



C.M.A(MD)No.175 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.02.2024

CORAM:

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

C.M.A(MD)No.175 of 2024

and

C.M.P(MD)No.2151 of 2024

The Branch Manager,
Reliance General Insurance Company Ltd.,
Sri Lakshmi Complex, I Floor,
Omalur Main Road,
Bharathi Street,
Swarnapuri,
Salem.

... Appellant

Vs.

1.Gunasundari

2.Vinoth Kumar

3.Satheesh

4.Mariyaayi

5.R.Anandan

6.C.Chandran

...Respondents



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree, passed in M.C.O.P.No.189 of 2018 on the file of the Motor Accident Claims Tribunal (Sub Court) Kulithalai dated 08.02.2023.

For Appellant : Mrs.K.R.Shivashankari

For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

[Judgment of the Court was made **by Mrs.V.BHAVANI SUBBAROYAN.J.**]

The appellant Insurance Company, aggrieved by the award passed by the learned Subordinate Judge/Motor Accident Claims Tribunal, Kulithalai in M.C.O.P.No.189 of 2018, dated 08.02.2023, has preferred this appeal, questioning the negligence fixed on the appellant.

2. The appellant Insurance Company is the second respondent in M.C.O.P.No.189 of 2018, on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai. The respondents 1 to 4 are the



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claimants and the fifth and sixth respondents are the owners of the Maruthi Omni car bearing registration No.TN-57-AZ-2607. The respondents 1 to 4 filed the claim petition in M.C.O.P.No.189 of 2018, claiming a sum of Rs.1,00,00,000/-(Rupees one crore only) as compensation for the death of Chelladurai, who is the husband of the first respondent and father of the respondent Nos.2 and 3 and mother of the fourth respondent for the accident that occurred on 02.07.2017. By the award, dated 08.02.2023, the Tribunal awarded a sum of Rs.65,01,537/- as compensation.

3.Facts of the Case:-

According to the respondent Nos.1 to 4, on 02.07.2017 at about 10.00pm., on Trichy to Thuraiyur Road, at Manachanallur, Near Ramavilas Rice Mill, the driver of the Maruti Omni bearing Reg.No.TM-57-AZ-2607 drove the said Omni van in a rash and negligent manner and without following the basis traffic rules and without blowing the horn from South to North direction and dashed against the motor cycle bearing Reg.No.TN-48-AA-4758 which was proceeding from North to South keeping extreme left side of the road with due care. As a result,



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the rider of the Motor Cycle TN-48-AA-4758 fell down and sustained multiple grievous injuries on his head and all over his body and he died on the spot. Therefore, the claimants filed a petition in M.C.O.P.No.189 of 2018 claiming compensation of Rs.1,00,00,000/-. The Tribunal awarded the compensation of Rs.65,01,537/- to the claimants.

4.Resisting the claim petition, the appellant filed a counter and has taken the plea that the rider of two-wheeler rode his two wheeler in a rash and negligent manner and invited the accident having no valid driving licence at the time of accident as per Section 129 of the Motor Vehicles Act and hence, contributory negligence has to be fixed on the rider of the two-wheeler.

5. Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents, no witness was examined and Ex.R1 and Ex.R2 were marked.



6. Finding of the Tribunal

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The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the appellant's vehicle and he was responsible for the accident. The learned trial Judge considered the evidence of P.W.1 to P.W.3 and Ex.P.1 to Ex.P.7 and has fixed the monthly income of the deceased as Rs. 62,046/- and considering the age of the deceased as 52, added 15% towards Future Prospect and applied multiplier 11 and deducted $\frac{1}{4}$ for the personal expenditure of the deceased and awarded the compensation of Rs.65,01,537/- to the claimants under the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	63,56,537/-
2	Loss of Consortium to the wife	50,000/-
3	Loss of Love and Affection	80,000/-
4	Funeral Expenses	10,000/-
5	Transport Expenses	5,000/-
Total		65,01,537/-

Aggrieved against the said award, dated 08.02.2023, the appellant-Insurance Company has filed the present appeal challenging the negligence and quantum.



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7. Submission of the learned counsel for the appellant:

(i) The learned counsel for the appellant submitted that the Tribunal, without properly considering the evidence adduced before the Court, fixed the liability against the appellant.

(ii) The learned counsel further submitted that the Tribunal awarded exorbitant amount of **Rs.65,01,537/-** without following the guidelines issued by the Hon'ble Supreme Court.

