



C.M.A(MD)No.401 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.401 of 2020
and
C.M.P.(MD)No.4912 of 2020

Reliance General Insurance Company Ltd.,
Rep. By its Branch Manager,
Office at Sri Meenakshi Plaza,
Plot No.HIG-55,
80 Feet Road, Anna Nagar,
Madurai.

...Appellant

Vs.

1.Ramalakshmi
2.Kannan
3.Bhuvaneswari
4.Shebagamoorthy
5.N.Malathi

...Respondents



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 30.01.2017 passed in M.C.O.P.No.174 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasaraghavan
For R1 to R3 : Mr.C.M.Arumugam
for Mr.M.Govindan
For R4 &R5 : No appearance

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai in M.C.O.P.No. 174 of 2016, dated 30.01.2017, the insurance company has filed the present appeal.



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2.The claimants filed the claim petition in M.C.O.P.No.174 of 2016, claiming a sum of Rs.90,00,000/- (Rupees Ninety Lakhs only) as compensation for the death of the son of the first respondent. By the award, dated 30.01.2017, the Tribunal awarded a sum of Rs.43,95,400/- (Rupees Fourty Three Lakhs Ninety Five Thousand Four Hundred only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

The deceased was one Navaneetha Krishnan. The first respondent is his mother. The second respondent is his brother and he is physically challenged person. The third respondent is his un-married sister. He worked as Manager in the Export Company namely, “First Garments Manufacturing Company (private) Limited, Valayankulam at madurai”. He got salary of Rs.50,000/- per month. The respondent Nos. 1 to 3 are dependents of the said deceased. On 10.05.2015, when the deceased was travelling in Nissan Car bearing Reg.No.TN 58 AA 3334 as occupant, in Alagarkoil Road at Thallakulam one-way in North-South direction, the fourth respondent parked the vehicle in the middle of the road on the right



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side without noticing the movement of vehicles behind the said vehicle and asked the deceased to get down from the car. When the deceased attempted to get down from the car, the appellant insured vehicle bearing registration No.TN-67-C-1557 driven by the third respondent driver without noticing the same in a rash and negligent manner hit the deceased and the deceased sustained severe injuries and immediately, he was taken to the Appollo hospital at Madurai and in spite of the treatment, the deceased died on 25.05.2015. Hence, Thallakulam Traffic Investigation wing registered the case is Crime No.194 of 2015 under Sections 279, 338 and 304(A) of IPC against the driver of the third respondent, namely, the appellant insured vehicle. Therefore, the respondent Nos.1 to 3 filed the claim petition in M.C.O.P.No.174 of 2016, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, claiming compensation of Rs.90,00,000/-.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the fourth respondent, without having any valid licence at the time of the accident drove the vehicle and caused



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the accident. Further, due to the negligence of the first respondent and the deceased, the said accident happened. Therefore, the appellant insurance company is not liable to pay compensation hence, they prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 18 documents were marked as Ex.P1 to P18. On the side of the insurance company, neither any witness was examined nor any document was marked.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving and parking of the fourth respondent vehicle bearing Reg.No.TN 58 AA 3334 and directed the appellant Insurance Company, to pay a sum of Rs.43,95,400/- (*Rupees Fourty Three Lakhs and Ninety Five Thousand Four Hundred only*) as compensation along with 7.5% interest from the date of filing of the claim petition under the following



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heads:-

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S.No.	Heads	Amount awarded by the Tribunal
1.	Transport Charges	Rs. 10,000/-
2.	Medical Bills	Rs. 3,90,400/-
3.	Funeral Expenses	Rs. 5,000/-
4.	Loss of Love and Affection	Rs. 1,50,000/-
5.	Loss of Income	Rs. 38,40,000/-
	Total	Rs. 43,95,400/-

7. Aggrieved against the said award dated 30.01.2017, the appellant insurance company has filed the present appeal.

8. Submission of the learned Counsel for the appellant:

The fourth respondent has parked the car in the middle of the one-way road and the deceased without noticing the appellant insured vehicle opened the door of the fourth respondent's car and hence, the accident happened. If the fourth respondent parked the vehicle on the left side of the road, the accident would not have happened. Therefore, the learned counsel appearing for the appellant insurance company submits that the



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accident took place on account of contributory negligence of the deceased. He also disputes the monthly income of the deceased and the same was determined by the learned Tribunal Judge without any admissible evidence.

9. Submission of the learned Counsel for the Respondents:

Per contra, the learned counsel appearing for the claimants seeks for dismissal of this appeal. The driver of the appellant insured car was not examined. Therefore, on the strength of the evidence of P.W.2, the learned trial Judge correctly fixed negligence on the driver of the appellant insured car. The learned Tribunal Judge, considering the salary certificate/Ex.P6 and Pay slip/Ex.P7, correctly fixed the monthly income of the deceased as Rs.30,000/-. But, no amount for future prospects was awarded and hence, he seeks to enhance the amount.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all 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 Car insured with the appellant?

