



C.M.A.(MD).No.69 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.69 of 2021

and

C.M.P.(MD).No.663 of 2021

The Branch Manager,
IFFCO TOKIO General Insurance Company Limited,
Kalluveetil Teenu Centre,
No.82, 3rd Floor, Court Road,
Nagercoil, Nagercoil Post,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant

Vs.

1.Shiji

2.Risho Alexander

3.A.Francis

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 30th August 2019 passed in M.C.O.P.No.45 of 2018 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil insofar as liability to pay compensation and quantum of compensation is concerned.

For Appellant : Mr.V.Sakhthivel

For R1 : Mr.K.P.Narayana Kumar

For R2 : Mr.S.Suresh Kumar



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J U D G M E N T

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(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

Challenging the award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil in M.C.O.P.No.45 of 2018, dated 30.08.2019, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

2. Facts of the case:

On 29.03.2017 at about 10.30 p.m., the deceased Joshua Darren drove his father's two wheeler bearing Registration No.TN 74 AL 7797 from Konam to Ramanpudur and sustained injuries and subsequently, succumbed to injuries. Hence, F.I.R. has been registered in Crime No.27 of 2017 against the deceased on 30.03.2017. Subsequently, the police duly investigated the case and collected particulars through CCTV camera. Finally, they came to know that the 2nd respondent namely Risho Alexander actually drove the vehicle at the time of accident. Then the police filed the alteration report before the Magistrate concerned and cited 2nd respondent as accused. The accident occurred only due to the rash and negligent driving of the 2nd respondent. The 3rd respondent is the owner of the vehicle. The vehicle was duly insured at the



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time of the accident. The deceased Joshua Darren was a 12th student in Adarsh Vidya Kendra School, Vettornimadam, Nagercoil. He was aiming for M.B.B.S. Course. The expectation of the parents were totally shattered due to the demise of their son namely Joshua Darren. Therefore, the claim petition has been filed by the mother of the deceased seeking compensation of Rs.25,00,000/-.

3. The Insurance Company filed a counter denying the allegations and the manner of accident stated in the petition. The Insurance Company specifically took a plea that the vehicle was originally driven by the deceased himself and also disputed the income and other amount claimed by the petitioner.

4. Before the Tribunal, on the side of the petitioner, P.Ws.1 to 3 were examined and Exs.P1 to P13 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

5. Finding of the Tribunal:

The Tribunal, after considering the economic condition and status of life of the petitioner and the educational background of the deceased, calculated the income of the deceased at Rs.10,000/- per month and applied multiplier '18'



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and added 50% towards future prospects and awarded a sum of Rs.22,30,000/-

as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realisation under the following heads:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	Rs.21,60,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Loss of Consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
	Total	Rs.22,30,000/-

Challenging the same, the Insurance Company has filed the present Civil Miscellaneous Appeal questioning the negligence and also the quantum fixed by the Tribunal.

6. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that as per the F.I.R./Ex.P1, the original version is that the deceased himself drove the vehicle and caused the accident. But subsequently, after investigation, the investigating officer filed a final report as if one Risho Alexander drove the vehicle and the deceased was a pillion rider and sustained injury. As per the final report, three persons travelled in the said vehicle. But the Tribunal has failed to consider the above aspect. Hence, he seeks interference of this Court.



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WEB C **7. Submission of the learned counsel for the respondents:**

The learned counsel appearing for the claimant would submit that the relative of the petitioner viz., Jerald Prasath preferred a complaint on hearing the news and his evidence is hearsay evidence. The investigating officer, after investigation filed a final report examining number of witnesses and found that only Risho Alexander drove the two wheeler and the deceased was a pillion rider. Hence, he seeks for confirmation of the award passed by the Tribunal.

8. The learned counsel appearing for the appellant/Insurance Company would submit that instead of 1/2, 1/3 deduction was made, which is against the law, since there is only one claimant viz., the mother of the deceased. Further, 50% added towards future prospects, which is not in accordance with the *Pranay Sethi case*. Hence, he seeks for reduction of the same. For which, the learned counsel appearing for the claimant would submit that considering the educational qualification of the deceased, the Tribunal added 50% towards future prospects and correctly deducted 1/3rd towards personal expenses of the deceased. Hence, he seeks for dismissal of the appeal.