8.Submission of the learned counsel for the respondents/claimants:

Per contra, the learned counsel appearing for the respondents/claimants argued that the impugned order awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondent Nos.1 to 4 and also perused all the materials available on record.



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10. The following points arise for consideration of this appeal:

10.1. Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

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

11. Discussion on negligence:

The learned trial Judge considering the evidence of P.W.3 and FIR marked as Ex.P.1, Final Report marked as Ex.P.5, has held that the accident occurred only due to the rash and negligence of the driver of the Omni car. The learned Tribunal Judge has correctly fixed the negligence on the driver of the Omni car. The learned counsel for the appellant argument that the deceased was riding the vehicle without valid licence. As per the Motor Vehicle Report marked as Ex.P.4, it is revealed that the deceased was having valid driving licence. Therefore, this Court confirms the finding of the learned Tribunal Judge that the accident happened only due to the negligence of the Omni car driver. The involved vehicle is insured with the appellant insurance company and hence the appellant insurance company has to indemnify for the accident. The appellant insurance company is liable to pay the compensation.



12. Discussion on quantum:

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On the point of quantum of compensation, it is seen that the deceased was working with Southern Railway at ponmalai and aged about 52 years and his salary certificate was marked as Ex.P6. As per Ex.P6 his salary is Rs.62,046/-. Therefore, Tribunal fixed Rs.62,046/- as monthly income and there was no contrary evidence adduced to disbelieve the above monthly income. Hence, this Court fixes the monthly income of the deceased as Rs.62,046/-.

12.1.Calculation of the amount:

(i) As per the *2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]*, 15% towards future prospect is to be taken, which is calculated as follows:

$$\text{Rs.62,046/-} + \text{Rs.9,307/-} (15/100) = \text{Rs.71,353/-}$$

and hence, his total monthly income comes around Rs.71,353/-.

(ii) His yearly income comes around Rs.71,353/- X 12 = Rs.8,56,236/-.

(iii) Professional tax = Rs.2,500/-

$$\text{Rs.8,56,236/-} (-) \text{Rs.2,500/-} = \text{Rs.8,53,736/-}$$



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Rs.2,50,000/-	= Nil
Rs.2,50,000/- to Rs.5,00,000/-	$(Rs.2,50,000/- \times 5/100) = Rs.12,500/-$
Rs.5,00,000/- to Rs.10,00,000/-	$(Rs.3,53,736/- \times 20/100) = Rs.70,747/-$
Rs.12,500/- + Rs.70,747/-	= Rs.83,247/-
Total Income tax amount	= Rs.83,247/-

Less: Deduction of Income Tax:

Annual income – income tax

$(Rs.8,53,736/- (-) Rs.83,247/- = Rs.7,70,489/-$

(v) As per the case reported in ***2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)*** the proper multiplier is 11 and proper deduction for his personal expenditure is 1/4, since there are 4 dependants. Hence, the loss of income is calculated as follows:

Rs.7,70,489/-	$(-) Rs.1,92,622/- (1/4)$	= Rs.5,77,867/-
Rs.5,77,867/-	$\times 11$	= Rs.63,56,537/-
Total Loss of Income		= Rs.63,56,537/-

In view of the above discussion, the tribunal correctly calculated the loss of income.



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12.2.The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:-

Loss of consortium to the wife =Rs.50,000/-

Loss of Love and affection = Rs.80,000/-

Funeral expenses = Rs.10,000/-

Transport Expenses = Rs. 5,000/-

We are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

13. Conclusion:

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the following heads which are enumerated hereunder:



<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount Awarded by this Court (Rs.)</i>	<i>Award Confirmed (or) enhanced (or) granted</i>
1	Loss of Income	63,56,537/-	63,56,537/-	confirmed
2	Loss of Consortium to the wife	50,000/-	50,000/-	confirmed
3	Loss of Love and Affection	80,000/-	80,000/-	confirmed
4	Funeral Expenses	10,000/-	10,000/-	confirmed
5	Transport Expenses	5,000/-	5,000/-	confirmed
Total		Rs.65,01,537/-	Rs.65,01,537/-	confirmed

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai, in M.C.O.P.No.189 of 2018 dated 08.02.2023 is hereby confirmed. The appellant/insurance company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are entitled to withdraw their share amount as



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per order and apportionment made by the Tribunal by filing necessary application before the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
20.02.2024

Index :Yes/No
Internet :Yes/No
sbn

To

- 1.The Sub Judge,
Motor Accident Claims Tribunal
Kulithalai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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