



WEB COPY

CMA NO.2641 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02 / 08 / 2024

JUDGMENT PRONOUNCED ON : 19 / 09 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.2641 OF 2022

1.Haneef

2.Mubina

3.M.H.Naseeba Thaj

4.M.H.Amreen Thaj

... Appellants /
Petitioners

Versus

1.M.Saravanan

2.The Divisional Manager,

United India Insurance Company Ltd.,

D.No.2, 104-A, Ranga Buildings,

Peramanoor Main Road, Near Four Roads,

Salem – 636 007.

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated February 27, 2019 made in M.C.O.P.No.60 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court for Motor Accident Claims Cases), Krishnagiri and to enhance the compensation amount and fix the entire liability on the 2nd respondent, by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.S.Prabhu



CMA NO.2641 OF 2022

for Mr.S.P.Yuaraj

For Respondent-1 : Served – No Appearance

For Respondent-2 : Ms.I.Malar

J U D G M E N T

Dissatisfied with the Award dated February 27, 2019 passed by the 'Motor Accident Claims Tribunal (Additional District and Sessions for Motor Accident Claims Cases) Krishnagiri' [henceforth 'Tribunal' for brevity] in M.C.O.P.No.60 of 2016, the petitioners therein have preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, henceforth, the parties will be referred to as per their array before the Tribunal

Petitioners' case

3.On March 17, 2015, at 12:40 PM, the deceased - Riyaz, was riding his Bajaj Discover motorcycle bearing Registration No. TN-70-D-5178 along the Nachikuppam to Kathiripalli Road, staying on the left side. As he neared Kolalamman Koil, a Leyland Comet lorry bearing Registration No. TN-30-AL-9303, owned by the first respondent and insured with the second

Page No.2 of 16



respondent, approached from the opposite direction at an uncontrollable speed without any honk and disregarding traffic rules. Because of the Lorry driver's rash and negligent driving, while passing the motorcycle, the lorry's rear wheel struck it. As a result, Riyaz, who was struck by the rear wheel sustained fatal injuries and passed away on the spot while the others were thrown off from the motorcycle.

3.1. According to the petitioners, only due to the negligence on the part of the Driver of the Lorry bearing Registration No.TN30-AL-9303, Riyaz passed away. First Information Report (FIR) was registered in Crime No.75 of 2015 on the file of Veppanapalli Police Station under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860 against the Driver of the Lorry.

3.2. First petitioner is the father of the deceased - Riyaz, while second petitioner is his mother, and the third and fourth petitioners are his unmarried sisters. According to the petitioners, at the time of accident, the deceased was aged 23 years and he was running a Hotel at Berigai, thereby earning not less than Rs.20,000/- per month. Hence, they filed a petition praying to award a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) as compensation for the death of Riyaz.



1st Respondent's case

4.Despite service of notice, the first respondent – owner of the Lorry did not choose to contest the case. Hence, he was set *ex-parte* by the Tribunal.

2nd Respondent's case

5.The second respondent – Insurance Company filed counter wherein it is averred that the Leyland Comet Lorry bearing Registration No.TN-30-AL-9303 was not insured with them at the time of accident; that the Driver of the Lorry had no Driving License at the time of accident; that on March 17, 2015, the Leyland Comet Lorry bearing Registration No. TN-30-AL-9303 was driven by its driver slowly, cautiously, observing all the rules of the road, with sounding horn, keeping to the extreme left side of the road, while thus coming near the opposite to Kolalamman Koil, the Driver of the Bajaj Discover Motorcycle bearing Registration No.TN-70-D-5178 driven by the petitioner on the wrong side with great speed in a rash and negligent manner, without observing any rules of the road and dashed against the right side rear wheel of the said Leyland Comet Lorry bearing Registration No.TN-30-AL-9303 and caused the accident; that the accident is caused due to the rash and negligent driving of the deceased only; that the second respondent –



