



**C.M.A(MD)No.494 of 2020**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 28.02.2024**

**CORAM:**

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

**and**

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

**C.M.A(MD)No.494 of 2020**

**and**

**C.M.P.(MD)No.5398 of 2020**

The Manager,  
Bajaj Allianz General Insurance Company Ltd.,  
Legal Office,  
184 / 25, K.P.S. Shopping Arcade,  
Bypass Road,  
Madurai – 10.

...Appellant

**Vs.**

1.Dr.Shanthi

2.Sri Nandini

3.Minor Ushavarshini

*(R3 is declared as major and her guardianship of her mother(R1) is discharged vide Court Order dated 22.06.2021 made in C.M.P. (MD)Nos.3575 & 3577 of 2021 in CMA(MD).No.494/2020)*

4.Sankarammai

5.K.Sudhakaran

6.AR.Thiruppathi



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7.The Manager,  
The New India Assurance Company Ltd.,  
No.3, Main Road,  
Dindigul.

8.The Manager,  
National Insurance Company Ltd.,  
Dindigul.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 19.10.2019 passed in M.C.O.P.No.1088 of 2012 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Dindigul and allow the appeal.

For Appellant : Ms.K.R.Shivashankari

For R1 to R4 : Mr.AN.Ramanathan

For R5 & R6 : No appearance

For R7 : Mr.G.Prabhu Rajadurai

For R8 : Mr.A.S.Mathialagan



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## JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal cum Principal District Court, Dindigul in M.C.O.P.No. 1088 of 2012, dated 19.10.2019, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.1088 of 2012 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Dindigul. The respondents 1 to 4 herein are the claimants. They filed the claim petition in M.C.O.P.No. 1088 of 2012, claiming a sum of Rs.2,50,00,000/- (*Rupees Two Crores and Fifty Lakhs only*) as compensation for the death of the husband of the first respondent. By the award, dated 19.10.2019, the Tribunal awarded a sum of Rs.2,00,80,840/- (*Rupees Two Crores and Eighty thousand and Eight Hundred and Forty 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 respondents 1 to 4, on 02.06.2011 when the deceased namely Dr.Saravanan, was travelling in Hynundai Santro Car bearing Reg.No.TN 01 R 7202 from Dindigul to Nagercoil, Hyundai Spritz I-20 Car bearing Reg.No.TN 75 D 3992 belonging to the fifth respondent came in a rash and negligent manner and dashed against the Hyundai Santro Car, due to which, he sustained severe injuries and succumbed to the injuries. Immediately, he was taken to the Government Hospital, Virudhunagar and doctor's found he was dead. The accident occurred only due to the careless, rash and negligent driving of both the drivers. Therefore, the respondents 1 to 4 filed the claim petition, claiming a sum of Rs.2,50,00,000/- (*Rupees Two Crores and Fifty Lakhs only*) as compensation.

4.The fifth respondent herein filed the counter statement and denied all the averments made in the claim petition. The fifth respondent contended that filing of charge sheet against the driver of the respondent's vehicle bearing Reg.No.TN 01 R 7202 is false and the claimants are not entitled to any relief. Hence, he prayed for dismissal of the claim



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petition.

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5.The appellant insurance company herein filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the accident occurred due to the negligence on the part of the driver of the sixth respondent's car. Hence, he prayed for dismissal of the claim petition.

6.The seventh respondent insurance company herein also filed the counter statement and denied all the averments made in the claim petition. The seventh respondent insurance company contended that the accident occurred due to the rash and negligent driving of the first respondent's driver. Hence, he prayed for dismissal of the claim petition.

7.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 42 documents were marked as Ex.P1 to P42. On the side of the insurance companies, R.W.1 to R.W.3 were examined and 10 documents were marked as Ex.R1 to R10. On the side of the Court, documents, Ex.C1 and Ex.C2 were marked.



**WEB COPY 8.Finding of the Tribunal:**

The Tribunal, considering the pleadings, oral and documentary evidence, especially the evidence of P.W.4, independent witness and the investigation report prepared by the investigation officer and arguments of the counsel for the appellant and claimants, applied the head on collusion theory and fixed the entire negligence upon the appellant insurance company and the sixth respondent to the extent of 50% each, to pay a sum of Rs.2,00,80,840/- (*Rupees Two Crores and Eighty thousand and Eight Hundred and Forty only*) as compensation along with 7.5% interest from the date of filing of the claim petition to be paid by the appellant insurance company and the sixth respondent. The Tribunal, awarded the compensation of Rs.2,00,80,840/- to the claimants under the various heads enumerated hereunder:-

| <b><i>Sl.No.</i></b> | <b><i>Heads</i></b>        | <b><i>Amount in Rupees</i></b> |
|----------------------|----------------------------|--------------------------------|
| 1                    | Loss of dependency         | 1,99,50,840/-                  |
| 2                    | Loss of Estate             | 15,000/-                       |
| 3                    | Loss of consortium         | 40,000/-                       |
| 4                    | Loss of love and affection | 50,000/-                       |
| 5                    | Funeral Expenses           | 15,000/-                       |



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|              |                    |                         |
|--------------|--------------------|-------------------------|
| 6            | Transport Expenses | 10,000/-                |
| <b>Total</b> |                    | <b>Rs.2,00,80,840/-</b> |

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9. Aggrieved against the said award dated 19.10.2019, the appellant Insurance Company has filed the present appeal.

