



C.M.A(MD)No.61 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.61 of 2021
and
C.M.P.(MD)No.739 of 2021

The Manager,
Shriram General Insurance Company Ltd.,
No.30, H.A.K.Road,
Chinnachokkikulam,
Madurai – 2.

...Appellant

Vs.

1.B.Malliga
2.Nandhini
3.Harivenkatesh
4.Rajakumari
5.R.Sasikumar

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 06.11.2019 passed in M.C.O.P.No.304 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul.



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For Appellant : Mr.D.Sivaraman
For R1 to R4 : Mr.M.Ashokkumar
For R5 : Mr.P.Muthuvijaya Pandian

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Additional District Judge, Dindigul in M.C.O.P.No.304 of 2016, dated 06.11.2019, the insurance company has filed the present appeal.

2.The claimants filed the claim petition in M.C.O.P.No.304 of 2016, claiming a sum of Rs.1,00,00,000/- (Rupees One Crore only) as compensation for the death of the husband of the first claimant. By the award, dated 06.11.2019, the Tribunal awarded a sum of Rs.28,20,000/- (Rupees Twenty Eighty Lakhs and Twenty Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition.



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3.Facts of the Case:-

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According to the claimants, on 14.10.2014, at about 06.30 hours, when the deceased was walking with the first claimant on Trichy to Madurai Fourways Road, Beschi Thottam near Dindigul PLA Motors Company, a Innova Red Colour Car bearing Reg.No.TN 50 E 2121 which was driven in a rash and negligent manner, hit against the deceased, due to which, he sustained severe injuries and died on spot itself. FIR was also registered against the driver of the Car. The accident occurred only due to the rash and negligent driving of the driver of the car. The deceased is a B.Sc., Agriculture Degree holder and running Block coir manufacturing company in the name and style of M/s.Chenna Coco Pith products and having Agriculture consultancy service and Agriculturist. His annual income is Rs.10,05,000/-. Therefore, the appellant filed the claim petition, claiming a sum of Rs.1,00,00,000/- (Rupees One Crore only) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the deceased suddenly darted across



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the road without noticing the car and the deceased himself invited the accident by his negligent act and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 was examined and 14 documents were marked as Ex.P1 to P14. On the side of the insurance company, R.W.1 was examined and Ex.R1 was marked.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the car vehicle bearing Reg.No. TN 50 E 2121 and directed the appellant Insurance Company, to pay a sum of Rs.28,20,000/- (Rupees Twenty Eighty Lakhs and Twenty Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition.



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S. No.	Heads	Amount awarded by the Tribunal
1.	Loss of income as per <i>Sarala Varma</i> Case Rs.4,00,000/- less ¼ living expenses of the deceased and hence Rs.3,00,000/- x 9 th multiplier.	Rs.27,00,000/-
2.	Loss of consortium to the first respondent.	Rs. 20,000/-
3.	Loss of love and affection to the respondents No.2 to 4	Rs. 80,000/-
4.	Funeral Expenses	Rs. 20,000/-
Total		Rs.28,20,000/-

7. Aggrieved against the said award dated 06.11.2019, the appellant insurance company has filed the present appeal.

8.Submission for the learned Counsel for the appellant:

The learned counsel appearing for the appellant insurance company submits that though the appellant insurance company challenged the whole order, it disputes the quantum only. He disputes the income of the deceased and except the tax return, there is no proof for the same and hence, he prays this Court to allow this appeal.



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9. Submission of the learned Counsel for the Respondents:

Per contra, the learned counsel appearing for the claimants seeks for dismissal of this appeal by disputing the averments made by the appellant insurance company.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the driver of the Innova Car insured with the appellant?