CMA NO.2641 OF 2022

Insurance Company is not liable to pay any compensation to the petitioners; that the petitioners are entitled to get any compensation from the owner and insurer of the Bajaj Discover Motorcycle bearing Registration No.TN-70-D-5178 only; that the deceased Riyaz, driven the Motorcycle with two pillion riders (totally three person) which is against law; that the accident caused due to imbalance, negligent and rash driving of the deceased Riyaz; that the second respondent – Insurance Company is not liable to pay any compensation to the petitioner; that three persons travelling in the Motorcycle is against law and they cannot claim any compensation against the second respondent – Insurance Company; that if the Court comes to the conclusion that the petitioners are entitled to get any compensation, contributory negligence award is to be passed against the said Bajaj Discover Motorcycle bearing Registration No.TN-70-D-5178 which was driven by the deceased; that in the accident, two vehicles involved that is the Leyland Comet Lorry bearing Registration No.TN-30-AL-9303 and Bajaj Discover Motorcycle bearing Registration No.TN-70-D-5178; that the owner and insurance company of the above said Bajaj Discover Motorcycle bearing Registration No.TN-70-D-5178 are necessary parties for proper adjudication; that the amount claimed by the petitioners are very excessive and exaggerated.

Page No.5 of 16



CMA NO.2641 OF 2022

Accordingly, the second respondent–Insurance Company prayed to dismiss the original petition.

Findings of the Tribunal:

6.Before the Tribunal, on the side of the petitioners, first petitioner-Haneef was examined as P.W.1 and one eye-witness - Mr.Nizamudin was examined as P.W.2 and Ex-P.1 to Ex-P.14 were marked. On the side of the second respondent, one Mr.Shanmugam was examined as R.W.1 and Mr.Sivaguru was examined as R.W.2 and Ex-R.1 and Ex-R.2 were marked.

7.The Tribunal framed the following points for determination:

- (i) *Whether the accident occurred due to the rash and negligent driving of the driver of the first respondent's Lorry?*
- (ii) *Whether the petitioners are entitled to compensation? If so, what is the quantum of compensation and who is liable to pay compensation to the petitioners - dependents of the deceased?*

8.The Tribunal after analyzing the oral and documentary evidence came to the conclusion that both the respondents are jointly and severally liable to pay compensation to the petitioners and fixed 10% contributory negligence on the part of the deceased as well. Accordingly, the

Page No.6 of 16



Tribunal awarded a sum of Rs.10,17,200/- as compensation. After deducting 10% towards contributory negligence, the respondents were directed to deposit 90% of the award amount *i.e.*, Rs.9,15,480/- with interest at the rate of 7.5% from the date of filing of the petition till its realization.

9. Not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners have preferred this Civil Miscellaneous Appeal.

Arguments:

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

11. The learned Counsel for the appellants / petitioners would argue that the Tribunal had taken a sum of Rs.6,000/- as monthly income of the deceased, which is on the lower side considering that in the year 2015, a man aged about 23 years, could have easily earned not less than a sum of Rs.15,000/- per month; that the Tribunal failed to award transport expenses and consortium as per the dictum laid down in *National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16 SCC 680]*; that though the deceased and two other persons were travelling on the motorcycle at the time of the accident, there is no evidence available on record to show that the deceased was riding the motorcycle in a rash and negligent manner



CMA NO.2641 OF 2022

contributing to the accident; that the first and second petitioners are the parents of the deceased while the third and fourth petitioners are the unmarried sisters of the deceased and they all are entitled to get compensation. Accordingly, the learned Counsel would pray to allow the Civil Miscellaneous Appeal and enhance the compensation awarded by the Tribunal.

