



C.M.A. (MD) No. 602 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2024

Pronounced on : 18.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.602 of 2020

The Oriental Insurance Company Limited,
Pudukkottai its Manager,
(Policy No.454901/31/2016/3886)
Sathiyamoorthi Salai,
Pudukkottai District.

...Appellant

Vs.

1. Kaliammal (Died)

2. Senthilkumar

3. Meyyar

4. Niroja

...Respondents

(2nd respondent remained exparte before the lower court)

(Respondents 3 and 4 are brought on record as LR's of the deceased 1st respondent vide Court order dated 13.10.2023 made in CMP(MD)Nos.13978, 13979 and 13981 of 2023 in CMA(MD)No.602 of 2020)



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment made in M.C.O.P.No.67 of 2017 dated 09.01.2020 on the file of the Motor Accidents Claims Tribunal cum Sessions Judge (Full Additional Charge), Mahila Court, Pudukkottai.

For Appellant : Mr.C.Karthik
For R2 : No appearance
For R3 & R4 : Mr.R.Balakrishnan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.67 of 2017 dated 09.01.2020 on the file of the Motor Accident Claims Tribunal/Mahila Court, Pudukkottai.

2. The appellant/insurer, who was mulcted with liability to pay compensation of Rs.12,54,000/- (Rupees Twelve Lakhs and Fifty Four Thousand only) with interest and costs to the first respondent/claimant for the death of Palanisamy, consequent to an accident occurred on 13.04.2016, challenged the liability and also the quantum of compensation awarded at, by the Tribunal.



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3. Pending appeal, the first respondent/sole claimant died and her two daughters got themselves impleaded as respondents 3 and 4 in the above appeal.

4. The case of the claimant is that on 13.04.2016 at about 5.30 p.m., when the deceased was riding a two wheeler splendor plus bearing Registration No.TN-49-AZ-8780, in the Mimisal road at Avudaiyarkovil near Karuppur bus stop a cyclist, who came in the opposite direction towards north, rode his cycle in a negligent manner and came towards the two wheeler of the deceased, that the deceased, in order to avoid dashing against the cyclist, slow down his two wheeler and at that time, a lorry bearing Registration No.TN-45-Z-2065 came in the opposite direction on the right side of the road in a rash and negligent manner and its mud guard hit against the deceased and due to that impact, the deceased has fallen down and sustained serious injuries and died on the spot and that the accident was occurred only due to the rash and negligent driving of the lorry driver.

5. It is the further case of the claimant that the deceased is the son of the claimant, that the deceased was aged 25 years at the time of accident



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and that he was doing agricultural coolie work and was earning Rs.15,000/- per month.

6. The defence of the appellant/insurer is that the accident was occurred only due to the rash and negligent riding of the deceased-two wheeler rider, that there is no rashness or negligence on the part of the lorry driver, that since the deceased was responsible for the accident, FIR was registered against him and the concerned police has also filed a charge sheet against the deceased, that since the driver of the lorry is not at fault, the appellant/insurer is not liable for the claim and that therefore, the claim petition is liable to be dismissed.

7. During trial, the claimant has examined herself as P.W.1 and two other witnesses alleged to be the occurrence witnesses as P.W.2 and P.W.3 (P.W.1 and P.W.2 are shown in the appendix to the impugned judgment) and exhibited 10 documents as Ex.P.1 to Ex.P.10 (Ex.P.10 not mentioned in the list of documents). The second respondent/first respondent had remained *ex parte*. The appellant/insurer has summoned and examined the Sub Inspector of Police as R.W.1 and exhibited the copy of the rough



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sketch through R.W.1 as Ex.X.1 (wrongly mentioned as Ex.R.1 in the impugned judgment).

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 09.01.2020 holding that the lorry driver was responsible for the accident and consequently mulcted liability on the appellant/insurer and directed them to pay the compensation of Rs.12,54,000/- with interest and costs. Aggrieved by the impugned order, the insurer has preferred the present appeal.

9. The main contention of the appellant/insurer is that the deceased drove his two wheeler bearing Registration No.TN-49-AZ-8780 in a rash and negligent manner and dashed against the cyclist and fell down before the lorry and invited the accident, that the lorry driver is not at fault and that since the deceased is the tortfeasor, the claimant cannot claim compensation.

10. It is pertinent to note that the accident and the involvement of the three vehicles viz., two wheeler bearing Registration No.TN-49-



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AZ-8780 driven by the deceased, lorry bearing Registration No.TN-45-Z-2065 and bicycle are not in dispute. The only dispute is as to who is responsible for the accident.

