



C.M.A(MD)No.353 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)No.353 of 2020

Reliance General Insurance Company Ltd.,
Represented through its Manager.
5th Street, 4th Street H Block,
Door No.12 H 2035, Annanagar West,
Chennai Metro Policity,
Chennai District.

... Appellant/Respondent No.2

Vs.

1.Vinothini

2.Minor Karun

3.Murugeswari

... Respondents 1 to 3/Petitioners

4.Kuppusamy

... 4th Respondent/1st Respondent

*(Minor 2nd respondent represented through
his mother the first petitioner Vinothini)*



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal Judge/Additional District Judge (FTC), Theni in M.C.O.P.No.123 of 2018 dated 22.07.2019.

For Appellant : Mr.V.Sakthivel
For R1 - R3 : Mr.C.Deepak
For R4 : No Appearance

JUDGMENT

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

This Civil Miscellaneous Appeal is preferred against the Award dated 22.07.2019 passed in M.C.O.P.No.123 of 2018 by the Motor Accident Claims Tribunal/Additional District Judge (FTC), Theni.

2. The 2nd respondent in M.C.O.P.No.123 of 2018 is the appellant herein.



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3. The respondents 1 to 3 herein, are petitioners/claimants who filed the claim petition in M.C.O.P.No.123 of 2018. The 4th respondent herein is the 1st respondent in the claim petition.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 123 of 2018 is adopted hereunder.

5.The brief facts of the case:

On 01.05.2018 at about 10.30 a.m. the deceased Saravanan was riding his two wheeler bearing registration number TN 22 BJ 8779 along the Chengalpattu to Tambaram GST road from south to north and while he was riding on service road leading to Keelkaranai, departed from GST road, on seeing mini lorry coming from opposite direction, dashed behind a parked tipper lorry bearing registration number TN 18 P 6896 belonged to the first respondent. The first respondent's tipper lorry was parked in a slightly crossing road, obstructs vision of the vehicle coming from opposite direction and the accident was taken place due to negligence on the part of the driver of the 1st respondent's lorry. Due to impact, the deceased



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sustained multiple injuries and died on the spot. At the time of accident, the deceased was working as a Supervisor in a private concern and was earning Rs.20,000/- p.m. The petitioners are the wife, minor son and mother of the deceased depending solely on his income. F.I.R. was registered against the driver of the 1st respondent's lorry. The offending vehicle was insured with the 2nd respondent. Hence, the petitioners, who are dependants of the deceased Saravanan, filed the claim petition seeking compensation of Rs.25,00,000/-.

6. The 2nd respondent/Insurance Company objected that the accident took place due to negligent act of the deceased, who did not have driving license and was not wearing helmet. The deceased was riding his two wheeler in a rash and negligent manner and dashed behind the parked lorry in the daytime on seeing a mini lorry coming from the opposite direction and inviting the accident. There is no negligence on the part of the driver of the lorry. Hence, the 2nd respondent is not liable to pay any compensation.



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7. Before the Tribunal both side adduced oral and documentary evidence. Petitioners examined four witnesses as P.W.1 to P.W.4 and marked 8 documents as Ex.P.1 to Ex.P.8. On the side of the respondents, three witnesses were examined as R.W.1 to R.W.3 and Ex.R.1 to Ex.R.4 were marked and also Ex.X.1 to Ex.X.5 marked. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to negligence on the part of the driver of 1st respondent and awarded Rs.44,91,000/- to the petitioners/claimants with interest and cost and directed the 2nd respondent to pay the award amount.

8. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

9. Heard both side and perused the records in this Civil Miscellaneous Appeal.

10. It is the main contention of the counsel for the appellant/ 2nd respondent Insurance Company that the accident happened at daytime,



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the deceased without holding a driving licence and without wearing helmet had ridden two wheeler in a rash and negligent manner and dashed behind the 1st respondent's lorry which was parked on the left side of the road. The driver was also in the lorry. It is further contended that the accident took place due to negligence act of the deceased and hence, the 2nd respondent is not liable to pay any compensation. Further, the Tribunal has awarded more than the claim amount and also has not fixed any contributory negligence on the part of the deceased.

