



C.M.A(MD)No.638 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.638 of 2019

and

C.M.P.(MD)No.7866 of 2019

The Manager,
Cholamandalam MS General Insurance Company Ltd.,
2nd Floor, Dare House,
2 NSC Bose Road,
Chennai – 600 001.

...Appellant

Vs.

- 1.Sarasu
- 2.Minor Sabetha @ Sivapriya
- 3.Minor Sharmabala
- 4.Angammal (died)
- 5.S.Chellamuthu
- 6.N.Muruganantham
- 7.K.Karunanithi

...Respondents

(R7 is brought on record as LR of the deceased R4 vide order dated 02.08.2023 in CMP(MD)No.1098 of 2022.)



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 21.02.2019 passed in M.C.O.P.No.51 of 2017 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Karur.

For Appellant	: Ms.K.R.Shivashankari
For R1 to R3 & R7	: Mr.K.Suresh
For R4 & R5	: Died
For R6	: No appearance

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal cum Principal Sub Court, Karur in M.C.O.P.No.51 of 2017, dated 21.02.2019, the insurance company has filed the present appeal.

2.The claimants filed the claim petition in M.C.O.P.No.51 of 2017, claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation for the death of the husband of the first respondent. By the award, dated 21.02.2019, the Tribunal awarded a sum of Rs.26,18,332/-

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(Rupees Twenty Six Lakhs Eighteen Thousand and Three Thirty 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 claimants, on 16.08.2012, when the deceased along with his child/claimant was riding his two wheeler namely Hero Honda Passion Pro bearing Reg.No.TN 47 W 3300 on Noyyal – Paramathi main road, a lorry bearing Reg.No.TN 47 AA 0300 overtook his two wheeler and suddenly stopped his lorry on the left side without following the traffic rules, due to which, the two wheeler dashed against the lorry, which suddenly stopped. The child and her father sustained severe injuries. Immediately, they were taken for treatment and admitted in Amaravathi Hospital as in-patient on 16.08.2012 and on the same day, for further treatment, the deceased was referred to K.G.Hospital at Coimbatore and underwent treatment from 17.08.2012 to 13.09.2012, and then her husband died. The fifth respondent is owner of the lorry vehicle and sixth respondent drove the said lorry vehicle. The accident occurred only due to the negligence on the part of the driver of the lorry.



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Therefore, the claimants filed the claim petition, claiming a sum of Rs. 25,00,000/-(Rupees Twenty Five Lakhs only) as compensation.

4.The fifth respondent, who is the owner of the lorry filed the counter statement and denied all the averments made in the claim petition and contended that driver of the lorry has valid driving licence and hence, the appellant insurance company is liable to pay compensation.

5.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. They contended that the deceased himself invited the accident on his own negligence and hence, he seeks for dismissal of the claim petition.

6.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and 13 documents were marked as Ex.P1 to P13. On the side of the insurance company, R.W.1 was examined and Ex.R1 was marked.



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7.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 the respondents held that the accident occurred only due to negligent act by the driver of the lorry and directed the appellant Insurance Company, to pay a sum of Rs.26,18,332/- (*Rupees Twenty Six Lakhs Eighteen Thousand and Three Hundred Thirty Two only*) as compensation along with 7.5% interest from the date of filing of the claim petition under the following heads:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of income	Rs.14,74,200/-
2	As per document Ex.P.6	Rs. 9,19,132/-
3	Loss of consortium to the first respondent	Rs. 1,00,000/-
4	Loss of Love and affection (each Rs.25,000/- X 4)	Rs. 1,00,000/-
5	Assistance Expenses	Rs. 10,000/-
6	Funeral Expenses	Rs. 10,000/-
7	Transport Expenses	Rs. 5,000/-
Total		Rs.26,18,332/-



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8. Aggrieved against the said award dated 21.02.2019, the appellant insurance company has filed the present appeal.

9. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company submits that the Tribunal erred in fixing the entire negligence on the part of the driver of the insured lorry, though the FIR was registered against the deceased. He further submits that granting 30% future prospects is against the law laid down in *Pranay Sethi* case.

10. Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the claimants submits that the learned Tribunal Judge appreciated the evidence of P.W.2 stating that the accident happened only due to the negligence of the lorry driver and hence, he seeks for dismissal of this appeal by disputing the averments made by the appellant insurance company.



