



C.M.A(MD)No.578 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **23.02.2024**

CORAM:

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

C.M.A(MD)No.578 of 2020

and

C.M.P.(MD)No.5997 of 2020

The Oriental Insurance Company Limited,
Rep. Through its Branch Manager,
having office at D.No.1024,
Sreevijay Complex,
Opposite to old bus stand,
Theni – 625 531.

...Appellant

Vs.

1.R.Muthucharam

2.Minor R.Mahajanasree

(Represented through her mother and natural guardian

R.Muthucharam the 1st Respondent)

3.V.Ochammal

4.P.Veerathevar (died)

5.T.Gnanasekaran

6.P.Virumandi

...Respondents



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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 29.04.2019 passed in M.C.O.P.No.32 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Judge (FTC), Theni.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R3 : Mr.J.Pooventhirarajan
For R5 & R6 : Mr.S.Sridharan

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Additional District Judge (FTC), Theni in M.C.O.P.No. 32 of 2016, dated 29.04.2019, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the third respondent in M.C.O.P.No.32 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Judge (FTC), Theni. The respondents 1 to 4 herein



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are the claimants. They filed the claim petition in M.C.O.P.No.32 of 2016, claiming a sum of Rs.45,00,000/- (*Rupees Forty Five Lakhs only*) as compensation for the death of the husband of the first respondent. By the award, dated 29.04.2019, the Tribunal awarded a sum of Rs.22,65,000/- (*Rupees Twenty Two Lakhs and Sixty Five Thousand 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 respondents 1 to 4, on 27.12.2014 at 13.30 hours, when the deceased was travelling as a loadman in a Tractor bearing Reg.No.TN 48 C 1692 attached with the Trailer bearing Reg.No.TN 60 F 2513 belonging to the respondents 5 and 6 for loading and unloading of garlands used on the body of deceased S.R.Tamilzhan and when the funeral cortege was going on Theni to Periyakulam Main Road to reach the burial ground, near Karuppiyah Mahal at Theni Allinagaram, the driver of the Tractor-cum-Trailer drove the vehicle in a rash and negligent manner and due to the sudden jolt and jerk, the deceased Ramar was thrown away from the Tractor and fell down on the road, due to which, he



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sustained severe injuries and succumbed to the injuries on the way to the Government Hospital, Theni. FIR was also registered against the driver of the Tractor. The accident occurred only due to the rash and negligent driving by the driver of the Tractor belonging to the fifth respondent. Therefore, the respondents 1 to 4 filed the claim petition, claiming a sum of Rs.45,00,000/- (*Rupees Fourty Five Lakhs only*) as compensation.

4.The appellant insurance company and the respondents 5 and 6 filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the deceased had not died due to any accident. The deceased and some other persons participated in the dead body funeral cortege. At that time, a communal riot happened and the deceased was attacked by the rival group with stone, due to which he sustained injuries and died and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 8 documents were marked as Ex.P1 to P8. On the side of the insurance company, R.W.1 to R.W.8 were examined and 14



documents were marked as Ex.R1 to R14.

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6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, especially Ex.P1 and the evidence of P.W.1 & P.W.2, and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the Tractor and directed the appellant Insurance Company, to pay a sum of Rs.22,65,000/- (*Rupees Twenty Two Lakhs and Sixty Five Thousand only*) as compensation along with 7.5% interest from the date of filing of the claim petition. The appellant insurance company was permitted to recover the award amount from the fifth respondent herein, who is the owner of the Tractor, without initiating any separate proceedings. The Tribunal awarded the compensation to the claimants under the heads enumerated hereunder:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Transportation	5,000/-
2	Funeral Expenses	15,000/-
3	Loss of consortium of the 1 st respondent	40,000/-



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4	Loss of love and affection (Respondents 1 to 4 Rs.50,000/- each)	2,00,000/-
5	Loss of Estate	15,000/-
6	Maintenance of Minor child	1,00,000/-
7	Loss of Dependency	18,90,000/-
Total		Rs.22,65,000/-

7. Aggrieved against the said award dated 29.04.2019, the appellant Insurance Company has filed the present appeal.

8. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company stated that the deceased is not entitled to claim compensation as he was the third party, who was travelling in the Tractor and the policy is also not covered.