11.2. Whether the compensation granted is in accordance with law?

12. Discussion on the negligence:

It is the case of the claimants that on 14.10.2014 at 6.30 am., the deceased was walking with the first claimant on Trichy to Madurai Fourways Road, Beschi Thottam, near Dindigul PLA Motor Company



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western side and at that time the vehicle bearing registration No.T.N.50-E-2121, Innova Red Colour car belonged to the 5th Respondent herein was coming from East to West side driven by its driven in a highly rash and negligent manner, dashed the deceased, and he sustained severe injuries and died on the spot itself. FIR was also registered against the driver of the Innova car. P.W.1 and connected records particularly Ex.P.1, Ex.P.2 and FIR, Post-mortem certificate would go to show that the said accident occurred due to the rash and negligent driving of the driver of the 5th Respondent. As per Ex.P.5, the age of the deceased Balasubramanian was 56 years on the date of accident. Therefore, the learned Tribunal Judge has correctly held that the rash and negligent driving of the driver of the appellant insurance company is the cause for the accident. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.



13. Discussion on quantum:

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The deceased was B.Sc., (Agriculture) Degree Holder. He was doing coir business in the name and style “M/s.Chenna Coco Pith products” and having agriculture consultancy service and doing agriculture. Registration certificate of coir product was produced under Ex.P.9 and the bank account statement of the said coir business also marked as Ex.P.12. The claimant produced income tax return under Ex.P.4 and Ex.P.10. This Court perused the same. But, the same was not submitted after the accident. Therefore, this Court made overall consideration of Ex.P.9 and Ex.P.12 and fixed the monthly income of the deceased as Rs.25,000/-.

13.1.As per the pan card/Ex.P.5, the deceased's date of birth is 25.05.1959 and hence, his age was 56 years on the date of accident and 9 multiplier was applied and $\frac{1}{4}$ th deduction of personal expenditure as per the judgment of the Hon'ble Supreme Court in the case of ***Smt.Sarala Verma and Others vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC 1 (SC)***. Therefore, the loss of income would be ***Rs.25,000/-X12X3/4X9=Rs.20,25,000/-***



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13.2.As per *pranay sethi case*, the conventional damage was determined under the head of loss of consortium to the wife of the deceased Rs.40,000/- and the loss of love and affection to the remaining claimants at the rate of Rs.40,000/- each and funeral expenses Rs.20,000/- and the loss of estate Rs.10,000/-.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined and the same is reduced as under:-

S. No.	Heads	Amount awarded by the Tribunal	Re-quantified amount by this Court	Status
1.	Loss of income	Rs.27,00,000/-	Rs.20,25,000/-	reduced
2.	Loss of consortium to the first respondent.	Rs. 20,000/-	Rs.40,000/-	enhanced
3.	Loss of love and affection to the respondents No.2 to 4	Rs. 80,000/-	Rs.1,20,000/-	enhanced
4.	Funeral Expenses	Rs. 20,000/-	Rs.20,000/-	Confirmed
5.	Loss of Estate	-	Rs.10,000/-	awarded
Total		Rs.28,20,000/-	Rs.22,15,000/-	Reduced



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15. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

The compensation awarded in M.C.O.P.No.304 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul, dated 06.11.2019, is hereby reduced from Rs.28,20,000/- to Rs.22,15,000/-. The appellant/insurance company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period one month from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount apportioned as stated below:

<i>Claimants</i>	<i>Amounts in Rupees</i>	<i>Entitled of share</i>
1 st Claimant/B.Malliga/Wife of the deceased	Rs.13,29,000/-	60%
2 nd claimant/Nandhini/daughter of the deceased	Rs.3,32,250/-	15%
3 rd Claimant/Harivenkatesh/son of the deceased	Rs.3,32,250/-	15%
4 th Claimant/Rajakumari/mother of the deceased	Rs.2,21,500/-	10%
Total:	Rs.22,15,000/-	100%



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Further, the insurance company is permitted to withdraw the remaining amount. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
23.02.2024

Index: Yes/No
Internet: Yes/No
sm/sbn

To

1. The Motor Accident Claims Tribunal,
Additional District Judge
Dindigul.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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