



C.M.A(MD)No.276 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.276 of 2024

and

C.M.P.(MD)No.3646 of 2024

The Branch Manager,
Reliance General Insurance Company Ltd.,
Shri Lakshmi Complex 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem – 636 004.

...Appellant

Vs.

- 1.Chirumbayee Ammal
- 2.Minor Manikandan
- 3.Minor Karthik Raja
- 4.Minor Santhosh
- 5.Minor Ilavarasi
- 6.Vairammal

*(Minors are represented by their natural guardian
and mother Chirumbayee Ammal, 1st petitioner.)*

7. Logeswari

... 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 16.12.2013 passed in M.C.O.P.No.345 of 2011 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Karur and allow the appeal.

For Appellant : Mr.K.Gokul

For Respondents : Mr.K.Sureshkumar (R1 to R5)

: Died (R6)

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Principal District Judge, Karur in M.C.O.P.No.345 of 2011, dated 16.12.2013, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.345 of 2011 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Karur. The respondents herein are the



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claimants. They filed the claim petition in M.C.O.P.No.345 of 2011, claiming a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation for the death of the husband of the first respondent. By the award, dated 16.12.2013, the Tribunal awarded a sum of Rs.21,24,230/- (Rupees Twenty One Lakhs Twenty Four Thousand Two Thirty only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the respondents, on 04.06.2011 at about 08.00 am, when the deceased namely Lakshmanan was proceeding in his two wheeler bearing Reg.No.TN 45 C 4399 on Chinthamanipatti-Karur main road, a van bearing Reg.No.TN 47 R 7049, coming from the opposite direction in a rash and negligent manner, dashed against the deceased, due to which, the deceased sustained serious head injuries, fractures on both limbs and injuries all over the body. Immediately, he was taken to Apollo Loga Hospital, Karur and since head injury was very serious, he was taken to Maruti Hospital, Tiruchirappalli and after ten days he passed away on 14.06.2011 despite best treatment. One Pandian, was the driver



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of the seventh respondent's vehicle at the time of accident. The accident occurred only due to the rash and negligent driving of the driver of the Van. Therefore, the respondents filed the claim petition, claiming a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation.

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 deceased alone is responsible for the accident and there was no negligence on the part of the driver of the van and hence, he 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 7 documents were marked as Ex.P1 to P7. On the side of the insurance company, neither any witness was examined nor any documents were marked.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and claimants



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held that the accident occurred only due to the rash and negligent driving by the driver of the van and directed the appellant Insurance Company, to pay a sum of Rs.21,24,230/- (Rupees Twenty One Lakhs Twenty Four Thousand Two Thirty only) as compensation along with 7.5% interest from the date of filing of the claim petition to the claimants under the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.18,46,000/-
2	Loss of consortium to the first respondent	Rs. 20,000/-
3	Loss of love and affection (each 10,000/-)	Rs. 60,000/-
4	Funeral Expenses	Rs. 10,000/-
5	Medical Expenses	Rs. 1,88,230/-
Total		Rs.21,24,230/-

7. Aggrieved against the said award dated 16.12.2013, the appellant Insurance Company has filed the present appeal.

8. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company disputes the award in respect of the quantum under the heads of loss of



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income, deduction of personal expenses and also future prospects. The learned Tribunal Judge erred in awarding the interest at the rate of 7.5%.

Hence, the insurance company prays this Court to allow this appeal.

9.Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the respondents 1 to 5 submits that only after considering all the documents, the monthly income of the deceased and the future prospects was fixed and hence, he seeks for dismissal of this appeal.

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 van insured with the appellant?

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



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12.Discussion on the negligence:

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P.W.2 an independent eye witness deposed that on 04.06.2011 at about 08.00 am, when he was riding his two wheeler on Chinthamanipatti-Karur main road, near Sundukuipatti, the deceased, namely, Lakshmanan was proceeding in his two wheeler bearing Reg.No.TN 45 C 4399 on Chinthamanipatti-Karur main road, and a van bearing Reg.No.TN 47 R 7049, came from the opposite direction in a rash and negligent manner, and dashed against the deceased due to which the deceased sustained serious head injuries, fractures on both limbs and injuries all over the body. Immediately, he was taken to Apollo Loga Hospital, Karur. He was cross examined by the appellant insurance company and he reaffirmed that he had seen the accident at a distance of 40 feet. Merely because, he has not preferred a police complaint, his evidence cannot be rejected. His evidence is cogent and his presence can not be disputed since he alone admitted the deceased in the hospital and the driver of the van has not been examined and no contra evidence was adduced on the side of the appellant insurance company, and the learned Tribunal Judge has correctly held that due to the rash and negligence driving of the driver of the appellant insured vehicle, the accident



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happened. This Court finds no reason to interfere with the said findings.

Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.

