



C.M.A(MD)No.497 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

AND

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.497 of 2021

and

C.M.P(MD)No.4357 of 2021

Reliance General Insurance Company Ltd.,
Through its Branch Manager,
No.19, Reliance Centre,
Walchand Hirachan Marg,
Ballard Estate, Mumbai 400 001.

... Appellant

Vs.

1.Subha
2.Minor Kaviya Lakshmi
3.Minor Nithiya Sree
*(Minor respondents through their mother, next guardian
and guardian, the first respondent Subha herein)*

4.Senthamarai

5.Sai Vishwas Plas Tek Private Limited
Through its Manager,
Office Aat SF No.288/6, Kottampatty,
Pakkothipalayam.

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 10.12.2019 passed in MCOP No.1585 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.V.Sasikumar for R1 to R4

JUDGMENT

[Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN, J.]

The Insurance Company has come up with this appeal assailing the award of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli made in MCOP No.1585 of 2015, dated 10.12.2019.



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2. **Brief facts of the case:** This is a case of fatal accident. The case of the claimants is that on 23.04.2015 the deceased namely Sundarraaj, was driving a TATA ACE bearing Reg.No.TN-72-AY-1405 from Madurai to Tisayanvilai. At about 4.30 a.m, he parked his vehicle and sleeping inside the vehicle on the service road near Gopalapuram Vilakku on the the Tirunelveli – Kovilpatti National Highways after switching on the parking lamp and indicator lamp. At that time, an Eicher lorry bearing Reg.No.TN-41-AK-4783 belonging to the fifth respondent insured with the appellant came from behind in a rash and negligent manner and hit against the TATA ACE and gone further and dashed against E.B pole. Due to the impact, the deceased was trapped inside the TATA ACE and sustained serious injuries and died on the spot. A criminal case has been registered against the driver of the offending lorry. The first claimant is the wife and the claimants 2 and 3 are the children and the 4th claimant is mother of the deceased. The said offending lorry is insured with the appellant Insurance Company. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the lorry, the claimants filed a petition, claiming compensation of Rs.20,00,000/-.

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3. Resisting the claim, the appellant Insurance Company filed their counter, wherein, they have stated that the deceased alone is responsible for the accident and he had committed violation of the regulations of the road by parking the vehicle in the entrance road. Hence, the respondents/claimants cannot claim any compensation. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, P.Ws.1 to 4 were examined and Exs.P1 to Ex.P.12 were marked. On the side of the appellant/Insurance Company, R.W.1, one Bangaru Vignesh was examined and Ex.R1 was marked.

5. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the driver of Eicher Lorry owned by the 5th respondent and the 5th respondent vehicle has been insured with the appellant. Hence the appellant is liable to pay the compensation to the claimants and awarded a compensation of Rs.19,97,800/- to the claimants under the heads which are as follows:-



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Sl. No.	Heads	Calculation	Amount in Rupees
1	Salary	Rs.9,000/-	
2	Future Prospects at 40%	Rs.9,000/- (+) Rs.3,600/- = Rs.12,600/-	Rs.19,27,800/-
3	1/4 th of the income (ii) deducted as personal expenses of the deceased.	Rs.12,600/- (-)Rs.3,150/- = Rs.9,450/-	
4	Compensation after multiplier of 17 is applied.	Rs.9,450/- X 12 X 17= Rs.19,27,800/-	
	Loss of Income		
5	Loss of Consortium to the parents		Rs. 40,000/-
6	Loss of Estate		Rs. 15,000/-
7	Funeral Expenses		Rs. 15,000/-
Total			Rs.19,97,800/-

Assailing the award, the appellant Insurance Company has filed the present appeal.

6. Submission of the learned counsel for the appellant:

The learned counsel appearing for the insurance company submitted that there is no eyewitness in this case, however, the Tribunal has fixed the negligence on the part of the driver of the lorry without any valid document. According to them, the award is on the higher side and it has be reduced.



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7. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 4/claimants and perused the materials available on record.

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

8.1.Whether the negligence is correctly fixed on the driver of the Eicher lorry insured with the appellant?