9. 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.



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

10.1.Whether the liability to pay compensation fixed upon the appellant/ insurance company is correct or not ?

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

11.Discussion on the negligence:

It is the case of the claimants that, on 27.12.2014 at 13.30 hours, when the deceased was travelling as a loadman in a Tractor bearing Reg.No.TN 48 C 1692 attached with the Trailer bearing Reg.No.TN 60 F 2513 belonging to the respondents 5 and 6 for loading and unloading of garlands used on the body of deceased S.R.Tamilzhan and when the funeral cortege was going on Theni to Periyakulam Main Road to reach the burial ground near Karuppiah Mahal at Theni Allinagaram, the driver of the Tractor-cum-Trailer drove the vehicle in a rash and negligent manner and due to the sudden jolt and jerk, the deceased Ramar was thrown away from the Tractor and fell down on the road, due to which, he sustained severe injuries and succumbed to the injuries on the way to the Government Hospital, Theni. Eye witness of PW2 has clearly narrated about the rash and negligent driving of Kaniraja the driver of the tractor,



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bearing Reg.No.TN 48 C 1692 belonging to the 5th respondent.

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11.1. Hence, on perusal of Ex.P.1 and the evidence of PW1 and PW2, the Tribunal came to the conclusion that, the accident occurred only due to the rash and negligent act of the driver of a Tractor belonging to the 5th respondent. Therefore, this Court confirms the finding of the Tribunal that the accident occurred only due to the rash and negligent act of the driver of a Tractor belonging to the 5th respondent.

12. Discussion on Liability to pay compensation:

The learned counsel for the appellant/insurance company contended that the deceased Ramar had travelled in the Tractor as unauthorized passenger at the time of accident and on this aspect, the appellant/insurance company is not liable to pay compensation to the claimants. It is not disputed that the Tractor bearing Reg.No.TN 48 C 1692 belonged to the 5th respondent and the same was insured with the appellant/ insurance company for the period from 20.11.2014 to 19.11.2015 as liability only policy as revealed from Ex.R.10 Insurance Policy. The sixth respondent is the owner of a Trailer on the date of



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accident and insured the trailer bearing Registration No.TN 60 F 2513 for a period from 28.03.2014 to 27.03.2015 as liability only policy. The accident occurred on 27.12.2014. RW7 Venkatesan, who is the RTO Official, Srirengam, has clearly deposed that the Tractor should be used only for the agricultural purposes and no person was allowed to travel in the Tractor except the driver of the tractor. As per Ex.P.1 FIR, it is stated that, the deceased Ramar was walking along in the funeral procession of deceased S.R.Tamizhan, and due to rash and negligent driving by the driver of a tractor, the accident happened. Whereas in the claim petition, the claimants stated that, the deceased Ramar was sitting on the Tractor, and due to rash and negligent driving by the driver of a tractor, the accident happened. PW1 and PW2 have deposed that, the deceased Ramar was sitting on the Tractor at the time accident and even as per the finding of the learned tribunal judge, he was travelling in the tractor at the time of accident as only unauthorized passenger and there was a violation of policy condition. But the learned tribunal judge on the basis of the judgment of the Hon'ble Supreme Court in the case of ***Shivaraj vs. Rajendra & Another*** in ***Civil Appeal Nos.8278-8279 of 2018*** dated ***05.09.2018***, has applied pay and recovery and the relevant of the portion



of the judgment as follows :-

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“At the same time, however, in the facts of the present case the High Court ought to have directed the insurance company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this court in National Insurance Co Ltd., Vs Swarna Singh and others, Mangala Ram Vs oriental insurance Co Ltd., Rani and others Vs National Insurance Co Ltd., and others are including Manuara Khatun and others Vs Rajesh Kumar singh and others. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief for direction to the respondent No.2 Insurance company to pay the compenstaion amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1)”.