13.Discussion on quantum:

The deceased was working as a head constable in the police department. His monthly salary was Rs.20,831/- as per Ex.P7. The learned Tribunal Judge without any reason has erroneously taken as a monthly income of Rs.20,000/-. Therefore, this Court re-determines the compensation by taking the monthly income of the deceased as Rs.20,831/- on the basis of the salary certificate Ex.P.7. As per the ***Pranay sethi case*** 15% for future prospects is to be added.

$$20831 \times 15/100 = 3,125/-$$

Monthly income Rs.23,956/-

13.1.The age of the deceased on the date of the accident is 54 years as per the post mortem certificate. The deceased had left 6 dependants, namely, his wife four minor children and his mother. Therefore, 1/5



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deduction is to be taken for his personal expenditure. After deducting 1/5 for his personal expenditure, the total loss of income is calculated as follows:

$$23,956 \times \frac{4}{5} \times 12 \times 11 = \text{Rs.}25,29,753/-$$

13.2.The learned Tribunal Judge has also granted only Rs.20,000/- as a consortium to the wife of the deceased and gave only Rs.10,000/- towards loss of Love and Affection to the remaining dependants. As per the ***Pranay Sethi case***, the wife is entitled to Rs.40,000/- towards consortium. The remaining dependants are entitled to Rs.40,000/- each towards the Loss of Love and Affection. The Tribunal also granted only Rs.10,000/- towards the funeral expenses and the same is enhanced as per the ratio of the Pranay Sethi case. No amount was awarded under the head of transportation and loss of estate as per the ***Pranay Sethi Case***. Therefore, this Court is inclined to grant Rs.15,000/- towards the transportation and Rs.15,000/- towards loss of estate.

14.Even though the claimants have not filed any cross appeal to enhance the compensation, it is the duty of this Court to award just



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compensation on the basis of the available records. The Motor Vehicle Act, is benevolent legislature and its object is to secure the social justice by giving just compensation. Considering the special circumstances of this case that the deceased left four minor children and his wife and his mother and also the learned tribunal Judge erroneously determined the compensation against the record and in order to render the justice and also avoid the miscarriage of justice, this Court is inclined to exercise the power under Order 41 Rule 33 C.P.C., and the same is fortified by the following various decision of this Court:-

- 1.2015(2) TN MAC 691
- 2.2018(2) TN MAC 278
- 3.2012(2) TNMAC 775
- 4.2015(2) TNMAC 721
- 5.2010(1) TNMAC 711
- 6.2015(1) TNMAC 354
- 7.2017(1) TNMAC 307
- 8.2013(1) TNMAC 308
- 9.2009(1) TNMAC 16
- 10.2015(2) TNMAC 341
- 11.2014(2) TNMAC 43
- 12.2016(1) TNMAC 184
- 13.2009(2) TNMAC 31
- 14.2004 ACJ 1086
- 15.2004(1) TNMAC 533
- 16.201891) TNMAC 791



18.2004(1) TNMAC 569

19.2005(1) TNMAC 65

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified by this Court</i>	<i>Status</i>
1	Loss of Income	Rs.18,46,000/-	Rs.25,29,753/-	Enhanced
2	Loss of consortium to the first respondent	Rs. 20,000/-	Rs. 40,000/-	Enhanced
3	Loss of love and affection (each 10000/-)	Rs. 60,000/-	Rs. 2,00,000/-	Enhanced
4	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-	Enhanced
5	Medical Expenses	Rs. 1,88,230/-	Rs. 1,88,230/-	Confirmed
6	Transport Expenses	-----	Rs. 15,000/-	Granted
7	Loss of Estate	-----	Rs. 15,000/-	Granted
Total		Rs.21,24,230/-	Rs.30,02,983/-	Enhanced

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15. Accordingly, this Civil Miscellaneous Appeal is dismissed with modification of award passed by the Motor Accident Claims Tribunal / Principal District Judge, Karur in M.C.O.P.No.345 of 2011, dated 16.12.2013 and is hereby enhanced. The 6th respondent died on 12.01.2013, hence her share of compensation may be adjusted with the other claimants. The appellant Insurance company is directed to deposit the award amount with proportionate accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the same in the following apportionment:

<i>Claimant</i>	<i>Amount in Rs.</i>
Wife of the deceased/ Chirumbayee Ammal	8,87,983/-
Son of the deceased/ Minor Manikandan	6,00,000/-
Son of the deceased/ Minor Karthik Raja	3,15,000/-
Son of the deceased/ Minor Santhosh	6,00,000/-
Daughter of the deceased/ Minor Ilavarasi	6,00,000/-

The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit under the cumulative deposit scheme, in any one of the



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Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. The wife of the deceased is entitled to withdraw her share along with proportionate interest and costs. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
14.03.2024**

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

To

- 1.The Motor Accident Claims Tribunal
/ Principal District Judge,
Karur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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and
K.K. RAMAKRISHNAN, J.

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Dated:14.03.2024