



C.M.A(MD)No.422 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :05.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)No.422 of 2018
and
C.M.P.(MD).No.5288 of 2018

Cholamandalam M/s General Insurance Co.Ltd.,
through its Branch Manager,
2nd Floor, Dare House,
No.2, NSC Bose Road, Chennai.

...Appellant

Vs.

1.Sudha

2.Minor Akilesh

(Rep.by guardian & mother 1st respondent Sudha)

3.Alagammal

4.P.Sakthivel

5.K.Chandran

6.National Insurance Company,
Through its Branch Manager,
Rep.by its Divisional Officer,
No.3, North Veli Street,
2nd Floor, Madurai.

...Respondents



C.M.A(MD)No.422 of 2018

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 28.02.2017 in M.C.O.P.No.158 of 2016, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Sivagangai, and allow this case.

For Appellant : Mr.Srinivasa Raghavan
For Respondents : Mr.V.Sasikumar for R1 to R3
: Mr.V.Sakthivel for R6
: R4 and R5 dispensed with

J U D G M E N T

[Judgement of the Court was made by **K.K.RAMAKRISHNAN.J.**]

The Insurance company filed this appeal challenging the quantum of the award passed in M.C.O.P.No.158 of 2016, dated 28.02.2017, by the Motor Accident Claims Tribunal Judge/Chief Judicial Magistrate, Sivagangai.



C.M.A(MD)No.422 of 2018

WEB COPY

2.Facts of the case:

One Karuthan Ambalam and the deceased/Nanni Anandhan are friends. Both worked in “Bahrain” and returned to India on leave. On 30.03.2014 at about 03.00 p.m., Karuthan Ambalam rode a two wheeler bearing registration No.TN-59-BZ-4592 and the deceased was a pillion rider and proceeded towards Thiruppuvanam to Narikkudi road from north to south direction and at that time the load vehicle Cargo Tempo Trux bearing registration No.TN-60-B-9229 was driven in front of the said two wheeler in a rash and negligent manner without following traffic rules and not using the indicator, suddenly turned the vehicle towards Kaliyandoor cross road and crashed the two wheeler and the said two wheeler tossed and both died. The Thiruppuvanam Police registered a case against the driver of the Cargo Tempo Trux in Crime No.126/2014 under Sections 279, 338, 304 of IPC.

2.1.The deceased worked at Bahrain as a Supervisor in Ahamed Mansoor A1-Ali Co Bsc (e) Company and earned more than a sum of Rs.1,36,000/- and sent more than Rs.1,00,000/- to the claimants from his



C.M.A(MD)No.422 of 2018

salary. Therefore, his wife, minor son and mother filed a petition in M.C.O.P.No.158 of 2016 claiming compensation of Rs.95,00,000/-.

3.They impleaded both the insurance companies and the owner of the two wheeler and Cargo Tempo Trux. The Cargo Tempo Trux was insured with the appellant insurance company and the two wheeler was insured with the sixth respondent/National Insurance Company.

4.Resisting the claim, the appellant insurance company filed their counter, wherein, they have stated that the accident had happened because of the negligence of the rider of the two wheeler and the driver of the vehicle of the appellant insurance company is no way responsible for the accident and he drove the vehicle in a careful manner by following the traffic rules. The driver of the Cargo Tempo Trux did not possess the valid license at the time of the accident. It was also contended that the claim is excessive and exorbitant.

5.The sixth respondent/National Insurance Company filed the counter denying the averment of the appellant insurance company and



they specifically pleaded that only due to the sudden turning of the Cargo Tempo Trux, the accident happened and the driver of the said vehicle is only responsible for the accident. Therefore, they seek to dismiss the claim petition against them.

6.To prove the case, on the side of the claimant, P.Ws.1 and 2 were examined and Ex.P1 to P14 were marked. On the side of the respondent, no witness was examined and no document was marked.

7. Finding of the Tribunal

The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant's vehicle was responsible for the accident. The learned trial Judge considered the evidence of P.W.1 and P.W.2 and Ex.P6, Ex.P7 and Ex.P9 and has fixed the monthly income of the deceased as Rs.25,000/- and considering the age of the deceased as 28 and added 50% towards Future Prospect and applied multiplier 18 and deducted 1/3 for the personal expenditure of the deceased and awarded compensation of Rs.57,30,000/- to the claimants under the following heads:-



C.M.A(MD)No.422 of 2018

<i>Heads</i>	<i>Rs.</i>
Transport charges	5,000/-
Funeral Charge	25,000/-
Loss of Consortium	1,00,000/-
Loss of Love and Affection	2,00,000/-
Loss of income	54,00,000/-
Total	57,30,000/-

Assailing the said award, the appellant Insurance Company has filed the present appeal.

8. Submission of the learned counsel for the appellant

The learned counsel appearing for the insurance company submitted that even though they raised a ground of negligence on the rider of the two wheeler, in view of the non-examination of the driver of the vehicle of the appellant insurance company and no contra evidence was adduced, he confined his argument only relating to the “*quantum*” . He would further submit that the learned Tribunal Judge failed to follow the ratio laid down by the Hon'ble Supreme Court in the case of (*National Insurance Co. Ltd., Vs. Pranay Sethi*) reported in **2017(2) TNMAC 609(SC)** and wrongly given 50% instead of 40% towards future prospects. Further, he submitted that the learned Tribunal Judge



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also wrongly adopted the multiplier of “18” instead of “17” as per the ***Sarala Verma Case***. He also submitted that the conventional damages are not in accordance with the ***Pranay Sethi*** case. On the basis of the above submissions, he seeks to reduce the compensation.

