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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.566, 784 & 1650 of 2024
and CMP Nos.5584 & 7305 of 2024

CMA Nos.566 & 784 of 2024

National Insurance Co., Ltd.,
MTPCO No.751, III Floor,
Anna Salai, Chennai – 600 002. ... Appellant

.vs.

1.K.Karthigai Rajan

2.K.P.Natarajan

3.A.Dhandapani

4.The Oriental Insurance Co., Ltd.,
MTPCO, No.45, II Floor,
Broadway, Chennai -600 108.

5.B.Arumugam

6.The New India Assurance Co., Ltd.,
MTPCO, No.45, V Floor,
Moore Street, Parrys,
Chennai – 1. ..Respondents

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CMA No.1650 of 2024

K.Karthigai Rajan. ... Appellant

.vs.

1.K.P.Natarajan

2.National Insurance Co., Ltd.,
MTPCO No.751, III Floor,
Anna Salai, Chennai – 600 002

3.A.Dhandapani

4.The Oriental Insurance Co., Ltd.,
MTPCO, No.45, II Floor,
Broadway, Chennai -600 108.

5.B.Arumugam

6.The New India Assurance Co., Ltd.,
MTPCO, No.45, V Floor,
Moore Street, Parrys,
Chennai – 1. ..Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 01.12.2022 in MCOP Nos.1133 & 1250 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

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CMA Nos.566 & 784 of 2024

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Amar D.Pandiya for R1

Ms.R.Sreevidhya for R4

Mr.C.Ramesh Babu for R6

CMA No.1650 of 2024

For Appellant : Mr.Amar D.Pandiya

For Respondents : Mr.N.Manoharan for R1

Ms.S.Arunkumar for R2

Ms.R.Sreevidhya for R4

Mr.C.Ramesh Babu for R6

COMMON JUDGMENT

These appeals arise out of a single accident and hence, they are taken up together, heard and disposed of through this common order.

2.CMA Nos.566 and 784 of 2024 have been filed by the Insurance Company and CMA No.1650 of 2024 has been filed by the claimant against the Award passed by the Tribunal in MCOP No.1133 of 2015, dated 01.12.2022.

3.Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.

4.The other claim petitions that were filed in MCOP Nos.196, 197, 198 of 2011 and MCOP No.1568 of 2012 became a subject matter of challenge in CMA No.860 to 862 of 2022 and 3270 of 2019. These appeals were filed by the National Insurance Company Ltd., The Division Bench after considering the facts and circumstances of the case and on careful perusal of the Award passed by the Tribunal passed a common judgement on 16.06.2023 and the relevant portions are extracted hereunder:

> *15.Therefore, it is a clear case of violation of permit condition. Hence, the Tribunal ought to have fastened the liability only on the insured KPN travels on the other hand erroneously fastened the liability on the appellant/Insurance Company.*
>
> *16.On the point of negligence, the learned counsel for the appellant/Insurance Company would contend that the driver of the lorry bearing Registration No.TN-23-D-2457 was also responsible for the accident. For the reason that the two lorry drivers were raising each other in a rash and negligent manner and due to which the accident occurred and therefore, the two*

lorry drivers are equally liable for the accident and taking into consideration the manner of accident there must be equal apportionment of liability between three vehicles involved in the accident. On perusal of the FIR it reveals that the FIR was registered against the drivers of the three vehicles involved in the accident. The reason attributed by the tribunal for exonerating the driver of the lorry bearing Registration No.TN-23-D-2457 cannot be accepted. There is no contra evidence to establish that the driver of the lorry bearing Registration No.TN-23-D-2457 was not responsible for the accident. The evidence of R.W.2 also supports the contention of the appellant. Therefore, taking into consideration the manner of accident, this Court thinks fit the reasonable apportionment of liability should be fixed. Admittedly, the place of accident is National Highway road and the lorries were driven in front of the Omni bus. While so, if the driver of the Omni bus had drove the vehicle in a sufficient distance, he could have avoided the said accident. Therefore, a major apportionment of liability should be fixed on the Omni bus.

17. Since the lorry drivers also contributed to the alleged accident, this Court apportioned the liability as here under:

Bus bearing Reg.No. PY-011-BH-9919	*50%*
Lory bearing Reg.No. TN-23-AH-1333	*30%*
Lorry bearing Reg.No. TN-23-D-245	*20%*

18.With regard to quantum of compensation, there is no dispute. In view of aforesaid discussions there can be no scope for doubt to hold that when an accident takes place on account of composite negligence of two or more motor vehicles the claimants are entitled to proceed against all the insured and the insurers of the offending vehicles in accordance to the liabilities apportioned as above. The above Insurance Companies are directed to make the payment of entire amount of compensation within a period of six weeks from the date of receipt of a copy of this order awarded by the Tribunal in accordance to the apportioned liabilities and thereafter realize from the owner of the Omni bus involved in the accident, since there is violation of policy as discussed above.

5.The above judgment passed by the Division Bench will squarely apply to the appeal filed in CMA Nos.566 and 784 of 2024 and both these appeals can be disposed in terms of the judgment passed by the Division Bench in the same line.