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

12.Discussion on the negligence:

It is true that the driver of the appellant insured vehicle was not examined. But, from the evidence of P.W.2 and rough sketch/Ex.P9, it is clear that the accident happened in the middle of the one-way road. The first respondent drove the vehicle and he has not parked the vehicle on the left side of the road and asked the deceased to get down of the car. But, he stopped the vehicle in the middle of the road and the deceased also got down from the car without noticing the appellant insured car. The driver of the appellant insured car has also not taken due care and in a rash and negligent manner drove his car in the one-way and hit the deceased. From the above available evidence, it is clear that the deceased also is responsible for the accident. It is well settled principle that if any omission on the part of the deceased has materially contributed to the accident, the theory of the contributory negligence comes into operation.



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The Hon'ble Supreme Court in the case of ***T.O.Anthony Vs. Karvarnan***

reported in **2008 3 SCC 748 at page 750** has held as follows:

6...Where a person suffers injury, partly due to the negligence on the part of another persons or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

The learned Tribunal Judge has failed to appreciate the above facts and hence, this Court upon appreciation of the evidence and consideration of the submission of the learned counsel for the insurance company and the claimants, has applied the contributory negligence theory, and this Court fixes 70% negligence upon the driver of Nissan Car bearing Reg.No.TN 58 AA 3334 and 30% negligence upon the driver of the TATA Indica Car bearing Reg.No.TN 67 C 1557.



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13.Discussion on quantum:

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On perusal of the materials, it is found that the deceased worked as Manager of the Export at First Garments Manufacturing Company (private) Limited, Valayankulam at madurai”. He got a salary of Rs. 50,000/- per month. To prove the same, P.W.3 was examined. He specifically deposed that the deceased received monthly salary of Rs. 49,210/- after the statutory deduction. The deceased was qualified person in operating the computer system. But, the learned Tribunal Judge without accepting the evidence of P.W.3 and the pay slip/Ex.P7 and Salary certificate/Ex.P6 did some guesswork and fixed the monthly salary of the deceased as Rs.30,000/-. This Court finds no reason to differ with the finding. But, the learned tribunal Judge has failed to grant any amount towards the future prospects as per the judgment of the Hon'ble Supreme Court in “*Pranay Sethi Case reported in 2017 (16) SCC 680*”. The deceased was aged about 36 years at the time of the accident and hence, 40% of future prospects is to be added. The same comes around Rs.12,000/-. Therefore, monthly income of the deceased comes Rs. 42,000/-. Even though the deceased was bachelor, this case is an extraordinary case. His brother is physically challenged person and his



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sister is un-married and his mother is not employed. Therefore, normal rule of deduction of 50% for the personal expenditure is not applicable.

Therefore, this Court deducts 1/3 for his personal expenditure considering the special circumstances. The multiplier is 16 and calculation is made as follows:

$42,000 \times 12 \times 16 \times \frac{3}{4} = 60,48,000/-$ and after deduction of 10% income tax the loss of income would be Rs.54,43,200/-.

13.1.The learned Tribunal Judge awarded under the head of Love and affection Rs.1,50,000/- and the same is hereby reduced to Rs. 1,20,000/-. The remaining amount awarded by the learned Tribunal Judge under the head of Medical Bills, Transport Charges and Funeral expenses needs no interference. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

<i>S. No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Re-quantified amount by this Court (in Rupees)</i>	<i>Status</i>
1	Transport Charges	10,000/-	10,000/-	confirmed
2	Medical Bills	3,90,400/-	3,90,400/-	confirmed
3	Funeral Expenses	5,000/-	25,000/-	enhanced



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4	Loss of love and affection	1,50,000/-	1,20,000/-	reduced
5	Loss of income after IT deduction	38,40,000/-	54,43,200/-	enhanced
	Total	43,95,400/-	59,88,600/-	Enhanced

14.1.The appellant insurance company is liable to pay only 70% of the compensation amount and the same comes around Rs.41,92,020/-

15.Accordingly, the Civil Miscellaneous Appeal is partly allowed. The Compensation awarded in M.C.O.P.No.174 of 2016, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, dated 30.01.2017 is here by reduced from Rs.43,95,400/- to Rs. 41,92,020/- (*Fourty One Lakhs Ninety Two Hundred Twenty Rupees only*). The insurance company is directed to deposit Rs.41,92,020/- with accrued interest and costs, less any amount if already deposited, within a period of one month from the date of receipt of a copy of this judgment.

16.It is now submitted that R1 died during pendency of this appeal. Hence, the amount apportioned to the first respondent as per the apportionment fixed by the Tribunal is equally distributed to the other



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claimants, who are already on record by making necessary application before the Tribunal. If any excess amount is deposited by the insurance company, the insurance company is at liberty to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed. The respondents/claimants are directed to pay Court fee, if any, for the enhanced award amount.

**(V.B.S.J.) (K.K.R.K.J.)
27.03.2024**

Index:Yes/No
Internet:Yes/No
sm/sbn

To

- 1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Sivagangai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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Dated:27.03.2024