



C.M.A(MD)No.136 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	21.06.2024
DELIVERED ON	29.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L. VICTORIA GOWRI

C.M.A(MD)No.136 of 2023

and

C.M.P(MD)Nos.1257 of 2023 & 3617 of 2024

The Branch Manager,
Oriental Insurance Company Ltd.,
Opposite Old Bus Stand,
Cumbum Road,
Sri Vijay Complex,
No.1024 B, Theni Town,
Theni Taluk,
Theni District.

... Appellant/2nd Respondent

Vs

1. Vanitha
2. Minor. Akshaya Sri

(Minor 2nd petitioner represented by
her mother/natural guardian,
the 1st respondent Vanitha)
3. Rajendran



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4.Santha

... Respondent 1to 4/Petitioners 1 to 4

5.S.Pradeepa

... 5th respondent/1st respondent

Prayer: Appeal filed Section 173 of the Motor Vehicles Act, 1988, against the order dated 29.08.2022 made in M.C.O.P.No.26 of 2019 by the Motor Accident Claims Tribunal cum Additional District Judge, Theni at Periyakulam.

For Appellant :Mr.E.Chandrasekaran

For R-1 to R-4 :Mr.J.Thomas Rajadurai

R5 : No appearance

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company challenging the award made in M.C.O.P.No.26 of 2019 by the Motor Accident Claims Tribunal cum Additional District Judge, Theni at Periyakulam, dated 29.08.2022.

2. In a road accident that took place on 07.03.2017 at Madurai – Theni Express Highway, certain Karthikeyan, serving in army suffered serious head injuries and died about a year and a half later on 04.08.2018. Seeking compensation, his dependants approached the Tribunal and the Tribunal had simultaneously



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invoked Section 163(A) and 166 of the Motor Vehicles Act, 1988(in short 'the M.V Act'). The Tribunal had awarded a total compensation of Rs.42,32,000/-, of which, the major component of compensation is on the head of 'loss of dependency' which the Tribunal had assessed at Rs.40,80,000/-.

3. The facts may be stated slightly elaborately:

- a) As stated earlier, the accident had happened at Madurai – Theni Express Highway and the spot where the accident took place is a junction where the state highway interject an express highway. The vehicles involved are a private bus insured with the appellant and a motorcycle driven by the victim. The accident had happened right at the junction on the northern half of the road. The victim was not wearing a helmet and suffered major head injuries. He was immediately taken to local hospital and then shifted to Government Rajaji Medical College Hospital, Madurai.
- b) Even though the injuries of the victim were treated, its aftermath continued and as he was not able to discharge the duties, and he was given voluntary retirement from military. In between, he had taken treatment at Armed Force Hospital at Bangalore, Chennai and other places and eventually on 04.08.2018, he was found dead near



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Doordharshan Relay Station at Sivanandha Road, Chennai.

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c) As stated earlier, the dependants of the victim approached the Tribunal and the Tribunal found several injuries. The victim at the relevant point to time was earning Rs.20,000/- a month and the Tribunal applied 17 as the multiplier under Section 163(A) of the M.V.Act., and made no deduction and arrived at a compensation of Rs.40,80,000/- under the head for loss of income (or loss or dependency). Including the conventional heads of compensation, the total value of the award passed by the Tribunal is Rs.42.32 lakhs. The breakup is given below:

S.No	Description	Amount awarded (Rs)
1.	For loss of income	40,80,000
2.	For Transport expenses	10,000
3.	Attendant charges	10,000
4.	For Loss of cloth	2,000
5.	For loss of love and affection for 1 st and the 2 nd petitioner Rs.50,000/- each and for 3 rd and 4 th petitioner Rs.10,000/- each.	1,20,000
6.	Funeral Expenses	10,000
	Total	42,32,000

This is now under challenge.



