



C.M.A.(MD).No.792 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 27.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.792 of 2022
and C.M.P.(MD).No.7215 of 2022

The Oriental Insurance Co.Ltd.,
Through its Branch Manager,
CH-1/271, Gopan Automobile Complex,
Nangiarkulangara, Mavelikkara,
Azhapuzha District, Kerala State.

... Appellant/3rd Respondent

Vs.

1.Mariammal

2.Maheshwari

3.Jothika

4.Kasthoori

5.Minor Manikandaraj (Died)

6.Marthal

7.Rajamani (Died) ... Respondents 1 to 7/Petitioners 1 to 7

(7th petitioner and the 5th Minor petitioner were exonerated as per this Court order in Memo dated 20.10.2019 and Memo dated 06.11.2019 respectively as they are died)

8.Pratheeshkumar, ... 8th Respondent/1st Respondent

9.Nisar ... 9th Respondent/2nd Respondent

1/11



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Motor Accidents Claims Tribunal cum Additional District Judge, (FTC), Tenkasi made in M.C.O.P.No.183 of 2019, dated 09.06.2022.

For Appellant : Mr.E.Chandrasekaran

For Respondents : Mr.R.L.Dilipandian for R1 to R5

JUDGMENT

This appeal has been directed against the order of the Motor Accidents Claims Tribunal cum Additional District Judge, (FTC), Tenkasi made in M.C.O.P.No.183 of 2019, dated 09.06.2022.

2.The facts in brief:

On 23.10.2015 at about 06.00 p.m., the deceased Karuppiah @ Murugan was riding a two wheeler bearing Registration No.TN 72 AC 4368 with one Murugan as pillian rider on the Ariyanbkavu - Palaruvi Road. At that time, a vehicle bearing Registration No.KL 04 L 6046 was driven by its driver in rash and negligent manner in the opposite direction and hit the two wheeler. As a result of which, the rider of two wheeler sustained grievous injuries and taken to Trivandrum Medical College



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Hospital. But without responding to the treatment, he died on 26.10.2015. A case in Crime No.1271 of 2015 was registered against the first respondent vehicle's driver under Sections 279 and 304A of IPC. The deceased was earning Rs.12,000/- per month by doing coolie work. Claiming compensation amount of Rs.25,00,000/- the claim application was filed before the Tribunal.

3.That was resisted by the Insurance Company, who was the third respondent before the Tribunal, contending that it is a head on collision between two vehicles. So the deceased also contributed towards the accident. He did not wear the helmet and no driving licence was available with him.

4.Regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the first respondent's vehicle driver.

5.Regarding the compensation amount, the age of the deceased was taken as 39 and monthly income was fixed as Rs.12,000/- notionally.



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Multiplier 15 was taken. Considering the age of the deceased and loss of dependency was fixed at Rs.24,19,200/-. To that other customary amounts were added and finally the following amount was granted.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	24,19,200
2.	<i>Loss of Estate</i>	15,000
3.	<i>Funeral Expenses</i>	15,000
4.	<i>Loss of Love and Affection</i>	5,00,000
	<i>Total</i>	29,49,200 <i>Rounded off to 29,50,000</i>

6.Regarding the liability, it was found that the first respondent was not owning proper driving licence. So pay and recovery was ordered against the appellant herein. Over which, this appeal is preferred by the Insurance Company.

7.The learned counsel for the appellant would submit that the deceased was not wearing helmet and there was no driving licence for him. The income taken by the Tribunal notionally is on the higher side. Consortium has been wrongly fixed. According to him, the accident happened in the centre of the Road. So, naturally the deceased also



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contributed to the occurrence. But, the Tribunal has not taken into account that fact.

8.Per contra, the learned counsel for the respondent would submitted that there is a clear finding by the Tribunal that not only the deceased, but, also the first respondent were not in possession of proper driving licence. Since the accident took place because of the rash and negligent driving on the part of the first respondent in the main petition, the compensation was reasonably fixed, which calls for no interference.

