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C.M.A(MD)No.226 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.226 of 2022

and

C.M.P.(MD)No.1998 of 2022

M/s.United India Insurance Co. Ltd.,
Branch Office,
II Floor, V Towers, Kattakada Road,
N.M.C.Hospital Junction,
Neyyattinkara,
Thiruvananthapuram District,
Kerala State – 695 121.

...Appellant

Vs.

1.J.Karthikeyan

2.M.Ashoharan

3.Shafi

...Respondents

(Note: As 2nd and 3rd respondents herein remained ex-parte before the Tribunal, notice to them given up)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 23.12.2020 passed in M.C.O.P.No.1543 of 2017 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Tirunelveli.



C.M.A(MD)No.226 of 2022

For Appellant : Mr.B.Rajesh Saravanan
For R1 : Mr.R.J.Karthick
For R2 & R3 : Ex-parte

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Presiding Officer/I Additional District Court), Tirunelveli, in M.C.O.P.No.1543 of 2017, dated 23.12.2020, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the third respondent in M.C.O.P.No.1543 of 2017 on the file of the Motor Accident Claims Tribunal (Presiding Officer/I Additional District Court), Tirunelveli. The first respondent herein is the claimant. He filed the claim petition in M.C.O.P.No.1543 of 2017, claiming a sum of Rs.3,00,00,000/- (Rupees Three Crores only) as compensation for the death of his wife. By the



C.M.A(MD)No.226 of 2022

award, dated 23.12.2020, the Tribunal awarded a sum of Rs.82,69,572/-

(Rupees Eighty Two Lakhs and Sixty Nine Thousand and Five Seventy

Two only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the first respondent, on 07.09.2017 at about 02.00 hours, on the Madurai to Nagercoil N.H.road, near Naranammalpuram, a water tanker lorry bearing Reg.No.KA 01 AA 2585 rammed into the rear side of another lorry bearing Reg.No.TN 28 BY 3169, which was loaded with cylinder, as a result, both the vehicle capsized. On getting information about said accident, the deceased Akila, Sub-Inspector of Police and other police officials came to the spot for clearing the traffic and removing the said vehicles involved in the accident by recovery van. At the time, the Tata Light Goods vehicle bearing Reg.No.TN 75 AC 0354 belonging to the respondents 2 and 3, driven by its driver in a rash and negligent manner in terrific speed and without observing the traffic rules and regulations of the road, came from North to South and crashed into the police personnel, namely, Akila, Shunmugam, Saravanan and



C.M.A(MD)No.226 of 2022

Pattumari. The deceased Akila, sustained grievous injuries on her head and died on spot. The deceased no way contributed to the accident and the accident occurred only due to the rash and negligent driving of the driver of the Tata light goods vehicle. Therefore, the first respondent filed the claim petition, claiming a sum of Rs.3,00,00,000/- (Rupees Three Crores 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 disputed the monthly income and also other aspects and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and 8 documents were marked as Ex.P1 to P8. On the side of the Insurance Company, neither any witness was examined nor any document was marked. On the side of the Court, documents, Ex.X1 to Ex.X6 were marked.



C.M.A(MD)No.226 of 2022

6.Finding of the Tribunal:

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The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and claimant held that the accident occurred only due to the rash and negligent act of the driver of the Tata Lights Goods Vehicle and directed the appellant Insurance Company, to pay a sum of Rs.82,69,572/- (*Rupees Eighty Two Lakhs and Sixty Nine Thousand and Five hundred Seventy Two only*) to the first respondent/claimant as compensation along with 7.5% interest from the date of filing of the claim petition under the heads which are as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.82,09,572/-
2	Loss of consortium	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Transport Expenses	Rs. 5,000/-
Total		Rs.82,69,572/-

7. Aggrieved against the said award dated 23.12.2020 on the negligence aspect, the appellant Insurance Company has filed the present appeal.



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8.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant Insurance Company submits that the Tribunal failed to consider that the accident occurred due to the negligence of the deceased. He also disputes the monthly income of the deceased. The claimant is also working as a Government Servant and hence, deduction of 1/3rd is not in accordance with law and the deceased was unmarried and hence, ½ has to be deducted under the head of personal expenditure. Hence, he prays this Court to allow this appeal.