11. According to the claimant, the deceased, while proceeding from north to south on the left side of the Mimisal road, a cyclist came in the opposite direction from south to north in a negligent manner and attempted to dash against the two wheeler and hence, the deceased, in order to avert dashing against the cyclist, had slow down his two wheeler but at that time mud guard of the lorry bearing Registration No.TN-45-Z-2065, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and caused the accident. As rightly pointed out by the learned counsel appearing for the appellant, In the FIR, it has been specifically stated that the deceased alone had dashed against the cyclist and losing balance fell down before the lorry and that back wheel of the lorry ran over the deceased. It is also not in dispute that the jurisdictional police, after completing the investigation, has filed a final report holding that the two wheeler rider Palanisamy was responsible for the accident and that since he died in the accident, charge has abated.



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No doubt, as rightly contended by the learned counsel appearing for the respondents 3 and 4, filing of the charge sheet and the opinion formed by the investigating officer and also the finding of the criminal Court with regard to the mode of accident is not binding on the Tribunal and the Tribunal is duty bound to consider and decide as to who is responsible for the accident, on the basis of the evidence available before it.

12. In the present case, the claimant has examined two witnesses alleged to be occurrence witnesses. P.W.2 and P.W.3, in their chief examination affidavit, would reiterate the version as stated in the claim petition. But in cross-examination, they would say that the police has examined them with regard to the accident, but they were not added as witnesses in the criminal case. P.W.2, in his cross-examination, would say that the accident was occurred in the Mimisal road, that the occurrence road is a north south road and it separates towards east, that the deceased was proceeding towards Avudaiyar temple at the time of accident and that the deceased belonged to his locality. P.W.2 would further say that the cyclist was proceeding before the deceased and the deceased had not dashed against the cyclist, but P.W.3, in his cross-examination, would say



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that the deceased, after hitting against the cyclist, has fallen down and at that time, the lorry ran over the deceased Palanisamy. Both P.W.2 and P.W.3 would say that they have not preferred any complaint and they were not aware as to who had lodged the complaint. But the fact remains that the complaint was lodged by one Sannasi, relative of the deceased Palanisamy.

13. The appellant/insurer has examined the Sub Inspector of Police attached to Avudaiyar police station as R.W.1 and he is not the investigating officer of the case on hand, but deposed on the basis of the records available. R.W.1 would specifically say that the occurrence road is a east west road and would specifically deny the version of P.W.2 and P.W.3 that it is a north south road. R.W.1 has produced the copy of the rough sketch under Ex.X.1 prepared during investigation and wherein also, it has been shown that the occurrence road is a east west road and the accident was occurred on the north of central portion of the east west road.

14. No doubt, as rightly contended by the learned counsel appearing for the respondents 3 and 4, the appellant/insurer has not chosen to



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examine the lorry driver, who is the competent witness to depose about the mode of accident. Except the present Sub Inspector of Police, who deposed on the basis of the records available, the appellant/insurer has not chosen to examine the investigating officer of the said case or any other witness, who had allegedly witnessed the occurrence.

15. The Tribunal, taking note of the evidence of P.W.2 and P.W.3, by observing that the claimant has discharged her initial burden of proof and that since the insurer has not produced any evidence to discharge their burden of proof in proving the mode of accident, has come to a decision that the accident was occurred only due to the rash and negligent driving of the lorry driver.

16. As rightly contended by the learned counsel appearing for the appellant, the claimant has not offered any valid reason or explanation for not examining their close relative Sannasi, who had witnessed the occurrence and lodged the complaint before the police, on the basis of which, FIR was laid and investigation was proceeded and that they have also not chosen to examine the cyclist, who was also injured in the accident.



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17. As already pointed out, as per the police records, the accident was occurred in east west road. Even according to the claimant, the deceased was proceeding towards Avudaiyarkovil i.e., from east to west and whereas the lorry was coming from Avudaiyarkovil to Mimisal i.e., from west to east and the accident was occurred on the north of the middle portion. The claimant, except P.W.2 and P.W.3, has not produced evidence that the accident was occurred only on the north south road and not as suggested by the defacto complainant and jurisdictional police. As rightly contended by the learned counsel appearing for the appellant, even assuming for arguments sake that the two wheeler rider, in order to avoid dashing against the cyclist, has slow down the vehicle, there is absolutely no chance or possibility for the lorry to dash against the two wheeler rider. R.W.1 would say that though the occurrence road is a east west road, it came as north south and turned towards east west and thereafter proceeded as north south. If that be the lie of the road, then the lorry driver, if driven the lorry carefully, would have averted the accident. Considering the entire evidence available on record, this Court is of the view that both lorry driver and the deceased are responsible for the accident and the same is fixed at 50% each.



