BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.07.2024**

CORAM

JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI

C.M.A(MD)Nos.215 of 2017 and 742 of 2023
and
C.M.P(MD)No.11128 of 2018
and
C.M.P(MD)Nos.10310 and 10312 of 2023

C.M.A(MD)No.215 of 2017

1.Veerammal
2.Minor Nandhini
3.Minor Ranjith Kumar
4.Adaikala Thevar
5.Mariammal ... Appellants/Petitioners

(Minor appellants 2 & 3 are represented by their mother and next guardian 1st appellant herein)

Vs.

1.Manikandan

2.National Insurance Company Ltd.,
Through its Branch Manager,
Nos.101, 106, BMC House,
NI Connaught Place,
New Delhi – 110 001. ... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 218 of 2013 on the file of the Motor Accident Claims Tribunal (IV Additional District Court), Tirunelveli, dated 07.04.2014.

For Appellants	: Mr.T.Selvakumaran
For R2	: Mr.S.Srinivasa Raghavan
For R1	: No Appearance

C.M.A(MD)No.742 of 2023

National Insurance Company Ltd.,
Nos.101, 106, BMC House,
NI Connaught Place,
New Delhi – 110 001.
Rep. by its Branch Manager, ...Appellant/2nd Respondent

Vs.

1.Veerammal
2.Minor Nandhini
3.Minor Ranjith Kumar
4.Adaikala Thevar
5.Mariammal ...Respondents 1 to 5/Petitioners

6.Manikandan ...6th Respondent/1st Respondent

(Minor respondents 2 & 3 are represented by their mother and next guardian 1st respondent herein)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 07.04.2014 made in M.C.O.P.No.218 of 2013 on the file of the Motor Accident Claims Tribunal (IV Additional District Court) (incharge), Tirunelveli and allow this appeal.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R5	: Mr.T.Selvakumaran
For R6	: No Appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

These Civil Miscellaneous Appeals are preferred challenging the Award, dated 07.04.2014 passed in M.C.O.P.No.218 of 2013 by the Motor Accident Claims Tribunal/IV Additional District Court, Tirunelveli.

2. The petitioners/claimants in M.C.O.P.No.218 of 2013 have preferred the appeal in C.M.A(MD)No.215 of 2017 seeking for enhancement of compensation.

3. The 2^{nd} respondent/National Insurance Company has preferred the appeal in C.M.A(MD)No.742 of 2023 to set aside the award.

4. For the sake of convenience, the parties as arrayed in M.C.O.P.No.218 of 2013 is adopted hereunder.

5. **The brief facts of the case:**

On 09.12.2012 the deceased Ramar was riding TVS XL moped bearing registration number TN 69 AV 8112 from Kovilpatti to Chettikurichi and at about 7.20 p.m. when he was riding near Chidambarampatti Colony, the 1st respondent's Hero Honda Splendar bearing registration number TN 69 AZ 8266, came from opposite direction, was ridden by its rider in a rash and negligent manner by talking with another man, suddenly came to the wrong side and hit against the moped. Due to impact, the said Ramar sustained serious injuries all over the body and died on the way to hospital. F.I.R. was registered by Nalatinputhur Police Station in Crime No.174 of 2012 under Sections 279, 337 & 304 (A) of IPC, against the rider of the 1^{st} respondent's two wheeler. The deceased Ramar was 32 years and working as a Helper in Tamil Nadu Electricity Board with monthly salary of Rs.13,494/- p.m. The petitioners, who are the wife, children and parents of the deceased Ramar are depending on the income of the deceased. Hence, the petitioners 1 to 5 filed the claim petition seeking compensation of Rs.50,00,000/-.

6. The 1st respondent stated that the deceased was riding his two wheeler in a rash and negligent manner and attempted to cross the main road and invited the accident. The accident happened due to negligence on the part of the deceased. The 1st respondent's rider was riding his two wheeler at moderate speed by following traffic rules. He was having valid driving licence. The vehicle was insured with the 2nd respondent. The 2nd respondent is liable to pay compensation, if any.

7. The 2nd respondent/Insurance Company objected the claim petition by contending that the accident was not taken place due to 1st respondent's rider, the 2nd respondent is not liable to pay compensation. Moreover, at the time of accident, the 1st respondent's vehicle rider has no

valid driving licence. Since the policy condition is violated, the 1st respondent alone has to pay compensation to the petitioners. So, the petitioners are not entitled to claim from the 2nd respondent/Insurance Company.

