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CMA.No.4198 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.4198 of 2019 & C.M.P. No.23726 of 2019

&

Cros. Obj. No.68 of 2024

C.M.A. No.4198 of 2019

The National Insurance Company Limited,
Office situated at No.18, Court Street,
Kumaran Road Corner,
Tiruppur - 638 601.

... Appellant

VS.

1. Kousalya

2. Minor.Rakshan

(Rep. by his guardian / next
friend mother Kousalya)

3. Maranaicker

4. Saroja

5. K.Sathyaraj

6. The Managing Director,
M/s.Sakthi Bala Process,
K.V.R.Thottam, Mangalam Road,
Tiruppur.
Respondents

...



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CROS. OBJ. NO.68 of 2024

1. Kousalya
2. Minor.Rakshan
(Rep. by his guardian / next
friend mother Kousalya)
3. Maranaicker
4. Saroja

... Cross Objectors

Vs.

1. The National Insurance Company Limited,
Office situated at no.18, Court Street,
Kumaran Road Corner,
Tiruppur - 638 601.

2. K.Sathyaraj

3. The Managing Director,
M/s.Sakthi Bala Process,
K.V.R.Thottam,
Mangalam Road,
Tiruppur.

... Respondents

PRAYER in C.M.A. No.4198 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 04.10.2017 in M.C.O.P.374/2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Erode at Bhavani.

PRAYER in CROS.OBJ. No.68 of 2024

Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award dated 04.10.2017 in M.C.O.P.374/2013 on the file of the Motor Accident Claims Tribunal, IV Additional District



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Judge, Erode at Bhavani.

Appearance In C.M.A. No.4198 of 2019

For Appellant	:	Mr.S.Vadivel
For R1 to R4	:	Mr.Ma.P.Thangavel
For R6	:	Mr. Srinath Sridevan, Senior Counsel Assisted by Mrs.R.Prathana for Mr.R.Udhayakumar

Appearance in Cros. Obj. No. 68 of 2024

For Cross Objectors	:	Mr.Ma.P.Thangavel
For R1	:	Mr.S.Vadivel
For R3	:	Mr. Srinath Sridevan, Senior Counsel Assisted by Mrs.R.Prathana for Mr.R.Udhayakumar

COMMON JUDGMENT

The appellant, the National Insurance Company Limited in CMA No.4198 of 2019 is the third respondent, and the Cross Objectors in 68 of 2024 are the Claimants in M.C.O.P.374/2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Erode at Bhavani.

2. The Cross Objectors (Claimants) filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of



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Rs.60,00,000/- for the death of one Saravanakumar (husband of claimant 1; father of claimant 2; son of claimants 3 and 4) in a road accident that occurred on 08.01.2013.

3. The case of the Claimants in a nutshell is as follows:

3.1. On 08.01.2013, Saravanakumar (deceased) was riding his two wheeler bearing Registration number TN-36-Y-9437 on Tiruppur - Oothukuli main road. When he was nearing Kolathupalayam bus stop, a speeding Eicher Van bearing Registration Number TN-30-AB-7799, hit the two wheeler, resulting in his instantaneous death.

3.2. According to the Claimants, the rash and negligent driving of the driver of the Eicher Van bearing Registration number TN-30-AB-7799 was the cause of the accident and that since the owner of the van had insured his vehicle with the appellant, the National Insurance Company Limited, the owner of the van and the insurer are jointly and severally liable to pay compensation to them.

4. The Tribunal after analysing the evidence on record, fastened



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negligence on the part of the driver of the Eicher van bearing Registration number TN-30-AB-7799. Since the laden weight of the lorry was 8760 kilograms and the driver of the Eicher van did not have a valid driving license for driving a Heavy Motor vehicle, the Tribunal directed the Insurance company to pay compensation of Rs.33,95,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance and then recover the same from the owner of the Eicher van (Pay and Recover).

5. Aggrieved over the orders passed by the Tribunal, the present appeal and Cross Objection are filed.

6. Heard Mr.S.Vadivel, learned counsel appearing for the National Insurance Company Limited, Mr.Ma.P.Thangavel, learned counsel for the Claimants and Mr. Srinath Sridevan, learned Senior Counsel assisted by Mrs.R.Prathana, learned counsel for the owner of the vehicle.

7. Mr.Ma.P.Thangavel, learned counsel for the Claimants drew



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the attention of this Court to the Pay certificate (Ex.X3), Pay slip (Ex.X2) and ESI Corporation Identity Card (Ex.P9) and contended that Saravanakumar (deceased) was working as a Manager in GUS Clothing Company, Tiruppur, earning a sum of Rs.22,000/- per month and that one Balakrishnan (P.W.2), the employer, in his evidence had deposed that Saravanakumar was earning a sum of Rs.28,000/- per month. However, the Tribunal without taking these documents into consideration, had fixed the notional monthly income of the deceased as Rs.15,000/-. He therefore prayed for enhancement of compensation.