Therefore this Court finds no reason to interfere with the said findings of the Tribunal. Therefore, this Court concurs with the finding of the Tribunal.



13.Discussion on quantum:

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According to the claimant stated that, the deceased Ramar was working as a Load man, and Vegetable Vendor and earned Rs.30,000/- per month. No material records were produced by the claimants to prove the occupation and income of the deceased. Hence, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/- and the age of the deceased was about 41 years at the time of accident. As per the *Pranay Sethi case*, 25% for future prospects added in the monthly income of the deceased and also taken 14 as multiplier. As per the *Sarala Verma case*, since there are 4 dependants, 1/4 to be deducted for personal expenses. In view of the above, calculated the loss of dependency as follows:-

13.1. Calculation of the amount:

(i) notional monthly income of the deceased = Rs.12,000/-

(ii) **Add:** 25% future prospects

$$\text{Rs.12,000/-} + \text{Rs.3,000/-(25/100)} = \text{Rs.15,000/-}$$

(iii) **Less:** 1/4 personal expenses

$$\text{Rs.15,000/- (-) Rs.3,750/-} = \text{Rs.11,250/-}$$



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(iv) multiplier 14

Rs.11,250/- X 12 X 14

= Rs.18,90,000/-

(v) **Loss of dependency**

= **Rs.18,90,000/-**

13.2.The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Transportation	5,000/-
2	Funeral Expenses	15,000/-
3	Loss of consortium of the 1 st respondent	40,000/-
4	Loss of love and affection (Respondents 1 to 4 Rs.50,000/- each)	2,00,000/-
5	Loss of Estate	15,000/-
6	Maintenance of Minor child	1,00,000/-

14.Conclusion:

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



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<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Transportation	5,000/-
2	Funeral Expenses	15,000/-
3	Loss of consortium of the 1 st respondent	40,000/-
4	Loss of love and affection (Respondents 1 to 4 Rs.50,000/- each)	2,00,000/-
5	Loss of Estate	15,000/-
6	Maintenance of Minor child	1,00,000/-
7	Loss of Dependency	18,90,000/-
Total		Rs.22,65,000/-

14.1. In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

14.2. Pending the above appeal the 4th respondent died. Therefore his legal heirs filed impleading petition to represent him. This court dismissed the same by passing the following order :-

The proposed respondents are the legal heirs of the fourth respondent, who died and who is the father of the deceased Ramar, for whom, claim petition was filed.



2. In the considered opinion of this court, the proposed respondents are not necessary to be impleaded in this case, as they are not depending upon the income of the deceased fourth respondent and also the wife of the deceased fourth respondent has already been impleaded in the appeal. The wife of the deceased fourth respondent, who is the third respondent in the appeal is entitled to the share of the deceased fourth respondent.

3. Accordingly, this civil miscellaneous petition is dismissed.

In view of the above 3rd respondent in this appeal is entitled to the share of the said deceased 4th respondent.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal / Additional District Judge (FTC), Theni in M.C.O.P.No.32 of 2016, dated 29.04.2019 is hereby confirmed. The appellant Insurance Company is 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 and recover the same as held by the Tribunal. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the



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Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minor attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the bank. The minor claimant on attaining majority is permitted to withdraw her share. The 3rd respondent is entitled to withdraw the amount of the 4th respondent herein, also in addition to the amount awarded to him in view of the death of the 4th respondent during the pendency of the above appeal and the dismissal at C.M.P.(MD).No. 5011 of 2022. In view of the above dismissal of the C.M.P, there is no necessity to pass order in C.M.P.No. 10060 of 2022 and the same was closed. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
23.02.2024
(1/3)

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



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To

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- 1.The Motor Accident Claims Tribunal /
Additional District Judge (FTC),
Theni
- 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
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(1/3)

Dated: 23.02.2024