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9. This Court heard the rival submissions made on either side and perused the award passed by the Tribunal.

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

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

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

11. Discussion on the negligence:

It is true that in the F.I.R., there is a version that the deceased was the rider. The complaint was given by the relative of the deceased. He reached the spot only after receiving information about the accident. Hence, he made the complaint only on the basis of what he heard. Thereafter, the investigating Officer/P.W.3 investigated the matter and examined number of witnesses and filed a final report against Risho Alexander. In the final report, it is specifically stated that Risho Alexander drove the vehicle and the deceased was acted as a pillion rider along with other persons. In view of the specific evidence of P.W.3 and also the independent witness P.W.2, who deposed that Risho Alexander drove the two wheeler, the Tribunal has correctly believed the evidence of P.Ws.2 and 3. But, taking into consideration the evidence of P.Ws.2 and 3 and



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the final report, this Court finds that riding of the two wheeler at the age of 17 years with three persons contributed to the negligence on the part of the rider of the two wheeler. Hence, this Court fixes the contributory negligence upon the rider of the two wheeler to the extent of 20% and fixed 80% upon the driver of the appellant insured vehicle.

12. Discussion on quantum:

As far as the quantum is concerned, the deceased is a student and the age of the deceased was 17 at the time of death and considering his educational qualification, the Tribunal has taken a sum of Rs.10,000/- as monthly income of the deceased. This Court concurs with the finding of fixing a sum of Rs.10,000/- as monthly income. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Co.Ltd., Vs.Pranay Sethi* reported in **2017(2) TNMAC 609(SC)**, 40% towards future prospect is to be taken, but, the Tribunal has wrongly taken the future prospects as 50%. Therefore, this Court holds that the claimant is entitled only of 40% for future prospect. Further, the deceased is a bachelor and his mother is the sole claimant. Instead of $\frac{1}{2}$ deduction, the Tribunal deducted $\frac{1}{3}^{\text{rd}}$, which is not in accordance with law. Hence, in this aspect also the Tribunal committed an error. Therefore, This Court deducts $\frac{1}{2}$ towards personal expenses. As per the judgment of the Hon'ble



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Supreme Court in the case of *Smt.Sarla Varma and Ors. vs. Delhi Transport*

Corporation & another reported in *2009(2) TN MAC 1 (SC)*, multiplier 18 can

be taken into account and calculates the Loss of income as follows:-

$$[\text{Rs.}10,000 + 40\% (4000)] = \text{Rs.}14,000/-$$

$$[\text{Rs.}14,000 - \frac{1}{2} (7000)] = \text{Rs.} 7,000/-$$

$$[\text{Rs.}7,000 \times 18 \times 12] = \text{Rs.}15,12,000/-$$

$$\text{Loss of Dependency} = \text{Rs.}15,12,000/-$$

13. Conclusion:

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

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
1.	Loss of dependency	Rs.21,60,000/-	Rs.15,12,000/-	Reduced
2.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	confirmed
3.	Loss of Love and affection	Rs. 40,000/-	Rs. 40,000/-	confirmed
4.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
Total		Rs.22,30,000/-	Rs. 15,82,000/-	Reduced
Less:20% negligent on the part of the two wheeler rider.			Rs. 3,16,400/-	
Total			Rs.12,65,600/-	



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14. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

The compensation awarded in M.C.O.P.No.45 of 2018 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil, dated 30.08.2019, is hereby reduced from Rs.22,30,000/- to Rs.12,65,600/-. The claimant/1st respondent is permitted to withdraw her share. It is represented by the learned counsel for the appellant/ Insurance Company that the entire award amount has already been deposited. Hence, the appellant/Insurance Company is permitted to withdraw the remaining amount. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
07.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

akv/sbn



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To

- 1.The Motor Accident Claims Tribunal cum
Chief Judicial Magistrate,
Nagercoil.
- 2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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