8. Mr. Srinath Sridevan, learned Senior Counsel assisted by Mrs.R. Prathana, relied on the decision of the Hon'ble Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited*** reported in ***(2017) 14 Supreme Court Cases 663*** and contended that since the gross unladen weight of the Eicher van did not exceed 7500 kg, it is a light motor vehicle. It was also contended that the driver of the van had a driving licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) and therefore is competent to drive the offending vehicle. He further relied on the Constitution Bench decision of the Hon'ble



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Supreme Court in *Bajaj Alliance General Insurance Company Limited*

vs. *Rambha Devi and Others* reported in (2024)1 Supreme Court Cases

818 and contended that the Supreme Court had held that the decision in *Mukund Dewangan vs. Oriental Insurance Company Limited* has held the field for nearly six years and the impact of the reversal of the decision, at this stage, particularly on the social sector, is a facet which would have to be placed in balance by the policy arm of the Government. He would therefore contend that the order of 'Pay and Recover' passed by the Tribunal has to be set aside.

9. Per contra, Mr.S.Vadivel, learned counsel appearing for the National Insurance Company Limited contended that in the absence of sufficient records, Ex.X2 and Ex.X3 cannot be relied upon for the purpose of fixing the monthly income of the deceased. His further contention is that since the owner of the vehicle has not questioned the order of 'Pay and Recover' by way of filing an appeal, the same need not be disturbed in the present case.

10. It is brought to the notice of this Court that the owner of the



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vehicle has also filed a Cross Objection and the same is pending in SR stage in S.R. No.19687/2020.

10.1. It is seen from the records that the unladen weight of the vehicle is 2850 Kgs and therefore, the driver of the Eicher Van bearing Registration Number TN-30-AB-7799, need not possess a driving licence to drive a Heavy Motor vehicle as laid down in ***Mukund Dewangan vs. Oriental Insurance Company Limited*** (cited *supra*). In the circumstances, the order of 'Pay and Recover' passed by the Tribunal is set aside.

Quantum

10.2. It is pertinent to point out that the deceased was a B.Com graduate and was employed in GUS Clothing Company, Tiruppur as a Manager. Though the employer filed the salary slip and salary certificate showing the monthly income of Saravanakumar (deceased) as Rs.28,000/, the relevant Registers were not produced before the Tribunal to substantiate the same. Considering the age of Saravanakumar (deceased) and the year of accident, the notional monthly income of the deceased is



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fixed as Rs.20,000/- and since he was permanently employed, 50% is added towards future prospects as per the decision rendered in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***. The age of the deceased on the date of the accident was 35 years as is seen from ESI ID Card (Ex.P9), and therefore, the proper multiplier is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***. Since the deceased had four dependents, 1/4 is deducted towards his personal expenses.

Calculation

Notional Income = Rs.20,000/-

50% Future Prospects = Rs.30,000/-

After 1/4 deduction = Rs.22,500/-

Loss of dependency

= Rs.22,500/- x 12 x 16

= Rs.43,20,000/-

In addition to that, the Claimants are entitled to Rs.1,60,000/- (40,000X4), Rs.15,000/- and Rs.15,000/- for 'loss of consortium', 'loss of estate' and 'funeral expenses' respectively as per the decision in ***National***



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Insurance Co. vs Pranay sethi and others (cited supra). Thus, the

Claimants are entitled to a total compensation of Rs.45,10,000/- (43,20,000 + 1,60,000 + 15,000 + 15,000= 45,10,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.43,20,000/-
2.	Loss of consortium	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.45,10,000/-

10.3. Thus, the compensation awarded by the Tribunal is enhanced to Rs.45,10,000/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

- i. The Civil Miscellaneous Appeal No.4198 of 2019 is dismissed and the Cross Objection.68 of 2024 is partly allowed. No costs. Consequently connected civil miscellaneous petition is closed.



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ii. The compensation awarded by the Tribunal is enhanced to Rs.45,10,000/-.

iii. The order of 'Pay and Recover' passed by the Tribunal is set aside.

iv. The appellant National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.45,10,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.No.374/2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Erode District at Bhavani.

v. Apportionment :

1st claimant / wife	Rs.10,00,000/- (with interest and costs)
2nd claimant / minor son	Rs.30,00,000/-
3rd claimant / Mother	Rs.3,10,000/-
4th Claimant /Father	Rs.2,00,000/-

vi. The share of the minor claimant is directed to be deposited in any one of the Nationalised Bank till they attain majority. The claimants



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1, 3 and 4 are at liberty to withdraw their respective shares after

following due process of law.

vii.The claimants/cross objectors are not entitled to claim any interest
for the period of delay of 1694 days in filing the Cross objection.

14.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No

bga/vum

To

1. The Motor Accident Claims Tribunal,
IV Additional District Judge,
Erode at Bhavani.
2. The Section Officer, V.R. Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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