4. The learned counsel for the appellant made the following submissions:

- a) That the victim of the accident died at least a year and a half after the accident and there is no proximity between the injuries suffered and the death of the victim.
- b) That the victim had contributed to the accident and he was not wearing helmet at the time of accident and this has not been reckoned by the Tribunal.
- c) That the Tribunal had not made any deduction towards personal expenditure of the victim.
- d) That the Tribunal should not have applied 17 as multiplier in terms of Schedule -II in a claim petition filed under Section 166 of the M.V.Act.
- e) The Tribunal ought to have reckoned (i) the income tax payable and (ii) Family pension received by the wife of the victim while calculating the compensation payable under the head of loss of income.

Reliance was placed on the ratio in ***S.Ravamma and others v. S.Jayaraman and another*** [2022(2) TNMAC 700 (DB)]

5. Placing reliance on Ex.P6 along with testimony of P.W.3, the doctor who performed the autopsy on the body of Karthikeyan, the learned counsel for the claimants made the following submissions:



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a) That the testimony of P.W.3 discloses that he had found that the beneath the portion of the brain, there are scares of an earlier injury and surgery. This piece of evidence justifies the conclusion of the tribunal that the victim died as a consequence of the injuries he had suffered.

b) Secondly, the Tribunal had not reckoned the future prospects of increase in income and also declined compensation for pain and suffering which the victim had carried for more than a year. Even the compensation awarded under other conventional heads are fare too parsimonious and far distant from reality and reasonableness.

Reliance was placed on the dictum in *the Managing Director, Tamil Nadu State Transport Corporation Ltd., Vs Chandrika & another* [2015 ACJ 1000]

6. Rival submissions are carefully weighed and this Court has every reason to believe that the victim had died as the consequence of injuries suffered by him in the accident. Indeed, P.W.3 in his evidence had testified not only about the post-mortem report that had prepared but had also testified after perusing the medical records of the various Military Hospitals which the claimants have produced, and the Tribunal in conclusion has held that the injuries suffered by



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the victim was the most proximate cause for his end. Here the claimants score a point over the appellant/Insurance Company.

7. Turning to the choice of multiplier as well as the future prospects of increase in income which the claimants requires this Court to consider, this Court finds that the claim petition has been filed both under sections 163A as well as 166 of the M.V.Act. However, inasmuch as the claimants have tried to establish the negligence involved in the accident, this Court necessarily has to treat the claim as one filed under Section 166 of the M.V.Act. If so reckoned, then the choice of multiplier should be 16 and not 17, given the fact that the victim was 34 years at the time of the accident. Reckoning Rs.20,000/- as monthly income and 16 as the multiplier and adding 40% of the aggregate towards future prospect of increase in income and deducting $\frac{1}{3}$ rd towards personal expenditure of the victim, the total compensation payable under the head 'loss of dependency is $[(Rs.20,000 \times 12 \times 16) + (40\%) - (\frac{1}{3})]$ Rs.35,84,064/-

8. The next point is should this court attribute any contributory negligence to the victim of the accident. This essentially depends on who had the best opportunity to avoid the accident. Here is the case where the victim of the accident apparently was crossing the road at a junction from south to north and



he had apparently crossed the southern half of the road since the accident had happened on the northern half of the road. This is fortified by Ext.R5 Rough Sketch prepared by the investigating agency in the course of investigating into the criminal angle of this accident. Ext.P4 M.V. Report says that the bus has suffered serious damage to its right side and the victim's motorcycle has also suffered damage only to its right handle bar. If the accident is recreated to the extent possible with the available material, bus driver had a greater opportunity to avoid the accident. Having said that this Court also considers that the victim ought to have checked the traffic on the northern half of the road before he attempted to move into the line of motion of the bus. Given the nature of accident, this Court fixes contributory negligence of the victim at 10%.

9. Another related aspect is whether the victim could have avoided serious head injury that he had suffered. There was a possibility if only the victim had worn a helmet. But, he did not chose to take care of to protect his head and towards this end, this Court considers it appropriate to fix additional contributory negligence of 5% on the victim. In all, this Court fixes the negligence of the victim at 15%.

