



C.M.A.(MD).No.557 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 06.12.2023

Delivered On : 10.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.557 of 2018

and

C.M.P.(MD)No.6480 of 2018

The Branch Manager,
The Oriental Insurance Company Limited,
Nagercoil Branch,
Marthandam,
Vadasery,
Nagercoil,
Kanyakumari District.

... Appellant / 3rd Respondent

Vs.

1.C.Ramachandran
2.K.Leelabai
3.R.L.Merlin Sheeba
4.R.L.Sheeja
5.P.Chandra Singh
6.K.Dhas

... Respondents 1 to 4 / Petitioners 1 to 4

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil made in M.C.O.P.No.78 of 2017 dated 07.02.2018.



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For Appellant : Mr.C.Jawahar Ravindran
For R1 to R4 : Mr.G.Balakrishnan
For R5 & R6 : Given Up

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/third respondent insurance company, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), at Nagercoil in M.C.O.P.No.78 of 2017 dated 07.02.2018.

2.For the sake of convenience, the parties are arrayed herein as per the rank in M.C.O.P.No.78 of 2017.

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

The petitioners 1 and 2 are the parents of the deceased and the petitioners 3 and 4 are the sisters of the deceased. The deceased was 27 years at the time of his death and the compensation of Rs.62,70,000/- has been claimed by the petitioners before the learned Tribunal. On 04.09.2016, at about 07.00 p.m., the deceased R.L.Vibin Raj was driving his motorcycle bearing registration No.TN-75-P-5349 along Malaikovil to Chitharal Road. While travelling near Chitharal Cheenithoppu Rajesh House, a tipper lorry bearing registration No.TN-32-C-1806 driven by the first respondent in a rash and negligent manner dashed against the motorcycle and as the result of which, the deceased was thrown away and fell on the road and



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sustained various fatal injuries all over the body. He was taken to Marthandam Issac hospital, however, declared died. Seeking to compensate the death of Vibin Raj, the petitioners have filed the claim petition.

4.The first respondent is the driver of the tempo, the second respondent is the owner of the tempo and the third respondent is the insurance company, with which the Tempo was insured. The third respondent has filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Tribunal framed three issues. Three witnesses were examined as P.W.1 to P.W.3 on the side of the petitioners and Ex.P1 to Ex.P23 were marked. Neither any witness was examined nor any document was marked on the side of the respondents. The respondents 1 and 2 were called absent and set exparte. On the basis of the oral and documentary evidence and arguments put forth by respective parties, the Tribunal proceeded to conclude that the accident had happened only due to the rash and negligent driving of the first respondent driver. However, the learned Tribunal held that the respondents 1 to 3 were jointly and severely liable for the payment of the compensation. On the basis of the birth certificate marked as Ex.P9, the learned Tribunal decided that the deceased was 27 years old at the time of death. Though it was claimed by the petitioners that the deceased earned a sum of Rs.35,000/- as salary by examining the deceased person's employer as P.W.3.



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Considering the evidence deposed by P.W.1 i.e. father of the deceased, the deceased worked only during the vacation with one Rajendran. The learned Tribunal brushed aside the claim of the petitioners that the deceased earned a sum of Rs.35,000/- as salary per month. However, considering Ex.P7 and evidence of P.Ws., the learned Tribunal came to a decision that the notional income would be fixed at Rs.9,000/-. After adopting the multiplier '17' as per the dictum laid down by the Hon'ble Apex Court in the case of Sarala Varma and others v. Delhi Transport Corporation and others reported in AIR 2009 (SCC) 3104, the compensation of loss of dependency was calculated as Rs.18,36,000 (Rs.9,000x12x17). For loss of future prospects, 50% of the monthly income was calculated as Rs.27,54,000/-[Rs. 18,36,000+9,18,000(18,36,000x50/100)]. Since the deceased was a bachelor at the time of his death, 1/2th of the income has to be deducted towards his personal income. Hence, the loss of dependency would be calculated as Rs.13,77,000/-[(Rs. 27,54,000-13,77,000(27,54,000x1/2)]. The learned Tribunal has awarded the compensation under the following heads:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.13,77,000/-
(ii) Loss of love and affection for petitioners 1 and 2:	Rs.2,00,000/- (Rs.1,00,000/- each)



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(iii) Loss of love and affection for 4 th petitioner:	Rs.50,000/-
(iv) Transportation and Funeral expenses:	Rs.20,000/-
(v) Loss of amenities:	Rs.10,000/-
Total compensation awarded:	Rs.16,57,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6. Further since the deceased travelled without wearing helmet, the amount of Rs.50,000/- was deducted from the total compensation and the learned Tribunal has concluded that the petitioners are entitled to Rs.16,07,000/- as compensation.