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11.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

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

12.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

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

13.Discussion on the negligence:

According to the claimants, on 16.08.2012, when the deceased along with his child / claimant was riding his two wheeler namely Hero Honda Passion Pro bearing Reg.No.TN 47 W 3300 on Noyyal – Paramathi main road, a lorry bearing Reg.No.TN 47 AA 0300 overtook his two wheeler and suddenly stopped the lorry on the left side without following the traffic rules, due to which, the two wheeler dashed against the lorry, which suddenly stopped. The child and her father sustained severe injuries. Immediately, they were taken for treatment and admitted



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in Amaravathi Hospital as in-patient on 16.08.2012 and on the same day, for further treatment, the deceased was referred to K.G.Hospital at Coimbatore and underwent treatment from 17.08.2012 to 13.09.2012, and then her husband died. The fifth respondent is owner of the lorry vehicle and sixth respondent drove the said lorry. On perusal of the materials available on record and specifically considering the evidence of P.W.2, wherein, he has clearly deposed that the accident occurred only due to the negligence on the part of the driver of the lorry and the plea of the appellant insurance company that the Tribunal erred in fixing the entire negligence on the part of the driver of the insured lorry is not correct. Therefore, the learned Tribunal Judge has correctly held that the rash and negligence driving of the driver of the lorry of the appellant insurance company is the cause for the accident. 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 vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.



14.Discussion on quantum:

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The deceased namely, Sivasamy aged about 45 years at the time of accident. He was working in a private company and earned a sum of Rs.10,000/- as monthly income and there are four dependants as per evidence of PW1. No evidence was produced with regard to monthly income of the deceased. During the time of accident, the deceased drove the two wheeler namely Hero Honda Passion Pro and hence, the Tribunal concluded that the deceased was in robust health and had earning capacity, since the deceased aged about 45 years. Therefore, the Tribunal determined the earning of the deceased as Rs.300/- per day. Hence, the Tribunal fixed the monthly income of the deceased as Rs.9,000/-.

14.1.Calculation of the amount:

Insofar as the quantum is concerned, as per the law laid down in *Pranay Sethi* case, the claimants are eligible 25% for future prospects, but the Tribunal has wrongly taken the future prospects as 30%. Therefore, this Court holds that the claimants are entitled only of 25% for future prospects and the same is calculated as follows:-

$$[\text{Rs.9,000/-} \times 25/100(2250)] = \text{Rs.11,250/-}$$



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14.2. The age of the deceased is 45 years and since there are four dependants, $\frac{1}{4}$ deducted for personal expenses and applying the multiplier

14 the Loss of Income comes around as follows:-

Annual Income (Rs.11,250/- X 12) = Rs. 1,35,000/-

[Rs.1,35,000 – Rs.33,750 ($\frac{1}{4}$)] = Rs. 1,01,250/-

Loss of Income (Rs.1,01,250/- X 14 Multiplier) = **Rs.14,17,500/-**

14.3. The learned Tribunal Judge also awarded a sum of Rs.1,00,000/- under the head of loss of consortium to the wife of the deceased as against the guidelines of the Hon'ble Supreme Court in the case of *National Insurance Co.Ltd., Vs. Pranay Sethi* reported in **2017(2) TNMAC 609(SC)** and hence, the same is reduced as follows:-

Loss of consortium (wife) = Rs.40,000/-

Love and affection (3XRs.40,000/-) = Rs.1,20,000/-

15.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-



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Sl. No.	Heads	Amount awarded by the Tribunal	Re-quantified amount by this Court	Status
1	Loss of income	Rs.14,74,200/-	Rs.14,17,500/-	Reduced
2	As per document Ex.P.6	Rs. 9,19,132/-	Rs. 9,19,132/-	confirmed
3	Loss of consortium to the first respondent	Rs. 1,00,000/-	Rs. 40,000/-	Reduced
4	Loss of Love and affection (each Rs.25,000/- X 4)	Rs. 1,00,000/-	Rs. 1,20,000/-	Enhanced
5	Assistance Expenses	Rs. 10,000/-	Rs. 10,000/-	confirmed
6	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	confirmed
7	Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
Total		Rs.26,18,332/-	Rs.25,21,632/-	Reduced

This Court reduced the award fixed by the Tribunal from Rs.26,18,332/- to Rs.25,21,632/- to the claimants.

16.Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.51 of 2017, on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Karur, dated 21.02.2019 is hereby reduced from Rs.26,18,332/- to Rs.25,21,632/-. The appellant/insurance company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a



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copy of this judgment. 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. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit under the cumulative deposit scheme, in any one of the Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. The insurance company is permitted to withdraw the remaining amount. No costs. Consequently, connected miscellaneous petition is closed.

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

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Index:Yes/No

Internet:Yes/No

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To

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



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K.K. RAMAKRISHNAN, J.

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Dated:21.02.2024