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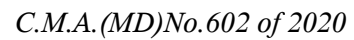
18. Now turning to the compensation, it is the specific case of the claimant that her son was aged 25 years at the time of accident and was doing agricultural coolie work and was getting Rs.15,000/- per month. Admittedly, the claimant has not produced any document to prove the age and income of the deceased. The Tribunal, taking note of the postmortem certificate under Ex.P.10, has rightly fixed the age of the deceased at 25 years on the date of accident and the same was not disputed by the other side specifically. The Tribunal, taking note of the judgment of this Court reported in **2018 (2) TNMAC 417**, wherein, for the death of an agricultural coolie, who was aged 55 years, the notional income was fixed at 7,000/-, has fixed the monthly income of the deceased at Rs.7,000/-. As rightly contended by the learned counsel appearing for the respondents 3 and 4, in the present case, the deceased was aged only 25 years and the accident was occurred in 2016. The Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TN MAC 459** has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and that the Hon'ble Division Bench of this Court in ***Andal and others Vs. Avinav Kannan and another*** reported in **2019 1 TN MAC 54 (DB)**, by taking into



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the amount fixed by the Hon'ble Supreme Court in ***Syed Sadiq's*** case at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above index, the cost of inflation index for the year 2007-2008 is 129 and for the year 2015-2016 will be 254. Hence, the notional income of the deceased would be Rs.12,798/- rounded off to Rs.12,800/-. Hence, this Court fixes the monthly income of the deceased at Rs.12,800/-.

19. The Tribunal, by referring the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, by observing that the deceased is decided as agriculturist and hence, by considering the same as self employment, has added 50% of the income towards future prospects. But as per the ***Pranay Sethi's*** case, if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. Hence, 40% of the income is to be added towards future prospects and after such addition, the monthly income would come to Rs.17,920/- {Rs.12,800/- + Rs.5,120/- (40% of the income)}. The Tribunal, taking note of the fact that



20. The Tribunal, by relying on the judgment of the Hon'ble Supreme Court in *Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others* reported in *(2018) 18 SCC 130*, has rightly awarded Rs.40,000/- towards loss of filial consortium, but also granted Rs.50,000/- towards loss of love and affection. Recently, the Hon'ble Apex Court in *The New India Assurance Company Ltd. Vs. Smt.Somwati and others* has specifically observed that no amount should be awarded under the separate head of loss of love and affection.

21. The Tribunal, as per the judgment in ***Pranay Sethi's*** case, has rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss



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of estate under the conventional heads. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	11,34,000	19,35,360	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Love and Affection	50,000	Nil	Nil
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Loss of estate	15,000	15,000	Confirmed
	Total	12,54,000	20,05,360	Enhanced by Rs.7,51,360/-

22. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020) wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and



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order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

23. Since the negligence on the part of the deceased is fixed at 50%, the respondents 3 and 4 are entitled to get 50% of the compensation amount i.e., Rs.10,02,680/- (Rupees Ten Lakhs Two Thousand Six Hundred and Eighty only) with interest at 7.5% per annum from the insurer.



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24. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

25. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,54,000/- (Rupees Twelve Lakhs and Fifty Four Thousand only) is hereby reduced to **Rs.10,02,680/- (Rupees Ten Lakhs Two Thousand Six Hundred and Eighty only)** together with interest at 7.5% per annum and costs. The appellant/insurer is directed to deposit the modified award amount with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.67 of 2017 on the file of Motor Accident Claims Tribunal/Mahila Court, Pudukkottai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Out of the said amount, the respondents 3 and 4 are entitled to get **Rs.5,01,340/- (Rupees Five Lakhs One Thousand Three Hundred and Forty only)** each. Accordingly, the respondents 3 and 4 are permitted to withdraw their shares as per the apportionment fixed by this Court



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together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited by the appellant/insurer, the balance amount shall be withdrawn by them. Parties are directed to bear their own costs.

18.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal/
Mahila Court,
Pudukkottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Judgment made in
C.M.A.(MD)No.602 of 2020**

Dated : 18.04.2024