7. Challenging the said award, the third respondent insurance company has filed this appeal.

8. The learned counsel for the appellant vehemently submitted that the learned Tribunal ought to have considered that the vehicle involved in the accident bearing registration No.TN-75-P-5349 was driven by the deceased with two more persons as pillion riders. The evidence of P.W.1 would suffice to prove the same. That apart he had travelled without wearing helmet. Under such circumstances, 20% contributory negligence ought to have been fixed on the deceased. That apart the learned



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Tribunal has proceeded to award a compensation under the head loss of love and affection at Rs.2,50,000/-, which is exorbitant. Following the dictum laid down in *Magma General Insurance Co. Ltd. v Nanu Ram and others* reported in 2018 ACJ 2782 (SC), the same should have been Rs.40,000/- each. That apart as per *Sarala Varma* case, the future prospects ought to have been calculated as 40%, the Tribunal ought not have calculated the same as 50% and pressed for allowing the appeal accordingly.

9.In the instant case, a perusal of materials available on record would reveal that the rider of the motor vehicle involved was the deceased and at the time of the accident, apart from the rider I.e. the deceased, he had accompanied two more pillion riders in his motorcycle, which is not permissible under Motor Vehicles Act. That apart he also did not wear helmet at the time of the accident. Though the learned Tribunal did not fix contributory negligence on the part of the deceased, deducted a sum of Rs.50,000/- from the total award amount for travelling without helmet, it is not necessary to interfere with the same.

10.With respect to future prospects, following the dictum laid down in *Sarala Verma* case, I am inclined to calculate the future prospects at 40% instead of 50%. The loss of future prospects would be calculated at 40% would be Rs.25,70,400/-[Rs. 18,36,000+7,34,400(18,36,000x40/100)]. After deducting 1/2th towards personal



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expenses of the deceased, the income would be Rs.12,85,200/-[(Rs. 27,70,400-12,85,200(Rs.27,70,400x1/2)]. That apart after adopting *Magma General Insurance Co. Ltd. v Nanu Ram and others* reported in 2018 ACJ 2782 (SC), for the loss of love of affection, the amount of Rs.1,00,000/- is reduced to Rs.40,000/- each for the petitioners 1, 2 and 4. Considering the fact that the learned Tribunal has not granted any compensation for the third petitioner since she has been married, I am not inclined to interfere with the same.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/ Confirmed
(I) Loss of Dependency:	Rs.13,77,000/-	Rs.12,85,200/-	Reduced
(ii) Loss of love and affection for petitioners 1 and 2:	Rs.2,00,000/- (Rs. 1,00,000/- each)	Rs.80,000/-(Rs. 40,000/- each)	Reduced
(iii) Loss of love and affection for 4 th petitioner:	Rs.50,000/-	Rs.40,000/-	Reduced



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(iv)Transportation and Funeral expenses:	Rs.20,000/-	Rs.20,000/-	Confirmed
(v)Loss of amenities:	Rs.10,000/-	Rs.10,000/-	Confirmed
Total compensation awarded:	Rs.16,57,000/-	(*)Rs.14,35,200/-	Reduced
After deducting Rs.50,000/- from the total compensation, since the deceased did not wear the helmet	Rs.16,07,000/-	(*)Rs.13,85,200/-	Reduced

11.The petitioners are entitled to a sum of **(*)Rs.13,85,200/-** as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The third respondent insurance company directed to deposit **(*)Rs.13,85,200/-** with 7.5% interest from date of the claim petition till the date of

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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 petitioners/claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The third respondent/insurance company are entitled to withdraw the excess amount, if any. The petitioners/claimants are not entitled for interest for the default period, if there is any.

12. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

**(*)Corrected as per the order of this Court dated. 01.04.2024
in CMA(MD)No.557 of 2018.**

Sd/-

Assistant Registrar()

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/06/2024

Sub Assistant Registrar
(CS-I/II/III/IV)



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(*)To be substituted to the order already despatched on 16.02.2024.

To

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

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

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10.01.2024**

MK/31.01.2024 10P 4C

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023