**10.Submission of the learned counsel for the appellant:**

The learned counsel appearing for the appellant insurance company states that there was road work going on and the deceased drove the vehicle in a wrong way and hence, he himself is responsible for the accident and hence, negligence is to be fixed on the deceased Doctor. It is revealed from the letter dated 22.09.2015, Ex.R6 and the application under RTI Act, 2005, Ex.R4 that the work was completed on 07.08.1999 itself. Hence, 50% of the negligence fixed upon the car insured with the appellant insurance company is not legally sustainable.

**11.Submission of the learned counsel for the Respondents:-**

Per contra, the learned counsel appearing for the respondents 1 to 4 submits that there was sufficient evidence to show that there was a



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diversion on account of the road repair. Hence, he seeks for confirmation of the award.

12. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and also perused all the materials available on record.

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

**13.1.** Whether the learned tribunal judge correctly fixed the negligence in the ratio of 50%:50% upon the both vehicle considering the head on collusion?

**13.2.** Whether the compensation granted is in accordance with law?

**14. Discussion on the negligence:**

PW4 independent witness was examined. He deposed that on the date of the accident, road extension work was being carried on the Virudhunagar District sport stadium area in the Western side of the two lane road and hence all the vehicles coming from North – South were diverted to use the Eastern side of the two lane road.



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**14.1.** It is the case of the claimants that on 02.06.2011 when the deceased namely Dr.Saravanan, was travelling in *Hyundai Santro Car* bearing Reg.No.TN 01 R 7202 from Dindigul to Nagercoil, *Hyundai Spritz I-20 Car* bearing Reg.No.TN 75 D 3992 belonging to the fifth respondent came in a rash and negligent manner and dashed against the Hyundai Santro Car, due to which, he sustained severe injuries and succumbed to the injuries. Immediately, he was taken to the Government Hospital, Virudhunagar and the doctors found he was dead.

**14.2.** The learned counsel for the appellant argued that from Ex.R4 to Ex.R7, it can be inferred that there was no laying of road near Virudhunagar Sport's Stadium as alleged by the claimant and PW.4. It is clear from the evidence of P.W.4, independent witness, that on the date of accident, road extention work was being carried on the Virudhunagar District Sport's Statium area. The said witness reconfirmed that stand in the cross examination. RW2-Senior Assistant of 7<sup>th</sup> respondent deposed that as per the investigation report Charge sheet was prepared against Hyundai I 20 car driver. The Police authority in his final report stated that



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road work was carried on the eastern side of railway bridge near Virudhunagar District Sport's Stadium. Hence, the traffic was diverted.

Unfortunately, the diversion board was damaged. From the evidence of PW4 and the final report, the Tribunal can infer that the road repair work was carried on the fateful day. Therefore, the contention of the appellant that no repair work was going on as alleged by the claimant and 7<sup>th</sup> respondent is not sustainable. Since the repair work was going on, santro car was coming on a diversion direction believing that he was travelling in correct direction. But, Hyundai I20 car which was travelling in correct direction was taken by surprise when Santro car suddenly emerged in front. Nevertheless, it is a four lane road. PW3 could have slowed down or swerved to his left. Therefore, the accident occurred due to rash and negligence of both Hyundai I 20 car and Santro Car drivers. Therefore in the light of the decision referred in **2008 ACJ page 1165**, the Tribunal infers that the accident occurred due to rash and negligence of Santro car driver and Hyundari I 20 car, equally. Hence negligence of both drivers are 50:50.



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**14.3.** Hence, the learned Trial Judge, by considering all the aspects, on perusal of PW1 to PW4 and RW1 to RW3 evidence, rightly came to the conclusion that the accident occurred only due to the rash and negligent act of the 5<sup>th</sup> and 6<sup>th</sup> respondent's drivers 50:50. Therefore, 7<sup>th</sup> and 8<sup>th</sup> respondents are exonerated.

**14.4.** Hence, this Court does not find any reason to interfere with the award passed by the Tribunal. Therefore, the first point is answered accordingly.

**15. Discussion on quantum in C.M.A.No. 494 of 2020:**

The deceased namely Dr.Saravanan, was aged about 44 years at the time of accident and the deceased was working as Associate Professor and also Head of Computer Science and I.T. Department in Mazoon College, Sultanate of Oman and earned a sum of 1560 OMR = Rs. 1,98,120/- per month. The Managing Director issued a pay roll that he draws at R.O.1,560/- per month. On verification of OMR to INR chart during June 2011, it is found that the value of **1 OMR is equal to Rs. 116/-**. Therefore, OMR 1560 (1560X116) = Rs.1,80,960/- per month.

