



C.M.A.(MD).No.1019 of 2018 and Cross Obj. (MD)No.2 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.12.2023

Delivered On : 29.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

**C.M.A.(MD)No.1019 of 2018
and
Cross Obj.(MD)No.2 of 2019**

C.M.A.(MD)No.1019 of 2018:-

The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
Nagercoil Office, DDJ Complex,
Opposite to Vadaseri Bus Stand,
Nagercoil, Agastheewaram Taluk,
Kanyakumari District.

... Appellant

Vs.

1.Suseela
2.Chandrasekar
3.Kalaiselvi
4.Minor Satheesh Kumar,
(Minor 4th respondent rep.
By his mother and natural guardian
of first respondent Suseela)
5.Soundara Rajan
6.K.Perumal
7.TATA AIG General Insurance Company Limited,



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Rep. By its Branch Manager,
Peninsula Business Park,
Tower A, 15th Floor Gnana Patrao Kadam Marg,
Opp. Senapathi Bapat Marg,
Lower Parel, Mumbai.

8.Muthumari

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment in M.C.O.P.No.75 of 2015 dated 13.10.2017, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil at Kanyakumari District.

For Appellant	: Mr.K.Bala Subramanian
For R1 to R4	: Mr.G.Aravinthan
For R7	: Mr.B.Vijay Karthikeyan
For R2, R3 & R5	: No Appearance

Cross Obj.(MD)No.2 of 2019:-

1.Suseela
2.Chandrasekar
3.Kalaiselvi
4.Minor Satheesh Kumar,
(Minor 4th respondent rep.
By his mother and natural guardian
of first respondent Suseela)

... Cross Appellants

Vs.

1.The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
Nagercoil Office, DDJ Complex,
Opposite to Vadaseri Bus Stand,



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Nagercoil, Agastheewaram Taluk,
Kanyakumari District.

2.Soundara Rajan

3.K.Perumal

4.TATA AIG General Insurance Company Limited,
Rep. By its Branch Manager,
Peninsula Business Park,
Tower A, 15th Floor Gnana Patrao Kadam Marg,
Opp. Senapathi Bapat Marg,
Lower Parel, Mumbai.

5.Muthumari

... Respondents

PRAYER : Cross Objection filed under Order XLI Rule 22 of the Civil Procedure Code, to set aside the order dated 13.10.2017 passed in M.C.O.P.No.75 of 2010 on the file of the learned Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil.

For Cross Appellants	: Mr.G.Aravinthan
For R1	: Mr.K.Bala Subramanian
For R4	: Mr.B.Vijay Karthikeyan
For R2, R3 & R5	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/fifth respondent/insurance company, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal cum Chief Judicial Magistrate, at Nagercoil at Kanyakumari District in M.C.O.P.No.75 of 2015 dated 13.10.2017.



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2.This Cross Objection has been filed by the appellants/petitioners/claimants, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal cum Chief Judicial Magistrate, at Nagercoil at Kanyakumari District in M.C.O.P.No.75 of 2015 dated 13.10.2017.

3.For the sake of convenience, the parties are arrayed herein as per the rank in M.C.O.P.No.75 of 2015.

4.The factual matrix of the present case, briefly stated, are as under:-

This is a fatal case. The petitioners 1 and 2 are the parents of the deceased. The third petitioner is the unmarried sister of the deceased. The fourth respondent is the minor brother of the deceased. On 30.07.2014 at about 11.45 p.m., the deceased Ganesa Moorthy was driving a TATA Super Ace Mini Tempo bearing registration No.TN-74-AH-2018 carrying fish boxes of Maria Aquacon Pvt., Ltd., Kootapuli, Tirunelveli District from Kootapuli to Thiruvananthapuram in Nagercoil – Kaliakkavilai NH-47 Road from east to west direction. While the deceased was driving



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the vehicle over Kulithurai Thamirabarani River new bridge, the first respondent driving a Telco Tempo bearing registration No.TN-74-AB-6196 from west to east direction in a rash and negligent manner dashed against the Mini Tempo bearing registration No.TN-74-AH-2018 driven by the deceased. As the result of which, the deceased sustained multiple grievous injuries and died on the spot. Seeking a compensation of Rs.30,00,000/-, the petitioners have filed the claim petition.

5.The first respondent is the driver of the tempo bearing registration No.TN-74-AB-6196, the second respondent is the owner of the tempo and the third respondent is the insurance company, with which the Tempo was insured. The fourth respondent is the owner of the vehicle TATA Super Ace Mini Temp bearing registration No.TN-74-AH-2018 and the fifth respondent is the insurance company, with which the fourth respondent vehicle was insured. The respondents 3 , 4 and 5 have filed counters refuting each and every allegations set forth in the claim petition.



