



CMA.No.3508 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM: THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA.No.3508 of 2021
& CMP.No.20313 of 2021

Branch Manager,
United India Insurance Company Ltd.,
No.123 A, No-2, Road,
Mayiladuthurai.

... Appellant

-Vs-

1.Nathiya
2.Minor Naveen
3.Minor Mukesh
(minor claimants 2 & 3 are rep by their
mother and Guardian Nathiya)
4.Malathi
5.Balakrishnan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 8-4-2021 made in M.C.O.P.No.181 of 2014 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Mayiladuthurai.

For Appellant	: Mr.D.Bhaskaran
For RR1 to 3	: M/s.M.R.Franklin
For R4	: Dispensed with



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JUDGMENT

The Appellant/insurance company has come forward this appeal challenging the liability to pay compensation and the quantum of compensation awarded in MCOP.No.181 of 2014 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Mayiladuthurai.

2.The facts leading to the filing of this appeal is as follows; the claimants are the dependents of the deceased namely Selvam. The third respondent is the father of the deceased. On 17.08.2013, the deceased Selvam was riding his two wheeler along with two pillion passengers on the Sirgazhi-Tharagambadi main road, while they reached near N.N.Chavadi, a TATA ACE Goods Vehicle bearing Regn.No.TN 51 B 8697 came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, which resulted in causing severe injuries to the deceased. Subsequently, he succumbed to the injuries. The Police have also registered criminal case in Crime No.241 of 2013 under Section 279, 237, 304A on the file of Poraiyar Police Station.



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3.The first respondent is the owner of the goods vehicle and the second respondent is the insurer of the goods vehicle. The first respondent has not come forward to contest the claim petition. The second respondent filed his counter and contented that the accident occurred due to the negligent driving of the deceased and the accident was head-on-collision. Since three persons were traveled in the vehicle, it is a violation of the policy condition and also the deceased has lost the control of the vehicle, which resulted in the accident. They have also disputed the age, income, avocation of the victim of the accident and the dependency of the third respondent. The third respondent, who is the father of the deceased filed a counter stating that he is 60 years old and that he was a dependent on the deceased Selvam.

4.The Tribunal based on the evidence placed on record has held that the driver of the goods vehicle belongs to the first respondent, who is the tortfeasor. It also quantified the compensation and awarded Rs.21,96,000/- to be paid by the first and second respondents to the claimants and respondent no.3. Aggrieved over the liability fixed on the insurance company to pay the compensation and also challenging the



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quantum of compensation, this appeal has been filed.

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5.The learned counsel for the insurance company submitted that it is an admitted case of the complainant that three persons traveled in the two wheeler driven by the deceased. Due to the impact, the deceased lost control and hit on the goods vehicle in the middle of the road. He has also stated that none of the persons were wearing headgear to protect themselves. He would further submit that the Tribunal has not properly appreciated the fact that the third respondent is not a dependent and the compensation awarded under other heads is also on the higher side. Hence, prays to set aside the above findings and modify the award.

6.Per contra, the learned counsel for the claimants submitted that it is true that three persons traveled in the two wheeler but, the same should not be a ground to hold that the deceased is a tortfeasor. There is no evidence placed on record to show that due to the impact of three persons traveled in the vehicle, the accident had taken place. He would further submit that based on the evidence on record, the Tribunal had held that the driver of the goods vehicle alone is responsible for the accident and



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9. In the cross-examination of PW2, it reiterated that three persons were traveling in the two wheeler and the two wheeler was coming from south to north direction and the TATA ASE Goods Vehicle came from north to south direction. He admits that the place where the accident took place is heavy traffic zone and he denied that the deceased Selvam has not ridden the vehicle with due care and caution, which resulted in the accident.

10. The evidence of P.W.2 shows that he admits that three persons traveled in the vehicle.

11. On the side of the respondents, no eyewitness was examined to depose about the manner in which the accident had taken place. They have examined the official of the insurance company as RW1. By relying on the evidence recorded in the cross-examination of the official of the insurance company, the learned counsel for the insurance company draws the attention of this Court to impress upon the fact that the accident was head-on-collision. Further, RW1 in his cross-examination has stated that the road in which the accident has taken place was a straight road and



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that three persons traveled in the vehicle.

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12.Except this evidence, there is no other evidence produced to show that the accident was head on collision.

13.The Apex Court in *Mohammed Siddique Vs. National Insurance Company Ltd.*[2020 (1) TNMAC 161 (SC)] has held that three persons traveling in a two wheeler will only attract criminal offence and the same alone is not sufficient to hold that the rider has acted negligently and contributed to the accident. There must be some evidence to show that, due to the impact of three persons traveled in the vehicle, the accident had taken place. In this case, there is no evidence placed on record to show that due to three persons traveled, the rider has lost the balance and he was not in a position to ride the two wheeler efficiently in order to avoid the accident.

