs and interest. Second appellant / minor's share is directed to be deposited in any one of the Nationalized Banks in the name of minor in interest bearing fixed deposit until he attains majority. The first appellant is permitted to withdraw interest accruing on such deposit every year.

18. Accordingly, this Civil Miscellaneous Appeal is allowed by enhancing the Award of the Tribunal from Rs.14,80,000/- to **Rs.26,73,870 /-** (**Rupees Twenty Six Lakh Seventy Three Thousand Eight Hundred and Seventy Only**) with interest at the rate of 7.5% per annum. No costs.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

The Motor Vehicle Accident Claims Tribunal
Sessions (Fast Track Mahila) Court

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