



CMA.(MD)No.1001 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/08/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.1001 of 2022

and

CMP (MD) No.9946 of 2022

The Oriental Insurance Company Limited,
rep. through its Divisional Manager,
having Office at No.1518,
Tenkasi Road,
Rajapalayam,
Virudhunagar District. : Appellant/2nd Respondent

Vs.

- 1.P.Mareeswari
- 2.Minor P.Kannan Akilesh
- 3.K.Thangamari
(The 2nd Minor respondent is
represented through mother
and natural guardian the
1st Respondent) : Respondents 1 to 3/
Petitioners 1 to 3
- 4.S.Sri Ramulu : 4th Respondent/
1st Respondent
- 5.Tamilnadu State Transport Corporation
Madurai Ltd.,
Dindigul Region,
rep. through its Managing Director
having Office at Bypass Road,
Collectorate Post,
Dindigul. : 5th Respondent/3rd Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal-cum-Additional District and Sessions Judge, Srivilliputhur, made in MCOP No.39 of 2017, dated 06/04/2022.



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For Appellant : Mr.C.Jawahar Ravindran
For R1 to R3 : Mr.P.Kannan
For 4th Respondent : Given Up
For 5th Respondent : Mr.K.A.Thirumalaiappan

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 06/04/2022 in MCOP No.39 of 2017 passed by the Motor Accident Claims Tribunal-cum-Additional District and Sessions Judge, Srivilliputur.

2.The facts in brief:-

On 13/03/2016 at about 03.00 pm, the deceased K.Prakash and his friend Santhanakumar were proceeding in a two wheeler bearing registration No.TN-67-AL-5478 on the Rajapalayam to Srivilliputhur main road from west-east direction. At that time, a Four wheeler bearing registration No.TN-67-AX-8263 driven by the first respondent in the main petition in a rash and negligent manner came in the opposite direction and dashed against the two wheeler. As a result of which, Prakash and Sathanakumar fell down, sustained injuries and both died on the spot.

3.The deceased Prakash was aged about 22 years at the time of the occurrence. He was working as Labour in



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SA.Anandan Spinning Mills (P) Limited, Rajapalayam. He was earning Rs.15,000/- per month. Claiming compensation of Rs.25,00,000/-, the claim petition was filed by the dependents.

4.That was resisted by the appellant Insurance Company contending that the first respondent vehicle was not involved in the occurrence and only the vehicle bearing registration No.TN-57-N-2107, which belongs to the TNSCTC was involved and because of the rash and negligent act on the part of the Bus driver, the occurrence took place. So only TNSCTC is liable to pay compensation. Apart from that, it is also contended that the first respondent vehicle was not having any proper driving licence.

5.The learned counsel appearing for the TNSCTC would submit that their vehicle was not involved in the occurrence, but the police after investigation filed the final report against TNSCTC bus driver also.

6.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 17 documents were marked. On the side of the respondents in the main petition, no oral and documentary evidence was adduced.



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7.Regarding the first aspect of negligence, the Tribunal recorded a finding that both the first respondent vehicle as well as the third respondent vehicle in the claim application are responsible for the occurrence at the ratio of 60:40. 60% on the part of the driver of the first respondent. 40% on the part of the third respondent driver namely TNSTC driver.

8.Regarding the quantum on the basis of the pay slip Ex.P17 the income was fixed at Rs.6,509/-. Multiplier was taken as '18', since he was aged about 25 at the time of occurrence. 1/3rd was deducted towards personal and living expenses. Noting that the Loss of Dependency was fixed at Rs.13,12,218/-. To that, conventional amounts were added and finally, the Tribunal fixed the following compensation:-

Loss of Dependency	Rs.13,12,218/-
Consortium	Rs. 1,32,000/-
Loss of estate	Rs. 16,500/-
Funeral expenses	Rs. 16,500/-
Total	Rs.14,77,218/-

9.Regarding the payment, the Tribunal has adopted the novel method or the order as the case may be, it directed the appellant Insurance Company to deposit the



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entire amount and thereafter, recover 40% from the 5th respondent namely the Transport Corporation Management. Why that order was passed by the Tribunal is not clear on record. In case of composite negligence, it is settled that the claimants are at liberty to claim compensation against any one of the tort-feasor. But here both the tort-feasors arrayed as respondent. Both contested the matter. The Tribunal ought not to have directed the appellant Insurance Company to deposit the entire amount and recover 40% from the 5th respondent. On that account, this appeal is liable to be allowed. The 5th respondent is directed to satisfy 40% of the award amount as ordered by the Tribunal.

10.Regarding the other aspect of composite negligence, the award of compensation is not disputed by the parties. So that portion of the finding of the Tribunal with regard to the composite negligence 60:40 requires no interference. In respect of conventional heads, it requires recalculation as the per judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case.

11.Accordingly, recalculation is made by this court as per the tabulation given hereunder:-



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Head	Award of the Tribunal	Award of this court
Loss of Dependency	Rs.13,12,218/-	Rs.13,12,218/-
Loss of consortium	Rs. 1,32,000/-	Rs. 1,20,000/-
Loss of estate	Rs. 16,500/-	Rs. 15,000/-
Funeral expenses	Rs. 16,500/-	Rs. 15,000/-
Total	Rs.14,77,218/-	Rs.14,62,218/-

12.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as **Rs.14,66,218/-**. The appellant herein is directed to deposit the modified amount of **Rs.8,77,331/-** as fixed by the Tribunal with regard to their negligence of 60%. The 5th respondent herein also directed to deposit the modified amount of **Rs.5,86,487/-** as fixed by the Tribunal with regard to their contribution towards the accident. On such deposit, the claimants are entitled to get their share as per the apportion of the Tribunal. No costs. Consequently connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Additional District and Sessions Judge,
Srivilliputhur.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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