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

9. Discussion on the negligence:

On 23.04.2015, the deceased, namely, Sundarraaj, was driving a TATA ACE bearing Reg.No.TN-72-AY-1405 from Madurai to Tisayanvilai. At about 04.30 am., he parked his vehicle and was sleeping inside the vehicle on the service road near Gopalapuam Vilakku on the Tirunelveli-Kovilpatti National Highways after switching on the parking lamp and indicator lamp. At that time, an Eicher lorry



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bearing Reg.No.TN-41-AK-4783 belonging to the fifth respondent insured with the appellant come from behind in a rash and negligent manner and hit against the TATA ACE and gone further and dashed against E.B.pole and consequently, the deceased was trapped inside the TATA ACE and sustained serious injuries and died on the spot. A criminal case has been registered against the driver of the Eicher lorry. The driver of the Eicher lorry has not been examined to dispute the evidence of the eye witness on the side of the claimants. The investigating agency also filed the final report against the driver of the Eicher lorry. Hence, we are of the view that the negligence fixed on the driver of the lorry by the Tribunal is correct. Hence, 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 Eicher Lorry of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.

10. Discussion on quantum:

The deceased was a Driver cum owner of the TATA Ace and earning Rs.15,000/- per month and the claimants have not produced any document to prove the income of the deceased. However, the Tribunal, by following the



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Judgment of this Court in the case of ***HDFC ERGO General Insurance company Limited, vs. Mathvannan and others*** reported in ***2019(1) TN MAC 366 (DB)***, and by considering Ex.P.5 Bank Pass Book of the deceased, has fixed the monthly notional income of the deceased as Rs.9,000/-. We are of the view that the monthly income fixed by the Tribunal is reasonable one.

10.1. Since the deceased had worked in an unorganized sector or as Labourer, the Tribunal his age is taken as 30 years at the time of death, adding 40% of the future prospects and deduction $\frac{1}{4}$ of personal expenses of the monthly income, since there are four dependents. Further, the Tribunal, by following the Judgment of the Honourable Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC)*** and in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC)***, has applied the correct multiplier (17) and the customary quantum of compensation under remaining heads were fixed by the Tribunal by following the above said Judgments.



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10.2.Calculation of the amount:

Rs.9,000/- + Rs.3,600/- (40%) = Rs. 12,600/-

Rs.12,600/- (-) Rs.3,150/- (1/4) = Rs. 9,450/-

Rs.9,450/- X 12 X 17 = Rs.19,27,800/-

Loss of Income = Rs.19,27,800/-

<i>Heads</i>	<i>Amount in Rupees</i>
Loss of Consortium to the parents.	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-

11.Conclusion:

For the foregoing reasons, the Tribunal awarded the compensation Rs.19,97,800/- to the claimants under various heads which are as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Calculation</i>	<i>Amount awarded by the Tribunal</i>
1	Salary	Rs.9,000/-	
2	Future Prospects at 40%	Rs.9,000/- (+) Rs.3,600/- = Rs.12,600/-	
3	1/4 th of the income (ii) deducted as personal expenses of the deceased.	Rs.12,600/- (-)Rs.3,150/- = Rs.9,450/-	
4	Compensation after multiplier of 17 is applied.	Rs.9,450/- X 12 X 17= Rs.19,27,800/-	
	Loss of Income		Rs.19,27,800/-



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5	Loss of Consortium to the parents	Rs. 40,000/-
6	Loss of Estate	Rs. 15,000/-
7	Funeral Expenses	Rs. 15,000/-
Total		Rs.19,97,800/-

Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. This appeal has no merit. Hence, this appeal is liable to be dismissed.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The compensation awarded in M.C.O.P.No.1585 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli, dated 10.12.2019, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants in any



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one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of majors and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
29.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
skn/sbn

To

- 1.The Motor Accident Claims Tribunal,
Special Sub Judge, Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
C.M.A(MD)No.497 of 2021
and
C.M.P(MD)No.4357 of 2021

Dated: 29.02.2024