8. The Tribunal has tried the claim petition. Both sides adduced oral and documentary evidence. On the petitioners' side, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.7 were marked. On the respondents' side, R.W.1 was examined and Ex.R.1 and Ex.R.2 were marked.

9. After hearing both and after considering the evidence, the Tribunal has passed the impugned order that the 1st respondent's rider was responsible for the accident and fixed monthly income at Rs.11,706/- with 50% future prospects and awarded a total compensation of Rs.26,42,200/- including incidental benefits with interest.

10. Aggrieved by the said award, the petitioners/claimants and the 2nd respondent/Insurance Company have preferred these respective Civil

Miscellaneous Appeals.

11. Heard both sides and perused the records in these Civil Miscellaneous Appeals.

12. The learned counsel for the appellants/claimants in C.M.A(MD)No.215 of 2017 has submitted that the deceased Ramar's monthly gross salary was Rs.13,494/- as per Ex.P.7 - salary certificate. The deceased was a permanent employee of TNEB and so, future prospectus at 50% has to be added as per settled principle. But, the Tribunal deducted Rs.1,588/- as shown in the deduction column of the salary certificate. The Tribunal erred in deducting the said deductions from monthly salary. Further, the Tribunal ought to have granted Rs.1,00,000/- towards consortium.

13. The 2nd respondent/Insurance Company (appellant in C.M.A(MD)No.742 of 2023) contended that the Tribunal has not properly appreciated the evidences adduced by both parties. On the respondents'

side, RW.1 was examined, who categorically deposed that the rider of the 1st respondent's two wheeler had not possessed a valid driving licence, particularly, the driving licence was valid upto 25.12.2003, thereafter, the licence was not renewed. The accident was taken place on 09.12.2012. Hence, there is a clear violation of policy condition and therefore, the 2nd respondent/Insurance Company is not liable to indemnify the owner of the vehicle and is not liable to pay any compensation to the petitioners/claimants.

14. On perusal of records, it is clear that the Tribunal has correctly held that the accident took place due to negligence on the part of the 1st respondent's vehicle rider, against whom Ex.P.1 – F.I.R. was registered. There is no contra material against Ex.P.1 – F.I.R. produced by the 1st respondent. On the 2nd respondent's side produced material showing that the driving licence of the rider was expired even on 25.12.2003 and thereafter, the licence was not renewed.

15. The Insurance Company, on its part, has filed C.M.A(MD)No.742 of 2023 and its contention is that the licence of the driver of the offending vehicle has expired and he has not renewed, which implead that at the time of accident, he did not have a valid driving licence. Since there is a breach of policy condition, the Tribunal ought to have directed applying the doctrine of pay and recover and should have granted the right to the insurance company to recover the sum determined as compensation from the owner of the vehicle. The owner of the vehicle was served with notice of this appeal but has chosen not to appear. So, the Civil Miscellaneous Appeal in C.M.ANo.752 of 2023 has to be allowed in part and the doctrine of pay and recovery has to be adopted.

16. On the side of the petitioners/claimants (appellants in CMA(MD)No.215 of 2017) it is submitted that the deceased Ramar was working as a Helper in TNEB and was a permanent government employee, which was not disputed. The deceased Ramar was drawing gross salary of Rs.13,494/- p.m. as seen from Ex.P.7 - Salary Certificate. But the Tribunal deducted the deductions of Rs.1,588/- as per the Salary Certificate and also

further deducted 1/4th towards personal expenses, which is not correct. It is a settled principle that gross salary has to be taken into account for fixing compensation in motor accident cases. Moreover, the cost of inflation of the index is increasing year by year. So, the said Rs.13,494/- is to be taken as monthly income of the deceased. The deceased was a salaried man, who was getting permanent monthly income. The age of the deceased was 32 years, which is not disputed. As per the settled proposition of law in **Pranay Sethi** case reported in **2017 (2) TNMAC 609 (SC)**, 50% has to be added towards future prospects of the deceased and therefore, the Tribunal has correctly added 50% future prospectus considering the age of the deceased was 32, i.e. below 40 years. By adding 50%, the income of the deceased is fixed at Rs.20,241/- p.m. (Rs.13,494/- + Rs.6,747/- (50% of Rs.13,494/-). Considering the age of the deceased as 32 years, the multiplier is '16' according to the settled principle in **Sarla Verma** Case. Hence, the Tribunal has correctly adopted the multiplier '16'. The loss of income due to the death of the deceased Ramar would come to Rs.20,241/- x 12 x 16 = Rs.38,86,272/-.