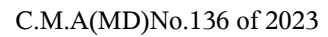
10. Should this Court now take into account the family pension received by the



widow of the victim. Here both the sides rely on two different authorities of two different benches of this High Court. Where as in *the Managing Director, Tamil Nadu State Transport Corporation Ltd., Vs Chandrika & another* [2015 ACJ 1000] an earlier Division Bench has held that the family pension received cannot be factored in while computing the compensation payable based on the ratio of the Hon'ble Supreme Court in *Vimal Kanwar & Others Vs Kishore Dan & Others* [(2013) 7 SCC 476]. It says:

“...that the pension amount is a pecuniary advantage received on account of ones death and the same has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. Hence the pension amount is not liable to be deducted from the compensation amount...”

However, in *S.Ravamma case* [2022(2) TNMAC 700], another Division bench has taken an opposite view, but it is not seen to have considered either the dictum in *Kanwar's case* or in *Chandrika case*. Nor has the Court given any reason of its own for factoring in the pension amount while computing the compensation amount. Necessarily this Court has to follow the *Kanwar* dictum as well as that in *Chandrika case*, and accordingly hold that the family pension received by the first respondent hardly has a bearing in awarding compensation.



11. Now, on perusing the award, the Tribunal had been excessively parsimonious in awarding compensation on other heads. Given the facts that the victim has been transported to Military Hospital at Bangalore and Chennai, this Court deems it appropriate to award Rs.50,000/- towards travelling expenditure and attendant charges awarded by the Tribunal is too meagre and therefore, the same is enhanced to Rs.50,000/-. Inasmuch as the victim was carrying the injury suffered for a year and a half, this Court deems it appropriate to award Rs.1,50,000/- for pain and suffering. The funeral expenses at Rs.10,000 in 2018 is far distanced from the reality of the times, and this Court enhances it to Rs.15,000/-. The Tribunal awarded a just and reasonable compensation under the head loss of cloth and loss of love and affection and awarded interest at 7 % per annum and the same, remain unaltered. In conclusion, the final award will look as below:

S.No	Description	Amount awarded (Rs)
1.	For loss of income	35,84,064
2.	For Transport expenses	50,000
3.	Attendant charges	50,000
4.	For Pain suffering	1,50,000
4.	For Loss of cloth	2,000



5.	For loss of love and affection for 1 st and the 2 nd petitioner Rs.50,000/- each and for 3 rd and 4 th petitioner Rs.10,000/- each.	1,20,000
6.	Funeral Expenses	15,000
	Total	39,71,064

If 15% of the total compensation amount hereinabove determined is reduced by 15%, then the total award would be Rs.33,75,404/- (Rs.39,71,064 -15% Rs. 5,95,660).

12.1 In the result, this Civil Miscellaneous Appeal is partially allowed and the award dated 29.08.2022 made in M.C.O.P.No.26 of 2019 by the Motor Accident Claims Tribunal cum Additional District Judge, Theni at Periyakulam, is modified to Rs. 33,75,404/- along with interest at the rate of 7% per annum from the date of petition till realisation and costs. Consequently, connected miscellaneous petitions are closed.

12.2 The learned counsel for the appellant submits that the Insurance Company had deposited the entire sum before the Tribunal. It implies that the appellant is at liberty to withdraw any excess amount and if any deposited. The reduced value is apportioned in the same ratio in which the Tribunal had apportioned it. Those claimants who are majors are permitted to withdraw their respective



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shares with proportionate interest and costs. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attains majority. The mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor.

(N.S.S., J.)

(L.V.G., J.)
29. 07.2024

NCC : Yes/No
Index : Yes/No
PM

To

1. The Motor Accident Claims Tribunal cum Additional District Judge,
Theni at Periyakulam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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and
L.VICTORIA GOWRI, J.

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