11. Per contra, the learned counsel for the petitioners/claimants has submitted that the 1st respondent has parked the tipper lorry at a curved place of service road which is departed from GST road, which is not a parking area. The F.I.R. was registered against the driver of the tipper lorry. The driver has not lodged any complaint against the deceased. Moreover, the 1st respondent's driver is not a regular driver, who drove the lorry. Hence, the Tribunal correctly appreciated the evidence and awarded compensation as per the settled proposition of law.



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12. On perusal of records, it is clear that the accident had taken place at a curved road, which is a service road from the main road. On perusal of evidence of P.W.2 - eye witness and R.W.2 - driver of the tipper lorry, it is clear that the lorry was parked in a curved road and that area is not a parking area. At this juncture, it is appropriate to mention here the provisions of Sections 122 and 126 of the Motor Vehicles Act.

“122. Leaving vehicle in dangerous position -

No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

126. Stationary vehicles -

No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.”



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So, under Section 122 of the Motor Vehicles Act, parking a motor vehicle in a public road, no matter which part of the day, is considered an obstruction as would cause inconvenience to the other road users and prohibits it and Section 126 of the Act prohibits parking a motor vehicle unless a licensed driver is there in the seat. In this case, the driver of the lorry was examined as R.W.2, who admitted that he was not a regular driver, one Baskaran was the regular driver of the tipper lorry and as per Baskaran's request, R.W.2 drove the lorry and parked it in a curved road. There is no material placed by the 2nd respondent/Insurance Company to show that the offending lorry was stopped due to mechanical fault. Admittedly, F.I.R. was registered against the offending lorry driver, who did not give any contra complaint to prove his non-negligence on his part. The 1st respondent did not contest the claim petition and remained ex-parte. So, the Tribunal correctly held that the lorry was parked in an unprotected area on a curved portion of the service road which would have caused the accident. Therefore, the negligence on the part of the driver of the offending lorry is evident and proved by the petitioners/claimants.



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13. The next contention raised by the appellant/2nd respondent Insurance Company is that the Tribunal awarded more than claimed compensation amount and the Tribunal failed to fix contributory negligence on the part of the deceased, who was not holding a driving licence and was not wearing helmet.

14. On perusal of records, the Tribunal held that as per Ex.X.2 to Ex.X.5 the deceased was working as a supervisor in Sri Akila Castings Company, Chennai and fixed the monthly income at Rs.21,500/- on the basis of Ex.P.6 and Ex.X.3 - Salary Certificates. At the time of accident, the deceased was aged about 30 years. There is no contra material produced by the appellant/2nd respondent. In view of the settled proposition of law in **Sarla Verma case** reported in **2009(2) TNMAC 1 (SC)**, 50% has to be added towards future prospects of the deceased, who was below 40 years. So, the Tribunal has correctly added future prospects at 50% and fixed the income of the deceased as Rs.32,250/- (Rs.21,500/- + Rs.10,750/-). The Tribunal has correctly arrived at the deduction at 1/3 towards personal



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expenses of the deceased and such deduction, the loss of income for the petitioners/claimants is Rs.21,500/- p.m. The multiplier '17' adopted by the Tribunal is correct one considering the age of the deceased. So, the loss of income of the dependents is $\text{Rs.21,500/-} \times 12 \times 17 = \text{Rs.43,86,000/-}$.

15. On perusal of the award, the Tribunal awarded Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transport. There is no dispute on both sides. But, the Tribunal has awarded Rs.40,000/- to the 1st petitioner and Rs.30,000/- to the 3rd petitioner towards consortium and love and affection. The Tribunal has not awarded any compensation to the 2nd petitioner towards filial consortium. The Tribunal has failed to consider the settled principle as laid down in **Pranay Sethi Case of the Hon'ble Supreme Court** reported in **TN 2017(2) TNMAC 609 (SC)**. It is settled that Rs.40,000/- has to be awarded towards loss of parental consortium, spousal consortium and filial consortium and also there should be an enhancement of 10% on consortium once in every three years. The accident occurred in 2018 and till now i.e., 2024 the litigation is challenged. Hence, 10% should be added in awarding



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compensation towards love and affection. Thereby, the petitioners are entitled Rs.44,000/- each towards love and affection.

