



C.M.A(MD)No.172 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)No.172 of 2019

and

C.M.P(MD)No.2267 of 2019

The Branch Manager,
New India Assurance Company Limited,
594, T.B.Road,
Obli Towers, R.S.Puram,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.Palaniammal
2.Minor Deepika
3.Pavalakodi
4.Subramaniam
5.Suganthi
6.Sathiya
7.N.Senthilkumar

... Respondents 1 to 6/Petitioners

... 7th Respondent/2nd Respondent

*(Minor 2nd respondent represented by Court Guardian
Mrs.K.R.Shivasankari, Advocate)*



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the fair order and decreetal order dated 10.10.2018 passed in M.C.O.P.No.98 of 2017 by the Motor Accident Claims Tribunal (Additional District Judge), Palani and set aside the same with costs.

For Appellant	: Mr.D.Malaichamy
For R1	: Died
For R2	: Mrs.K.R.Shivasankari (Court Guardian for minor R2)
For R3 - R6	: Mr.M.P.Senthil
For R7	: No Appearance

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the Award dated 10.10.2018 passed in M.C.O.P.No.98 of 2017 by the Motor Accident Claims Tribunal/Additional District Judge, Palani.

2. The 2nd respondent in M.C.O.P.No.98 of 2017 is the appellant herein.



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3. The respondents 1 to 6 herein are petitioners/claimants 1 to 6, who filed the claim petition in M.C.O.P.No.98 of 2017. The 7th respondent herein is the 1st respondent in the claim petition.

4. For the sake of convenience, the parties are arrayed in M.C.O.P.No.98 of 2017 is adopted hereunder.

5. The brief facts of the case:

The deceased Durairajkumar was riding his two wheeler bearing registration number TN 57 Y 9700 along the Ramanathanagar bypass road in Palani - Udumalpet road from south to north on 21.02.2015 morning. At that time, the 1st respondent's bus bearing registration number TN 41 S 5675 driven by its driver in a rash and negligent manner from east to west and dashed against the deceased. Due to impact, the deceased sustained multiple injuries all over the body and died on the spot. At the time of accident, the deceased was working as a driver and was earning Rs.15,000/- p.m. The petitioners being the wife, minor son, parents and sisters of the deceased are depending solely on his income. F.I.R. was



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registered against the driver of the 1st respondent's bus. The offending vehicle was insured with the 2nd respondent. Hence, the petitioners, who are dependants of the deceased Durairajkumar, filed the claim petition seeking compensation of Rs.20,00,000/-.

6. The 2nd respondent/Insurance Company objected that the accident occurred due to rash and negligent driving of the deceased, who suddenly crossed the road. The deceased was not holding a valid driving license. So, the 1st respondent's bus driver was not responsible for the accident and hence, the 2nd respondent/Insurance Company is not liable to pay any compensation. Moreover, the petitioners have not produced any material to prove the income of the deceased and the petitioners/claimants 5 and 6 are sisters who are married and living separately and they are not dependents of the deceased.

7. Before the Tribunal both side adduced oral and documentary evidence. On the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and marked 10 documents as Ex.P.1 to Ex.P.10. On the



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side of the respondents, no witness was examined and no exhibit was marked. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to negligence on the part of the driver of 1st respondent and awarded Rs.23,74,000/- to the petitioners/claimants with interest and cost and directed the 2nd respondent to pay the award amount.

8. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

9. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

10. It is the main contention of the counsel for the appellant/ 2nd respondent Insurance Company that the accident occurred due to rash and negligent riding of the deceased, who was not holding a driving licence and without wearing helmet. Hence, the 2nd respondent is not liable to pay any compensation. Further, the Tribunal has awarded more than the claim



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amount and also has not fixed any contributory negligence on the part of the deceased.

11. Per contra, the learned counsel for the petitioners/claimants has submitted that the 1st respondent's bus driver drove the bus in a rash and negligent manner and dashed against the deceased. F.I.R. was registered against the driver of the bus and charge sheet was also laid against him. The negligence was proved. Hence, the Tribunal correctly appreciated the evidence and awarded compensation as per settled proposition of law.

12. On perusal of records, it is clear that the accident had taken place in a national highway and it is clear that the case was registered against the driver of the 1st respondent's bus and the charge sheet was also laid against him by the police concerned after investigation as seen from Ex.P.1 – F.I.R. and Ex.P.4. There is no contra material produced by the respondents. The 1st respondent's driver has not lodged any police complaint against the deceased as if he rode the two wheeler in a rash and negligent manner. The 1st respondent did not contest the claim petition and remained ex-parte.



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Therefore, the negligence on the part of the driver of the offending bus is evident and proved by the petitioners/claimants. Hence, the Tribunal correctly held that the accident occurred due to rash and negligent driving of the 1st respondent's driver.

13. The next contention raised by the appellant/2nd respondent Insurance Company that the Tribunal has fixed the income of the deceased as Rs.15,000/- on the basis of Ex.P.10 in the absence of examination of the author of the Ex.P.10. It is further contended that the petitioners 3 to 6 being parents and sisters are living separately, so they are not entitled for consortium.

14. It is submitted by the petitioners/claimants' side that the Tribunal has failed to fix future prospects and also the petitioners 3 to 6 are entitled for consortium.