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6.The learned Tribunal framed three issues. Four witnesses were examined as P.W.1 to P.W.4 on the side of the petitioners and Ex.P1 to Ex.P13 were marked. One witness was examined and one document was marked on the side of the respondents. On the basis of the oral and documentary evidence and the arguments put forth by the respective parties, the Tribunal proceeded to conclude that both the drivers who drove the Tata ace and Tempo were responsible for the accident and fixed 50% - 50% contributory negligence on both the drivers.

7.The Transfer certificate of the deceased was marked as Ex.P8 and the driving licence of the deceased was marked as Ex.P11 and death certificate was marked as Ex.P6, from which the learned Tribunal decided that on the date of the accident, the deceased was 20 years old. Though it was contended by the petitioners that the deceased earned a monthly salary of Rs.12,000/- and daily batta of Rs.150/-, considering the fact that the deceased was the driver, the learned Tribunal had fixed a notional monthly income of Rs.5,000/- per month. Following the mandates of the Hon'ble Supreme Court in the case of ***Rajesh and others v. Munnalal Jain and another***, the learned Tribunal proceeded to add



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50% of the income of the deceased towards future prospects and thereafter, arrived at a monthly income as Rs.12,000/- (Rs.8,000/- + Rs. 4,000) and the yearly income of the deceased was arrived at Rs. 1,44,000/- (Rs.12,000x12). Since the age of the deceased was less than 40, it is necessary that the future prospects has to be adopted by the learned Tribunal. As per the judgment of th Hon'ble Apex Court in the case of ***Sarala Varma and others v. Delhi Transport Corporation and others reported in AIR 2009 (SCC) 3104***, 1/2th of the income of the deceased has to be deducted, since the deceased was bachelor. Hence, the contribution towards family was calculated as Rs.72,000/- (Rs. 1,44,000-72,000). As per ***Sarala Varma*** case, the multiplier '18' was adopted. After adopting multiplier, the head of loss of dependency was calculated as Rs.12,96,000/- (Rs.72,000x18). The learned Tribunal has passed an award under the following head:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.12,96,000/-
(ii) Loss of filial consortium for petitioners 1 and 2:	Rs.2,00,000/- (Rs.1,00,000/- each)
(iii) Loss of love and affection for petitioners 3 and 4 :	Rs.1,00,000/- (Rs.50,000/- each)
(iv) Funeral expenses:	Rs.25,000/-



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Total compensation awarded:	Rs.16,21,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.
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8.In view of the contributory negligence fixed on both the drivers, the respondents 3 and 5 insurance companies are directed to deposit 50%-50% of the award amount equally before the learned Tribunal.

9.Challenging the same, the appellant/fifth respondent/insurance company had filed this Civil Miscellaneous Appeal and the cross appellants/petitioners/claimants had filed the Cross Objection.

10.The appellant/fifth respondent is the insurance company with which the owner of the Tata Ace driven by the deceased had insured the said vehicle bearing registration No.TN-74-AH-2018. The learned counsel for the appellant/fifth respondent/insurance company vehemently submitted that the deceased having been found to be a tortfeasor, the learned Tribunal ought not to have proceeded to direct the first respondent to indemnify the fourth respondent. On the other hand, considering the fact that the deceased himself a tortfeasor, the



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appellant/fifth respondent company should not have been mulcted with liability.

11.Per contra the learned counsel for the respondents 1 to 4/petitioners who have filed Cross Objection in Cross Objection (MD)No.2 of 2019 vehemently submitted that the only eye witness to the scene of occurrence is P.W.2 and his evidence would prove that the accident happened only due to the rash and negligent driving of the tempo driver and that the deceased had driven his vehicle diligently and carefully in the extreme left. However, the same has not be considered by the learned Tribunal and has proceeded to fix 50%-50% contributory negligence on the deceased and the driver of the tempo and pressed for dismissal of the Civil Miscellaneous Appeal.

12.A careful perusal of the materials available on record would reveal that FIR which has been marked as Ex.P1 was registered by Marthandam police on the complaint given by the first respondent driver fixing liability on the deceased Ganesa Moorthy. However, the version narrated in the FIR Ex.P1 could not be taken as substantial evidence,



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since the same has been lodged by the driver who drove the Tempo. That apart the said driver was not examined on the side of the respondents. However, an eye witness namely Muthukrishnan P.W.2 on the side of the petitioners who strongly contended that the Tempo bearing registration No.TN-74-AB-6196 driven by the first respondent was driven in a rash and negligent manner and the same came along the road, in which the accident had happened in a high speed. That apart even the cleaner who travelled along the first respondent driver in the Tempo bearing registration No.TN-74-AB-6196 sustained grievous injuries and died on the spot. Had the contention of the first respondent that he had parked the vehicle on the extreme left of the road being true, the cleaner who had travelled along with him would not have sustained injuries, resulting in his death.