16. The next contention raised by the appellant/2nd respondent Insurance Company, the petitioners/claimants claimed compensation of Rs.25,00,000/-, but the Tribunal erred in awarding more than the compensation claimed by them. On perusal of award of the Tribunal, it has relied on the decision of the **Hon'ble Supreme Court** in the case of **Nagappan /v/ Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC)** and awarded just compensation under Section 168 of the Motor Vehicles Act more than the claim amount. This Court has also in various cases held that just compensation can be awarded more than the claim amount as the Motor Vehicles Act is a beneficial and welfare legislation, relying on the recent decision of the **Hon'ble Supreme Court in Ramla & Ors. /v/ National Insurance Company Limited & Ors.** reported in **(2019) 2 SCC 192**. The argument of the appellant/2nd respondent Insurance Company in this regard is not acceptable one and the same is rejected.



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17. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.123 of 2018 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.21,500/- x 12 x 17)	Rs. 43,86,000
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of Consortium to the petitioners 1 to 3 being wife, child and mother of the deceased (Rs.44,000/- x 3)	Rs. 1,32,000/-
5.	Transport	Rs. 5,000/-
	Gross Total	Rs. 45,53,000/-

18. In this case, the appellant/2nd respondent vehemently contended that the deceased was not holding driving licence and also was not wearing helmet at the time of accident. The petitioners have not produced any material to show that the deceased possessed a valid driving licence at the time of accident. On perusal of the M.V. report and F.I.R., it is established that the deceased was not wearing a helmet at the time of accident. This Court has held in various cases fixing contributory negligence from 10% to 50%. It is established that the deceased was not having any driving licence and was not wearing helmet. The deceased was riding two wheeler and



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dashed behind the stationed tipper lorry. Considering the facts and circumstances of the case, the Tribunal ought to have fixed contributory negligence on the part of the deceased, but failed to do so. Hence, this Court fixes 20% contributory negligence on the part of the deceased. So, 20% contribution negligence is to be deducted from Rs.45,53,000/-. After deducting 20% of that amount i.e. Rs.9,10,600/-, the petitioners are entitled to Rs.36,42,400/- (Rs.45,53,000/- less Rs.9,10,600/-).

19. Therefore, the petitioners 1 to 3/claimants in M.C.O.P.NO.123 of 2018 are entitled to Rs.36,42,400/-. Therefore, to that extent, the compensation awarded by the Tribunal is modified and fixed as Rs.36,42,400/- with interest at 7.5% p.a. and with cost.

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No Costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.44,91,000/- to Rs.36,42,400/- (Rupees Thirty six lakhs forty two thousand and four hundred only).



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(iii) The first claimant/wife of the deceased, is entitled to receive a sum of Rs.21,00,000/-, the 2nd minor petitioner/claimant is entitled to receive a sum of Rs.12,00,000/- and the 3rd petitioner/mother of the deceased is entitled to receive a sum of Rs.3,42,400/- with proportionate interests and costs.

(iv)The appellant/2nd respondent is directed to deposit the entire compensation amount if already not deposited, 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.123 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Court (FTC), Theni, 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 appellant/2nd respondent, the claimants/respondents 1 and 3 herein 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



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amount already withdrawn if any. The share amount of minor petitioner/
2nd respondent herein shall be deposited in any one of the Nationalized Bank
till he attains majority and the first petitioner/1st respondent herein is
entitled to receive interest payable on the said deposit once in three months.

(N.S.S.,J.)

(P.V.M.,J.)

18.04.2024

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

To

- 1.The Motor Accident Claims Tribunal Judge/
Additional District Judge (FTC),
Theni.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI. J.

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