9. Submission of the learned counsel for the Respondent:

Per contra, the learned counsel appearing for the first respondent / claimant submits that the learned Tribunal Judge only after considering the materials and the oral evidence held that the accident happened only because of the negligence of the driver of the Tata lights goods vehicle. Only as per law laid down by the Hon'ble Supreme Court, the deduction of 1/3rd is fixed and hence, he seeks for dismissal of this appeal by disputing the averments made by the appellant insurance company.



C.M.A(MD)No.226 of 2022

WEB COPY

10. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent 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 Tata lights goods vehicle insured with the appellant?

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

12. Discussion on the negligence:

The independent witnesses examined on the side of the claimants clearly deposed that . on 07.09.2017 at about 02.00 hours, the deceased Sub Inspector of Police, received the information about the accident that had happened in Madurai to Nagercoil N.H.road, near Naranammalpuram, in which one lorry bearing Reg.No.KA 01 AA 2585 rammed into on the rear side of another lorry bearing Reg.No.TN 28 BY 3169, which was loaded with cylinders. Therefore, she and her team went to the spot and involved in the process of recovering the vehicle and



C.M.A(MD)No.226 of 2022

clearing the traffic. At that time, the appellant insured vehicle's driver drove his vehicle in a rash and negligent manner and ploughed into all the police officers involved in the said process. The deceased died and other persons sustained injuries. The said evidence was corroborated by documentary evidence, namely, Ex.P2 and Ex.P3. There was no contra evidence adduced on the side of the insurance company. The driver of the said vehicle has not been examined. Hence, this Court finds no reason to interfere with the finding of the learned Tribunal Judge that the accident happened due to the rash and negligent driving by the driver of the said insured vehicle. 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:

The age of the deceased namely Akila, is fixed as 30 years and was working as Sub-Inspector of Police and was drawing salary of Rs.40,243/- per month. Only as per Ex.X6, pay slip, the salary of the deceased was fixed by the Tribunal. As per the *Sarala Verma case*, the



C.M.A(MD)No.226 of 2022

learned Tribunal Judge has rightly fixed 50% for the future prospects also. Insofar as the submission of the learned counsel appearing for the insurance company that deduction of 1/2 to be made for her personal expenditure cannot be accepted for the reason that the claimant is the husband of the deceased and as per the ratio in the case of *National Insurance Co. Ltd. v. Pranay Sethi* reported in *2017(6) SCC 680* in the case of the bachelor alone deduction of personal expenditure $\frac{1}{2}$ has to be made and the same was clearly discussed in paragraph No.37. Therefore, the learned Tribunal Judge has correctly deducted $\frac{1}{3}$ towards her personal expenditure and applied the multiplier as 17 for calculating the loss of income which are as follows:-

13.1.Calculation of the amount:

$$40243 + 20122 (50\%) = \text{Rs.}60,364.50/- \\ (\text{rounded as Rs.}60365/-)$$

$$60365 - 20122 (1/3) = \text{Rs.}40,243/-$$

$$40243 \times 12 \times 17 = \text{Rs.}82,09,572/-$$

$$\text{Loss of Income} = \text{Rs.}82,09,572/-$$



C.M.A(MD)No.226 of 2022

WEB COPY

13.2. The learned Tribunal Judge also awarded Rs.40,000/- for the Loss of consortium and Rs.15,000/- for the Funeral expenses and Rs.5,000/- for the Transport Expenses to the claimant.

13.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimant under various heads are enumerated hereunder:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of Income	Rs.82,09,572/-
2	Loss of consortium	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Transport Expenses	Rs. 5,000/-
Total		Rs.82,69,572/-

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant Insurance Company.



C.M.A(MD)No.226 of 2022

WEB COPY

15. Accordingly, this Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.1543 of 2017 on the file of the Motor Accident Claims Tribunal (Presiding Officer/I Additional District Court), Tirunelveli, dated 23.12.2020 is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
21.03.2024

Index :Yes/No
Internet :Yes/No
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C.M.A(MD)No.226 of 2022

To

WEB COPY

- 1.The Motor Accident Claims Tribunal
(Presiding Officer/ I Additional District Court),
Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.226 of 2022

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and
K.K. RAMAKRISHNAN, J.

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