17. The deceased was family man consisting wife, children and parents and hence, as per settled proposition in **Sarla Verma Case and Pranay Sethi** Case, 1/4th income has to be deducted towards personal expenses. Accordingly, Rs.9,71,568/- (1/4 of Rs.38,86,272/-) is to be deducted towards personal expenses. After deducting the personal expenses, the loss of income of deceased's dependants is arrived at Rs.29,14,704/-, rounded to Rs.29,14,700/-.

18. While considering the loss of love and affection, the Tribunal has only awarded Rs.50,000/- to the petitioners and also Rs.50,000/- towards loss of consortium to the 1st petitioner. As per the dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi case (2017 (2) TNMAC 609 (SC)**, each dependents of the deceased are entitled to Rs.40,000/- each towards spouse consortium, parental consortium and filial consortium. Though the accident took place in the year 2013 still the litigation is continued upto before this Court. Hence, 20% should be added in awarding compensation towards love and affection. It is not disputed by the learned counsel for the respondents. Hence, the petitioners being the wife, children and parents of

the deceased are entitled Rs.48,000/- each towards consortium and so, the lumpsum consortium of Rs.50,000/- to the petitioners and also Rs.50,000/- towards consortium to the 1st petitioner as awarded by Tribunal is modified. The Tribunal awarded Rs.5,000/- towards transport and loss of estate. There is no dispute raised by the petitioners/claimants.

19. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.218 of 2013 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.20,241/- x 12 x 16 = Rs.38,86,272/- less 1/4th Rs.9,71,568/- towards personal expenses	Rs.29,14,700/-
2.	Towards spousal consortium to the 1st petitioner, being wife of the deceased.	Rs. 48,000/-
3.	Towards filial consortium for petitioners 2 and 3 (Rs.48,000 x 2) (being children of the deceased)	Rs. 96,000/-
4.	Towards parental consortium for petitioners 4 and 5 (Rs.48,000 x 2) (being parents of the deceased)	Rs. 96,000/-
5.	Towards Transport and Loss of Estate	Rs. 5,000/-
	Total	**Rs.31,59,700/-**

Therefore, the petitioners 1 to 5/claimants in M.C.O.P.NO.218 of 2013 are entitled to Rs.31,59,700/-. Therefore, to that extent, the compensation awarded by the Tribunal is set aside and the same is modified and enhanced as Rs.31,59,700/-.

20. In the result,

(i) The Civil Miscellaneous Appeals in C.M.A(MD)Nos.215 of 2017 and 742 of 2023 are partly allowed.

(ii) Insofar as C.M.A(MD)No.215 of 2017 is concerned the quantum of compensation awarded by the Tribunal / IV Additional District Court, Tirunelveli in M.C.O.P.No.218 of 2013 is enhanced from Rs.26,42,200/- to Rs.31,59,700/- (Rupees Thirty One lakhs, fifty nine thousand and seven hundred only).

(iii) The first petitioner/wife of the deceased, who is the first appellant herein is entitled to receive a sum of Rs.8,00,000/-, the petitioners 2 and 3 / children of the deceased, who are minor appellants 2 and 3 herein are entitled to receive a sum of Rs.8,00,000/- each and the 4th appellant / father of the deceased is entitled to receive a sum of

Rs.3,09,700/- and the 5th appellant / mother of the deceased is entitled to receive a sum of Rs.4,50,000/- with proportionate interests and costs.

(iv) The 2nd respondent / Insurance Company is directed to deposit the entire compensation, less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.218 of 2013 on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the 2nd respondent / Insurance Company, the appellants 1, 4 and 5 /claimants are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. The share amount of minor appellants 2 and 3/claimants shall be deposited in any one of the Nationalized Bank till they attain majority and the first appellant is entitled to receive interest payable on the said deposit once in three months.

(vi) Insofar as the Civil Miscellaneous Appeal in C.M.A(MD)No.742 of 2023 is concerned, the appellant / Insurance

Company is directed to pay the compensation awarded by this Court and then recover the same from the 6th respondent / owner of the offending vehicle. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.S.S.,J.) **(P.V.M.,J.)**

11.07.2024

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

VSD

To

1.The Motor Accident Claims Tribunal
(IV Additional District Court),
Tirunelveli

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.
AND
P.VADAMALAI. J.

VSD

Judgment made in
C.M.A(MD)Nos.215 of 2017 and 742 of 2023

11.07.2024