15. On perusal of records, the Tribunal fixed the income of the deceased on the basis of Ex.P.10. Ex.P.10 is said to have been issued by one



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Dr.G.Radhakrishnan as if the deceased was working as a driver to him from 02.05.2012 to 21.02.2015, but he was not examined by the petitioners to prove the authenticity of the Ex.P.10 as rightly contended by the appellant/2nd respondent. However, as per the settled proposition of law in **Sarala Verma** case and also the Division Bench of this Court held in **2019 (1) TNMAC 54** that the notional income of the deceased has to be fixed after applying the inflation index, this Court fixed the notional income of the deceased at Rs.12,000/- p.m. there would be no prejudice on both sides. In view of the settled proposition of law in **Pranay Sethi** case reported in **2017 (2) TNMAC 609 (SC)**, 40% has to be added towards future prospects of the deceased person who has self income or fixed income and who was below 40 years. In this case, the deceased was aged 32 years and there is no dispute in it. So, towards future prospects 40% has to be added on the income of the deceased and the income of the deceased is arrived at $\text{Rs.12,000/-} + 40\% \text{ of Rs.12,000/-} = \text{Rs.16,800/-}$. The multiplier '16' is adopted by the Tribunal is correct one considering the age of the deceased. So, the loss of income of the dependents is $\text{Rs.16,800/-} \times 12 \times 16 = \text{Rs.32,25,600/-}$. Considering the dependency and age of the



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deceased, 1/4 has to be deducted towards personal expenses and hence, 1/4 of Rs.32,25,600/-, Rs.8,06,400/- has to be deducted towards personal expenses.

16. On perusal of the award, the Tribunal awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. There is no dispute on both sides. But, the Tribunal has awarded Rs.40,000/- towards consortium to the 1st petitioner alone. Though the appellant/2nd respondent raised an objection for awarding consortium to petitioners 3 to 6, the petitioners 5 and 6 being sisters of the deceased are not entitled. However, it is a settled proposition that consortium has to be awarded under the heads of spousal consortium, parental consortium and filial consortium. Further, the Tribunal has failed to consider the settled principle as laid down in **Pranay Sethi case of the Hon'ble Supreme Court** reported in **TN 2017 (2) TNMAC 609 (SC)**. It is settled that Rs.40,000/- has to be awarded towards loss of parental consortium, spousal consortium and filial consortium and also there should be an enhancement of 10% on consortium once in every three years. The accident occurred in 2015 and till now i.e.,



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2024 the litigation is challenged. Hence, 10% should be added in awarding compensation towards love and affection. Thereby, the petitioners 1 to 4 are entitled to Rs.44,000/- each towards consortium and love and affection.

17. The next contention raised by the appellant/2nd respondent Insurance Company that the petitioners/claimants claimed compensation of Rs.20,00,000/-, but the Tribunal erred in awarding compensation at Rs.23,74,000/- more than the compensation claimed by them. As per the decision of the Hon'ble Supreme Court in the case of **Nagappan /v/ Gurudayal Singh and others** reported in **2004(2) TNMAC 398 (SC)** the Tribunal can award just compensation under section 168 of the Motor Vehicles Act more than the claim amount. This Court has also in various cases held that just compensation can be awarded more than the claim amount as the Motor Vehicles Act is a beneficial and welfare legislation, relying on the recent decision of the Hon'ble **Supreme Court in Ramla & Ors. /v/ National Insurance Company Limited & Ors.** reported in **(2019) 2 SCC 192**. The argument of the appellant/2nd respondent Insurance Company in this regard is not acceptable one and the same is rejected.



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18. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.98 of 2017 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.16,800/- x 12 x 16) = Rs.32,25,600/- less Rs.8,06,400/- towards personal expenses of deceased	Rs.24,19,200/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of Consortium to the petitioners 1 to 4 being wife, child and parents of the deceased (Rs.44,000/- x 4)	Rs. 1,76,000/-
	Gross Total	Rs.26,25,200/-

19. Therefore, the petitioners 1 to 6/claimants in M.C.O.P.NO.98 of 2017 are entitled to Rs.26,25,200/-. Therefore, to that extent, the compensation awarded by the Tribunal is modified and fixed as Rs.26,25,200/- with interest at 7.5% p.a. and costs.

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No Costs.

(ii) The quantum of compensation awarded by the Tribunal is



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enhanced from Rs.23,74,000/- to Rs.26,25,200/- (Rupees Twenty six lakhs twenty five thousand and two hundred only)

(iii)The first respondent herein, 1st claimant/wife of the deceased, reported died, the 2nd minor petitioner/claimant is entitled to receive a sum of Rs.18,25,200/- and the petitioners 3 and 4 /claimants 3 and 4 being parents of the deceased are entitled to receive a sum of Rs.2,50,000/- each with proportionate interests and costs and the petitioners 5 and 6/claimants 5 and 6 being sisters of the deceased are entitled to Rs.1,50,000/- each with proportionate interest and cost.

(iv) The appellant/2nd respondent is directed to deposit the entire compensation amount if already not deposited, 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 to the credit of M.C.O.P.No.98 of 2017 on the file of the Motor Accident Claims Tribunal/Additional District Court, Palani within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant/2nd respondent, the claimants/respondents 3 to 6 herein are permitted to withdraw their



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entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. The share amount of minor petitioner/ 2nd Respondent herein shall be deposited in any one of the Nationalized Bank till she attains majority. Consequently, connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

24.04.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal (Additional District Judge),
Palani
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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AND
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