13.The Hon'ble Supreme Court in the case of ***Meera Devi and Another v. H.R.T.C. And others*** reported in ***(2014) 4 SCC 511***, had held that '*when there is no specific evidence to prove that the accident had taken place due to rash and negligent driving of the deceased, the doctrine of common law cannot be applied fixing contributory*



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negligence on the deceased' and the relevant portion of which is extracted as follows:-

“10.To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

14.In yet another case of Hon'ble Apex Court in ***Saraladevi v. Divisional Manager, Royal Sundaram Alliance Insurance Company Limited*** reported in ***(2014) 15 SCC 450***, has dealt with similar issue and the relevant portion of which is extracted as follows:-

“9. Aggrieved by the impugned judgement and final Order dated 12.09.2012 passed by the High Court, the appellants filed this appeal before this Court urging various tenable grounds namely, as to whether the High Court was justified in holding that there is a contributory negligence on the part of the deceased contrary to the evidence of the eye witness; whether the High Court was justified in fixing the ratio of contributory negligence as 25% on the part of the



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deceased on the basis of an erroneous finding; whether the High Court was justified in reducing the amounts awarded by the Tribunal from Rs.37,33,248/- to Rs.15,84,750/- and lastly, whether the High Court was justified in deducting 1/3rd amount towards personal expenses of the deceased contrary to the law laid down by this Court in various judgements?”

15. Even in the instant case, one of the eye witnesses who was examined as P.W.2 has clearly deposed in his evidence that the accident had happened due to the rash and negligent driving of the driver of the first respondent. That apart neither any evidence was brought in by the respondents nor any document was marked to prove that the deceased had driven his vehicle in a rash and negligent manner.

16. Fully fortified by the judgments of the Hon'ble Supreme Court discussed supra, I am inclined to observe that the learned Tribunal had erred in fixing the 50% liability of contributory negligence on the deceased Ganesa Moorthy. Hence, the appellant/fifth respondent/insurance company is absolved from liability and the third respondent insurance company is directed to pay the entire award amount by indemnifying the respondents 1 and 2.



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17. That apart, a careful perusal of the award passed by the learned Tribunal under various heads, would reveal that a sum of Rs.1,00,000/- each has been awarded to the petitioners 1 and 2 towards the compensation of loss of filial consortium and that amount is exorbitant. A sum of Rs.50,000/- was awarded towards love and affection to the petitioners 3 and 4, which is excessive. Following the dictum laid down in *Magma General Insurance Co. Ltd. v Nanu Ram and others* reported in **2018 ACJ 2782 (SC)**, the loss of filial consortium to the petitioners 1 and 2 is reduced from Rs.1,00,000/- each to Rs.40,000/- each. The compensation awarded towards loss of love and affection of the petitioners 3 and 4 was also reduced from Rs.50,000/- each to Rs.40,000/- each. Hence, the petitioners 1 and 2 are entitled only to Rs.40,000/- each towards the loss of filial consortium and the petitioners 3 and 4 are entitled to Rs.40,000/- each towards loss of love and affection.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/ Confirmed
(I) Loss of Dependency:	Rs.12,96,000/-	Rs.12,96,000/-	Confirmed
(ii) Loss of filial consortium for petitioners 1 and 2:	Rs.2,00,000/- (Rs.1,00,000/- each)	Rs.80,000/- (Rs.40,000/- each)	Reduced



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(iii) Loss of love and affection for petitioners 3 and 4 :	Rs.1,00,000/- (Rs. 50,000/- each)	Rs.80,000/- (Rs.40,000/- each)	Reduced
(iv) Funeral expenses:	Rs.25,000/-	Rs.25,000/-	Confirmed
Total compensation awarded:	Rs.16,21,000/-	Rs.14,81,000/-	Reduced

18. The first respondent is entitled to a sum of Rs.7,21,000/-, the second respondent is entitled to a sum of Rs.2,00,000/- and the respondents 3 and 4 are entitled to a sum of Rs.2,80,000/- each as compensation. The 7th respondent/insurance company directed to deposit Rs.14,81,000/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimants are permitted to withdraw their respective shares after deducting any amount received by them earlier. Insofar as the share of the minor claimant is concerned, the Tribunal is directed to deposit his respective share in a Fixed Deposit under a periodically renewable scheme till he attain majority and the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor. The fifth



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respondent/insurance company is entitled to withdraw the award amount, if any already deposited. The petitioners/claimants are not entitled for interest for the default period, if there is any.

19. Accordingly, the Civil Miscellaneous Appeal stands partly allowed and the Cross Objection stands dismissed. There shall be no order as to costs.

29.01.2024

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

To

1. The Motor Accidents Claims Tribunal Cum
Chief Judicial Magistrate, Nagercoil,
Kanyakumari District.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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