9.Regarding the first aspect we will go to the evidence available on record. The witness to the occurrence was examined as PW2 on the side of the claimant. He was the pillion rider in the vehicle driven by the deceased. He has stated that because of the rash and negligent driving on the part of the first respondent in the main petition, the accident took place. A case was also registered against the first respondent in Crime No.1271 of 2015 on the file of the Thenmalai police station under Sections 279 and 304(A) of IPC. Final report was also filed. The damage caused to the two wheeler driven by the deceased was taken into account



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by the Tribunal, wherein, we see that the entire front portion of the vehicle was completely damaged. The contributory negligence pleaded by the appellant was negatived.

10.As stated in the preamble portion, both vehicles were proceeding in opposite directions. There is no indication that the accident took place in the middle of the road. It is not even suggested to PW2 that deceased was not wearing helmet at the time of the occurrence. In the absence of any evidence on the side of the appellant by examining the first respondent before the Tribunal, now the contention raised by the appellant are without any basis or reason.

11.Regarding the absence of driving licence to the deceased, it was established that the deceased also not having proper driving licence to drive the two wheeler. Ex.P6 shows that the deceased was issued with light motor vehicle driving licence. It is also evident that he did not possess with any driving licence to drive the two wheeler. But, the facts remains that the entire negligence was on the part of the first respondent in the main petition. There is no question of contributory negligence



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here. So the absence of driving licence on the part of the deceased would not have altered or changed the manner of occurrence. Absence of driving licence on the part of the deceased did not contribute the accident. Only if it so we can fix the contributory negligence. So the finding of the trial Court on that aspect requires no interference.

12.Regarding the compensation amount as stated above the notional income was fixed as Rs.12,000/-. The deceased was a coolie by worker. We cannot expect any direct evidence on that aspect. So considering the daily wage of coolie work, during the relevant time, fixing Rs.400/- per day can not be considered as excessive. So I find that there is no reason to interfere into the fixation of the notional income. Multiplier was fixed as 15 considering the age of the deceased. In the driving licence, the date of birth is noted as 29.03.1976. So on the date of accident, he was aged about 39. The appropriate multiplier for the age group is 15. So 1/3rd was deducted towards personal living expenses. Loss of dependency was properly calculated, which requires no interference at all.



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13. But, the Tribunal committed a mistake in assessing the loss of love and affection, it awarded Rs.5,00,000/-. It is against settled procedure. The learned counsel for the appellant would rely upon the judgment of the Co-ordinate Bench of this Court passed in ***Meena and others Vs. H.Srinivasan and others***, reported in ***2022 (1) TNMAC 210***. Now, it is settled that on the head of loss of consortium only Rs.40,000/- can be claimed as per the settled procedure of law in Pranaysithi's case. Now the claimants are 7 in numbers. The first petitioner is the wife. 2 to 5 are the children. 6 & 7 are the parents. They are entitled for Rs.40,000/- each. Out of the five children one child, who is the fifth respondent herein died and his mother, who is the seventh respondent also died. So they were deleted as per the order of this Court in Memos, dated 30.10.2019 and 06.11.2019. The total number of claimants are 5. So it totals around Rs.2,00,000/- (Rs.40,000 x 5 = Rs.2,00,000/-). So in this way that amount is reduced. Recalculation is made as below. The award amount granted under other heads are remain unchanged.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	24,19,200



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2.	<i>Loss of Estate</i>	<i>15,000</i>
3.	<i>Funeral Expenses</i>	<i>15,000</i>
4.	<i>Loss of Love and Affection</i>	<i>2,00,000</i>
	<i>Total</i>	<i>26,49,200</i>

14.This appeal is partly allowed and the award is modified and this Court issued the following directions.

(i)The quantum of compensation awarded by the Tribunal is reduced to Rs.26,49,200/- (Two Lakhs Forty Nine Thousand Two Hundred only), which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the entire compensation of Rs.26,49,200/- (Two Lakhs Forty Nine Thousand Two Hundred only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.183 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, (FTC) Tenkasi, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the claimants are permitted to withdraw the entire award amount of Rs.26,49,200/- (Two Lakhs Forty Nine Thousand Two



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Hundred only) after following the due process of law, less any amount already received by them.

(iv) No costs. Consequently, connected miscellaneous petition stands closed.

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

- 1.The Additional District Judge, (FTC) Motor Accident Claims Tribunal, Tenkasi.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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