12.Per contra, the learned Counsel for the second respondent—Insurance Company would submit that the appellants / petitioners did not produce any document to show that the deceased was running a Hotel whereby earned a sum of Rs.20,000/- per month; that the deceased and two other persons travelled on the motorcycle which is against the Motor Vehicles Act, 1988 and the Rules framed thereunder; that the accident occurred only due to the rash and negligent riding of the deceased; that the Tribunal after considering the facts and circumstances of the case, held that the deceased also contributed to the accident and fixed 10% negligence on the part of the deceased; that since the petitioners did not produce any document to show the monthly income, the Tribunal rightly fixed a sum of Rs.6,000/- per month and awarded compensation as per law. Hence, there is no warrant to interfere with the Award. Accordingly, he would pray to dismiss the Civil Miscellaneous

Page No.8 of 16



CMA NO.2641 OF 2022

Appeal.

Discussion:

13.This Court has considered the submissions made on either side and perused the materials available on record.

14.The accident occurred on March 17, 2015, at about 12.40 hours. The deceased Riyaz along with two others was riding the motorcycle bearing Registration No.TN-70-D-5178 on Nachikuppam to Kathiripalli Road; while approaching Kolalamman Koil, they encountered the first respondent's Lorry bearing Registration No.TN30-AL-9303 coming from the opposite direction; while passing, the rear wheel of the Lorry hit the deceased – Riyaz and two others. All were thrown off from the motorcycle, which caused Riyaz to die on the spot. An FIR was registered against the first respondent's Lorry Driver. One Nizamudin, eye-witness, was examined as P.W.2 on the side of the petitioners to prove the accident. FIR and the evidence of P.W.2 would establish the manner of the accident as stated by the petitioners. The Tribunal has rightly come to the conclusion that the accident happened only due to the rash and negligent driving of the first respondent's Lorry Driver. Moreover, the second respondent – Insurance Company has not



filed any appeal. Hence, the findings of the Tribunal in this regard has attained finality.

15.As regards the quantum of compensation, the petitioners averred that at the time of accident, the deceased was running a Hotel at Berigai and thereby, earned a sum of Rs.20,000/- per month. But the petitioners did not produce any documents or acceptable evidence to prove his claim. At the time of accident, the deceased was 23 years old. The accident occurred in the year 2015. Undisputedly, the first and second petitioners are parents of the deceased and the third and fourth petitioners are the unmarried sisters of the deceased. In these circumstances, this Court is of the opinion that the deceased would have earned at least a sum of Rs.12,000/- per month to meet the expenses of his family. However, the Tribunal has taken a sum of Rs.6,000/- per month as notional income, which is on the lower side. Hence, this Court fixes the notional income at Rs.12,000/- per month. Since deceased died as Bachelor, this Court deducts $\frac{1}{2}$ towards his personal expenses. Future prospects is taken as 40%. The appropriate multiplier is 18. Therefore, the compensation payable under the head 'loss of dependency' would be $(Rs.12,000/-) + (40\%) \times (1/2) \times 12 \times 18 = Rs.18,14,400/-$.

15.1.Further, the Tribunal considered only the parents of the



deceased as dependants and accordingly, awarded Rs.80,000/- i.e., Rs.40,000/- each under the head of filial consortium. But since the deceased was a Bachelor at the time of accident and since his sisters were unmarried, all the petitioners are dependants of the deceased and thus, are entitled to compensation. Hence, bearing in mind the dictum laid down by the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16 SCC 680]* this Court is inclined to award Rs.1,60,000/- i.e., Rs.40,000/- each under the said head.

15.2.Furthermore, the Tribunal has failed to grant compensation towards transportation charges. This Court is inclined to award Rs.15,000/- towards the same.

16.Accordingly, the petitioners are entitled to get compensation as tabulated hereunder:

S.No.	Head	Amount awarded by the Tribunal	Re-quantified by this Court	Status
1	Loss of Dependency	Rs.9,07,200.00	Rs.18,14,400.00 [Rs.12,000/- (I) + 40% (FP) X 1/2(PD)X12(m)X18(M)]	Enhanced
2	Loss of Estate	Rs.15,000.00	Rs.15,000.00	Confirmed
3	Loss of Funeral Expenses	Rs.15,000.00	Rs.15,000.00	Confirmed
4	Filial Consortium	Rs.80,000.00	Rs.1,60,000.00	Enhanced
5	Transportation	--	Rs.15,000.00	Granted



CMA NO.2641 OF 2022

S.No.	Head	Amount awarded by the Tribunal	Re-quantified by this Court	Status
	Total	Rs.10,17,200.00	Rs.20,19,400.00	Enhanced
Note: In the above table, 'I' denotes 'Notional Income', 'FP' denotes 'Future Prospects', 'PD' denotes 'Personal Deductions', 'M' denotes 'Multiplier applied' and 'm' denotes 'months'.				