6.Insofar as CMA No.1650 of 2024 is concerned, the same has been filed by the husband of the deceased Sunitha @ Lakshmi seeking for enhancement of compensation. The accident had taken place in the year 2011 and the Tribunal while calculating the compensation, fixed the total compensation at Rs.20,76,000/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Towards Loss of income / dependency	20,16,000
2.	Towards Loss of Estate	15,000
3.	Towards Loss of Consortium	30,000
4.	Towards Funeral Expenses	15,000
	Total	**20,76,000**

7.The learned counsel for the appellant submitted that the deceased in this case was a M.Sc., Chemistry qualified person and she was taking tuitions and was earning not less than Rs.18,000/- to Rs.20,000/- per month. The learned counsel submitted that the Tribunal has fixed only a sum of Rs.15,000/- towards notional monthly income which is on the lower side. The next ground that was raised by the learned counsel for the appellant was that the Tribunal went wrong in deducting 50% (½) towards the personal expenditure of the deceased. It was contended that the Tribunal ought to have deducted 1/3rd towards personal expenditure of the deceased.

8.Insofar as the notional monthly income is concerned, this Court is of the considered view that the notional monthly income of Rs.15,000/- fixed by the Tribunal and adding 40% towards future prospects, is very reasonable and it does not require the interference of this Court. This is more so considering the fact that the claimant in this case was again married and he was also having a child through the second marriage.

9.Insofar as ½ deducted towards personal expenditure, it is seen that the husband alone was the claimant in this case. The learned counsel for the appellant contended that only in case of a bachelor, ½ can be deducted towards towards expenditure. In other cases, 1/3rd must be deducted. To substantiate the same, the learned counsel relied upon the judgement of the learned single Judge in CMA No.1175 of 2023, dated 16.08.2023.

10.In order to deal with this contention, it is relevant to take note of the relevant portion of the judgement of the Apex Court in ***Sarla Verma & others Vs. Delhi Transport Corporation & another*** reported in **2009 (2) TNMAC 1 SC Supreme Court** and the same is extracted hereunder:

> *14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis*

of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

11.The above judgement makes it clear that 1/3rd deduction can be resorted to only if the number of dependent family members exceeds one and it is atleast 2 to 3. In the case in hand, husband alone is the claimant.

12.The above law pronounced by the Apex Court was reiterated by the Division Bench of this Court in ***The Branch Manager, The Oriental Insurance Company Ltd, No.81C, First Floor, 2nd Floor, Vijay Shopping Complex, 2/7-16, Bangalore Main Road, Zuzuwadu, Hosur – 635 109 vs. Arumugam and others*** in CMA No.538 of 2021 dated 26.03.2021. That was also a case where there was only one dependant and 1/2 was deducted towards personal expenditure. The relevant portion is extracted hereunder:

*8.The learned counsel appearing for the appellant / Insurance Company would contend that the claimants are the husband and son of the deceased and they are not the dependents of the deceased. While so, the Tribunal ought to have deducted atleast half of the income towards personal and living expenses instead of 1/3rd. In this regard, he relied on the judgment of the Apex Court in **New India Assurance Co. Ltd., vs. Vinish Jain** reported in **2018 (1) TN MAC 365**. He would also submit that the Tribunal ought to have deducted the income tax due payable by the deceased while computing the compensation. He would also point out that the Tribunal had eroneously fixed the monthly income at Rs.64,157/-, whereas the last drawn salary of the deceased was only Rs.48,670/- per month. Therefore, the learned counsel would submit that the total award of Rs.63,10,349/- towards loss of dependency is highly excessive and it is liable to be reduced.*

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11.It is not in dispute that the deceased/Amudhavalli was working as Teacher in Government Middle School at Sappadi, Shoolagiri Taluk. To prove her salary, Ex.P-15/salary certificate was marked, wherein the monthly salary was shown as Rs.64,157/-, while the basic salary was mentioned at Rs.51,900/- (after the 7th Pay Commission). Therefore, relying on Ex.P-15, the Tribunal has rightly fixed a sum of Rs.64,157/- as monthly

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income of the deceased and also added 10% towards her future prospects. As regards the deduction towards the personal and living expenses of the deceased by 1/3rd, it is pertinent to note that the 1st respondent being husband, is a legal heir, but he cannot be construed as a dependent on the deceased and as such, amount awarded under the head 'loss of dependency' is liable to be reduced by fixing the personal and living expenses of the deceased at ½. .....

13.In view of the above, the Tribunal was perfectly right in deducting ½ towards personal expenditure of the deceased and the same does not require the interference of this Court.

14.In the result, CMA No.1650 of 2024 is dismissed. CMA Nos.566 and 784 of 2024 are allowed in terms of the judgement of the Division Bench in CMA No.860 to 862 of 2022 and 3270 of 2019. No Costs. Consequently, connected miscellaneous petitions are closed.

15.07.2024

Index : Yes
Speaking Order
Neutral citation : Yes
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N. ANAND VENKATESH., J

ssr

To

The Motor Accidents Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.

CMA Nos.566, 784 & 1650 of 2024
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