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Hence, the Tribunal fixed the monthly income of the deceased as Rs. 1,80,960/-. Hence, future prospects 25% is added and there are four dependants on the date of accident. Hence 1/4<sup>th</sup> is deducted towards personal expenses of the deceased. Since, the age of the deceased was 44 years at the time of accident, considering the age, the multiplier is 14 as per the guidelines of 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)***.

**15.1. Calculation of the amount:**

- (i) monthly income of the deceased = Rs.1,80,960/-
- (ii) 25% future prospects  
(Rs.1,80,960/- + Rs.45,240/-) = Rs.2,26,200/-
- (iii) Annual income assessed  
(Rs.2,26,200/- X 12) = Rs.27,14,400/-
- (iv) **Less:** Income tax 30%  
[Rs.27,14,400/- (-) Rs.8,14,320/-] = Rs.19,00,080/-
- (v) **Less:** 1/4 personal expenses  
[Rs.19,00,080/- (-) Rs.4,75,020/-] = Rs.14,25,060/-
- (vi) multiplier 14  
(Rs.14,25,060/- X 14 ) = Rs.1,99,50,840/-
- (vii) **Loss of dependency** = **Rs.1,99,50,840/-**



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**15.2.** The non pecuniary damages is calculated as follows:-

| <i><b>Sl.No</b></i> | <i><b>Heads</b></i>        | <i><b>Amount in Rupees</b></i> |
|---------------------|----------------------------|--------------------------------|
| 1                   | Loss of Estate             | 15,000/-                       |
| 2                   | Loss of consortium         | 40,000/-                       |
| 3                   | Loss of love and affection | 50,000/-                       |
| 4                   | Funeral Expenses           | 15,000/-                       |
| 5                   | Transport Expenses         | 10,000/-                       |

**15.3.** Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. Therefore, the second point is answered accordingly.

**16.Conclusion:**

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

| <i><b>Sl.No.</b></i> | <i><b>Heads</b></i>        | <i><b>Amount awarded by the Tribunal (in Rupees)</b></i> |
|----------------------|----------------------------|----------------------------------------------------------|
| 1                    | Loss of dependency         | 1,99,50,840/-                                            |
| 2                    | Loss of Estate             | 15,000/-                                                 |
| 3                    | Loss of consortium         | 40,000/-                                                 |
| 4                    | Loss of love and affection | 50,000/-                                                 |



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|              |                    |                         |
|--------------|--------------------|-------------------------|
| 5            | Funeral Expenses   | 15,000/-                |
| 6            | Transport Expenses | 10,000/-                |
| <b>Total</b> |                    | <b>Rs.2,00,80,840/-</b> |

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

**17. Discussion on quantum in C.M.A.No. 495 of 2020:-**

The injured claimant sustained the following injuries :-

He suffered dislocation of left wrist joint,

2. Chest injury – R Pneumothorax, Fracture 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> ribs (r)side and fracture of Manubrium and body of sternum.

3.Spinal injury – Compression fracture L5 Vertebra.

17.1. The medical board also assessed permanent disability at 19% and the disability certificate has been marked as Ex.C2. He has undergone multiple surgeries and he was doing agricultural activities before the accident and taking into consideration the said fact the learned tribunal judge awarded Rs.1,09,125/- as total compensation as stated below:-

17.2. This court perused the records and also the evidence. Considering the nature of the injuries sustained under the treatment taken



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and the permanent disability of 19%, this court finds no infirmity in the order of the Learned Tribunal Judge in awarding the Rs.1,09,125/-.

Therefore the C.M.A.No. 495 of 2020 is liable to be dismissed.

17.3. Accordingly the Civil miscellaneous appeal No. 495 of 2020 is dismissed and the claimant is entitled to withdraw the entire amount along with the acquired interest.

**18.** Accordingly, this Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.1088 of 2012, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Dindigul dated 19.10.2019 is hereby confirmed.

**18.1.** The appellant Insurance Company and the sixth respondent are directed to deposit the award amount with proportionate 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, if any already withdrawn, by making necessary application before the Tribunal.



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**18.2.**The Tribunal shall deposit the shares of the minor claimant in a Fixed Deposit under the cumulative deposit scheme, in any one of the Nationalized Banks, till they attain majority. Herein, the minor claimant/ 3<sup>rd</sup> respondent is declared as major, hence, she is permitted to withdraw her share. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.,) (K.K.R.K.J.,)**  
**28.02.2024**  
(1/2)

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

**To**

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



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**V.BHAVANI SUBBAROYAN, J.**  
**and**  
**K.K. RAMAKRISHNAN, J.**

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and  
C.M.P.(MD)No.5398 of 2020  
(1/2)

Dated: 28.02.2024