17. The Tribunal had held that, out of the total compensation of Rs.10,17,200/-, the petitioners are entitled to 90% award amount from the respondents 1 and 2, and the petitioners should bear upon the remaining 10% of the award amount as at the time of accident, the deceased was riding the motorcycle with two other persons on the pillion, that too without wearing helmet, which are in violation of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Holding so, the Tribunal directed the second respondent – insurance company to deposit Rs.9,15,480/- as compensation to the petitioners. This Court is of the view that the Tribunal rightly fixed 10% negligence on the part of the deceased and there is no infirmity or irregularity in the said finding, so as to reject it. It should be noted that the second respondent - Insurance Company did not prefer any appeal.

18. Accordingly, the second respondent – Insurance Company is directed to deposit 90% of the award amount now arrived at by this Court, which would be **Rs.18,17,460/-** $[(Rs.20,19,400) \times (90\%) = Rs.18,17,460/-]$

Page No.12 of 16



CMA NO.2641 OF 2022

and the petitioners are directed to bear 10% of the award amount *i.e.*,
Rs.2,01,940/- [(Rs.20,19,400/-) X (10%) = Rs.2,01,940/-] for the deceased's contributory negligence.

Conclusion:

19. In fine, the second respondent - Insurance Company is directed to deposit **Rs.18,17,460/-** (Rupees Eighteen Lakh Seventeen Thousand Four Hundred and Sixty Only) to the credit of M.C.O.P.No.60 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court for Motor Accident Claims Cases) Krishnagiri, along with accrued interest and costs, less the amount if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants / petitioners are permitted to withdraw their respective shares as per the ratio of apportionment fixed by the Tribunal along with proportionate interest at the rate of 7.5% per annum from the date of filing the petition till realization (excluding the default period, if any) less the amount if any already withdrawn.

20. Accordingly, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.



CMA NO.2641 OF 2022

19 / 09 / 2024

WEB COPY

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

PS:

At the time of pronouncing this judgment, Ms.I.Malar, learned counsel for the second respondent who appeared through Video Conferencing Mode has submitted that the delay of 1095 days in filing the above appeal may be excluded while calculating interest.

2.On perusal of records, it is seen that this appeal has been filed with a delay of 1095 days. This Court, while condoning the delay on 23.11.2022, in CMP No.16042 of 2022 in CMA SR.No.98239 of 2022, has observed as under:

“The above petition is filed to condone the delay of 1095 days in filing the above appeal.

2.Considering the fact that the sufficient reasons have been given in the affidavit filed in support of the petition for condoning the delay. Hence the petition is allowed and the delay of 1095 days in filing the above appeal is condoned subject to the

Page No.14 of 16



WEB COPY



CMA NO.2641 OF 2022

condition that the petitioners are not entitled to any interest for the delay period i.e. for 1095 days.

3.The Registry is directed to number the appeal, if it is otherwise in order.”

3.In view of the observation made above, it is made clear that the appellants / petitioners are not entitled to claim interest for the delay period of 1095 days in filing the appeal.

19 / 09 / 2024

To
The Motor Accident Claims Tribunal
and Additional District and Sessions Court
for Motor Accident Claims Cases
Krishnagiri.

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN

Page No.15 of 16



WEB COPY



CMA NO.2641 OF 2022

CMA NO.2641 OF 2022

19 / 09 / 2024

Page No.16 of 16