14.While the evidence of PW2 is that the two wheeler was driven with due care and caution on the left hand side of the road from south to north direction, the goods vehicle came from the opposite direction and



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hit on the two wheeler. The standard of proof required in the case of this nature is preponderance of probability. Evidence of P.W.2 has not been dis-credited by any contra evidence by the respondent/insurance company. The Tribunal has rightly held that the driver of the goods vehicle alone is responsible for the accident since no contra evidence placed on record. This Court confirms the above finding of the Tribunal and no interference of this Court is warranted.

15. With regard to the quantum of compensation, even though the claimants have claimed that the victim of the accident was a driver by profession, no proof of income has been produced. The Tribunal has fixed the monthly income of the victim of the accident notionally at Rs.10,000/-. Considering the age of the deceased as 32 years and by adding 40% as future prospects, the Tribunal has awarded the compensation. The Tribunal had also deducted 1/4th of the income as the personal expenditure of the victim, by adding the third respondent as one of the dependents of the deceased.



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16. Admittedly, the third respondent herein has not adduced any evidence to prove his dependency. The claimants have added him as one of the respondents and they have also not pleaded that he is also a dependent on the income of the deceased. Proceedings of the Tribunal shows that after recording evidence, in the year 2018 the third respondent, the father of the victim is impleaded as one of the respondents. Since the third respondent has not adduced any evidence, and there is no evidence on record to prove that he is one of the dependents, awarding compensation to the third respondent is not appropriate. Awarding compensation to the respondent no.3, without proof of dependency is liable to be set aside.

17. It is also stated by the insurance company that the compensation awarded under various heads is exorbitant, this Court is unable to appreciate the same, since the notional income fixed by the Tribunal is within the norms followed by this Court. Accordingly, the notional income fixed by the Tribunal at Rs.10,000 per month is hereby confirmed. After adding the future prospects and after deducting 1/3rd,



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towards personal expenses of the deceased, the multiplicand and compensation ordered towards loss of income is summed as follows;

The applicable multiplier for the deceased as per *Sarala Varma Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121] is 16.

$[10,000 + 40\% (10,000)] \times 12 = 1,68,000$ Deduction of $1/3 = 56,000/-$

Multiplicand = 1,12,000

Multiplicand x 16 = 1,12,000 x 16 = 17,92,000/-

18.The Tribunal had separately awarded Rs.50,000/- under the head of loss of love and affection to the first petitioner, Rs.30,000/- to the second and third petitioners and the third respondent.

19.The Apex Court in *United India Insurance Co. Limited V. Satinder Kaur and Ors.* [MANU/SC/0500/2020: (2021) 11 SCC 780] and *Sriram General Ins. Co. Ltd. Vs. Bhagat Singh Rawat and others* [2023 ACJ 2330] held that the consortium includes loss of love and affection, care and companionship. In this case, as stated supra the third



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respondent has not been accepted as a dependent on the deceased.

Accordingly, he is not entitled for compensation under the head of loss of consortium. However, the other claimants 1 to 3 are entitled for consortium of Rs.40,000/- each, as per the Apex Court Judgment stated supra. As far as other conventional heads are concerned, Rs.15,000/- awarded each under the head of loss of estate and funeral expenses stand confirmed. Accordingly, the compensation is quantified as below;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	20,16,000/-	17,92,000/- -	Reduced
2.	Loss of love and affection – modified as Loss of Consortium for the 1 st claimant	50,000/-	40,000/-	Reduced
3.	Loss of love and affection – modified as Loss of Consortium to the 2 nd and 3 rd claimants	60,000/-	80,000/-	Enhanced



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4.	Loss of love and affection to the third respondent	30,000/-	Nil	Canceled
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Transport expenses	10,000/-	10,000/-	Confirmed
7.	Loss of estate	15,000/-	15,000/-	Confirmed
Total		21,96,000/-	19,52,000/- -	Reduced by 244,000/-

20.The Tribunal has also adopted the principal of 'Pay and Recover', since it was proved that the driver of the goods vehicle was not having valid license at the time of the accident. Applying the principle of pay and recover in terms of the Apex Court Judgment in ***National Insurance Co.Ltd Vs. Swaran Singh & Ors.***[2004(3) SCC 297], is hereby confirmed.

21.To conclude, this appeal is partly allowed and the compensation amount is decreased from Rs.21,96,000/- to Rs.19,52,000/, together with interest at 7.5% per annum, from the date of petition till the date of deposit excluding default period, if any. The appellant is now required to deposit the entire compensation amount now determined by



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this Court with interest at 7.5%, less any amount already deposited, within a period of six (6) weeks from the date of receipt of a copy of this order. The compensation is required to be apportioned equally among the claimants and the father of the deceased is not entitled for any compensation. On such deposit, the first claimant viz., Nathiya is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The compensation amount pertaining to minor Naveen and minor Mukesh are directed to be deposited in a nationalised Bank in the interest bearing Fixed Deposit till the minors attain the age of majority and the mother of the minors viz., Nathiya is permitted to withdraw the accrued interest on the deposit of the minors once in six months. No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2024

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K.RAJASEKAR, J.,

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To

- 1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Mayiladuthurai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

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