9. Submission of the learned counsel for the respondents

Per contra, the learned counsel appearing for the respondents/claimants argued that the impugned award awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

10. This Court carefully considered the submissions of the learned counsel for the appellant insurance company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

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

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



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C.M.A(MD)No.422 of 2018

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

12. Discussion on the negligence:

It is the case of the claimants that on 03.03.2014 at 03.00 p.m. the deceased was the pillion rider of the two wheeler bearing Reg.No.TN-59-BZ-5492 which was ridden by Karuthan Ambalam/deceased. When the driver of the vehicle insured with the appellant insurance company suddenly turned the Cargo Tempo Trux bearing registration No.TN-60-B-9229 and crashed the two wheeler ridden by the deceased Karuthan Ambalam, in which, the deceased travelled as pillion rider. P.W. 2/independent Eye witness cogently deposed about the accident and he was subjected to incisive cross examination and nothing was elicited to disbelieve his version. The investigating agency also filed a final report against the driver of the said vehicle. There is no contra evidence adduced on the side of the appellant insurance company and no circumstances are also available to presume the negligence on the part of the rider of the two wheeler. Therefore, the learned Tribunal Judge has correctly held that the rash and negligent driving of the driver of the appellant insurance company is the cause for the accident. This Court



C.M.A(MD)No.422 of 2018

WEB COPY

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.

13. Discussion on quantum

P.W.1 produced Ex.P6 to Ex.P9 to prove that the deceased was working in the Bahrain. She also deposed about it and her evidence is cogent and trustworthy. Even though in the salary certificate, it is mentioned the monthly salary of the deceased as Rs.95,000/-, which is not covered the accident period hence, the Tribunal has taken a sum of Rs.25,000/- as a monthly salary of the deceased. This Court finds no reason to differ with the said amount as a monthly salary.

13.1. the deceased was aged about 28 years at the time of accident. As per the judgment of the Hon'ble Supreme Court reported in **2017(2) TNMAC 609(SC)** in the case of (*National Insurance Co. Ltd., Vs. Pranay Sethi*), 40% towards future prospect is to be taken, but the



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Tribunal has wrongly taken the future prospects as 50%. Therefore, this Court holds that the claimants are entitled only of 40% for future prospect and the same is calculated as follows:

$$25,000 \times 40/100 = 10,000/- \text{ [Rs.35,000/-]}$$

13.2. Similarly, the Tribunal, without following the judgment of the Hon'ble Supreme Court in the case of ***Smt. Sarala Verma and Others Vs. Delhi Transport Corporation and another*** reported in **2009 (2) TN MAC 1(SC)** had taken the multiplier of “18” instead of “17”. Therefore, this Court applies “17 multiplier” and calculated the loss of income as follows:

$$35,000 \times 17 \times 12 \times 2/3 = \text{Rs.47,60,000/-}$$

13.3. 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 and a sum of Rs.2,00,000/- towards love and affection to his child and mother as against the guidelines of the Hon'ble Supreme Court issued in the case of (***National Insurance Co. Ltd., Vs. Pranay Sethi***), reported in **2017(2) TNMAC 609(SC)** and hence, the same was reduced as follows:



C.M.A(MD)No.422 of 2018

Loss of consortium = Rs.40,000/-

Loss of Love and affection =Rs.40,000/- each

14. Conclusion

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

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Transport Charges	5,000/-	5,000/-	confirmed
Funeral Charge	25,000/-	25,000/-	confirmed
Loss of Consortium to the first respondent	1,00,000/-	40,000/-	reduced
Loss of Love and Affection to the respondent Nos.2 & 3	2,00,000/-	80,000/- [40,000/- each]	reduced
Loss of Income	54,00,000/-	47,60,000/-	reduced
Total	57,30,000/-	49,10,000/-	Reduced

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.158 of 2016 on the file of the Motor Vehicle Accidents Claims Tribunal/Chief Judicial Magistrate, Sivagangai, dated 28.02.2017 is hereby reduced from Rs.57,30,000/- to Rs.49,10,000/-. The appellant/insurance is directed to deposit the modified award amount with accrued interest and costs, less any amount



C.M.A(MD)No.422 of 2018

WEB COPY

if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

15.1. Apportionment:

The wife of the deceased was 19 years at the time of the accident, she lost her husband at a young age. She has to lead her future with much ordeal and hardship as young widow. Therefore, this Court inclines to give 50% of the award amount to her. The minor son was 8 months at the time of the accident and he has to grow and get adequate education and he has not even seen his father's face and he has to continue his life as a fatherless boy losing the affection of father and guidance. Therefore, this Court inclines to grant 30% of the award amount to him. The age of the deceased's widowed mother was 45 at the time of the accident and hence, she is entitled to the remaining 20% of the award amount. In result this court makes the following apportionment:

<i>Claimants</i>	<i>Amount in Rs.</i>
Sudha/Wife of the deceased	24,55,000/-
Minor Akilesh/Son of the deceased	14,73,000/-
Alagammal/Mother of the deceased	9,82,000/-

In view of the submission of the learned counsel for the insurance

12/15



C.M.A(MD)No.422 of 2018

WEB COPY

company that the entire amount has already been deposited, the first and the third respondent is permitted to withdraw their share, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors 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 his share. The insurance company is permitted to withdraw the remaining amount. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[P.V.J] [K.K.R.K.J.]

05.08.2024

NCC : Yes/No
Index : Yes : No
sbm



C.M.A(MD)No.422 of 2018

To

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- 1.The Motor Accident Claims Tribunal,
Sub Court,
Devakottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.422 of 2018

P.VELMURUGAN.J.,
and
K.K.RAMAKRISHNAN.J.,

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C.M.A(MD)No.422 of 2018

05.08.2024