

C.M.A.No.2165 of 2005

IN THE HIGH COURT OF JUDICATURE OF MADRAS

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DATED : 06.01.2025

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.M.A.No.2165 of 2005

Oriental Insurance Company Limited,
Regional Office,
Post Box No.1877, Esplanade,
Chennai – 600 108.

... Appellant/3rd respondent

Vs.

1.S.M.Asalam

2.Fathima Begum

3.M.Shanawaz

4.M/s.Shoba Cloth Centre
rep. by its Partner,
Mr.Shoukath Ali,
68, Bhasyakaralu Road,
West R.S. Puram,
Coimbatore – 641 002.

... Respondents/Petitioners &
Respondents 1 and 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 30.04.2004 in M.A.C.T.O.P.No.339 of 2003 on the file of the learned Principal Subordinate Judge, Motor Accidents Claims Tribunal, Coimbatore.



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For Appellant : Mr.R.Premchander

For Respondents : Mr.V.T.Narendiran
for R1 and R2

Mr.V.Ampikapathy for R3

Mr.Sundar Narayan for R4

JUDGMENT

The appellant has filed the above Civil Miscellaneous Appeal questioning the quantum of compensation awarded in M.A.C.T.O.P.No.339 of 2003 dated 30.04.2004 by the learned Principal Subordinate Judge, Motor Accidents Claims Tribunal, Coimbatore,

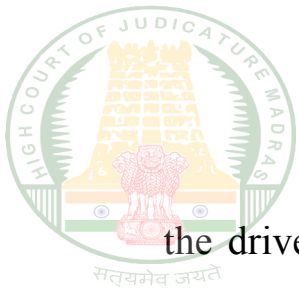
2.The claimants are the parents of the deceased Shiek Mohammed Shakeel. It is the case of the claimants that on 22.06.2000 about 7.00 p.m., while the deceased Shiek Mohammed Shakeel and his friends Anu @ Anukraj and Gani @ Moinudeen were returning from Marudhamalai to their residence, in a Matiz Car bearing Registration No.TN 37 U 8321 which was driven by one Shanawas, who is the 1st respondent herein and



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the driver of the 2nd respondent, who is the owner of the Car, near Bharathiyar University, the right front tyre of the Car suddenly burst and the car was dragged to left side and hit against the electricity post on the road side and it capsized. The deceased died on the spot. The other two occupants, Gani @ Moinudeen and Anu @ Anukraj have sustained grievous injuries and they were taken to Sri Ramakrishna Hospital, Coimbatore and they were discharged subsequently. The 1st respondent has not sustained injuries. Immediately, the deceased was taken to the Coimbatore Medical College Hospital wherein he has been declared as brought dead due to the grievous injuries. At the time of death, the deceased was aged 15 ½ years and was studying Plus one in ALO Matriculation School, Coimbatore. The 1st respondent is the driver of the Car, the 2nd respondent as the owner of the vehicle and the 3rd respondent as the insurer of the vehicle, they are liable to pay a sum of Rs.5,00,000/- as compensation for the death of the deceased Shiek Mohammed Shakeel.

3.The 1st and 2nd respondents had filed a counter Statement stating that the 2nd respondent is the owner of the vehicle and the 1st respondent is



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the driver of the car. The vehicle was insured with the 3rd respondent.

Suddenly, the right front tyre of the car punctured and it was dragged to left side and hit against the electricity post.

4.The 3rd respondent Insurance Company had filed a counter statement disputing the manner of the accident and also, the Claim Petition was filed without impleading the 1st respondent was bad for non joinder of necessary parties. The 1st respondent did not drive the car at the time of accident. The car was driven Gani who is the son of the 2nd respondent. On the complaint given by the 1st petitioner, a case has been registered against the said Gani. At the time of accident, the said Gani did not possess a valid driving license to drive the vehicle. Due to the rash and negligent driving of Gani, the accident has occurred. The petitioners are not depending the deceased. The compensation amount claimed is excessive. The rate of interest claimed is also very high.

5.The Tribunal after considering the evidence on record came to a conclusion that the accident was occurred due to rash and negligent



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driving of the 1st respondent. Ultimately, the Tribunal has awarded a sum of Rs.4,00,000/- towards compensation with interest @ 9% per annum from the date of petition till the date of realization to the claimants. Aggrieved over the same, the 3rd respondent Insurance Company is before this Court.

6.The learned counsel appearing for the appellant Insurance Company submitted that the Tribunal ought not to have adjudicated its judicial function of adjudicating *inter se* disputes between the insurer and the insured under Section 165 read with 168 of the Motor Vehicles Act, 1988, in the light of the Judgment of the Supreme Court in National Insurance Company Limited v. Swaran Singh [(2004) 3 SCC 297]. Further, the Tribunal ought to have ascertained the identity of the person who had driven the vehicle involved at the time of accident and given findings whether such person possessed a valid and effective driving license. There is no reliable or independent evidence available on record to believe that the 3rd respondent drove the vehicle at the time of accident. During the investigation and the Criminal Court proceedings only show



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that it was either the deceased or the said Gani drove the vehicle at the time of accident. The accident was caused due to his own negligence of the deceased. He would submit that the Tribunal failed to note that admittedly, the deceased was a gratuitous occupant of the vehicle involved and he could not be a third party whose death by the use of the motor vehicle would entitle his legal representative to compensation under the Policy. The Tribunal ought to have seen that if the claimants were found to be entitled to compensation only under the “No fault liability” and the income of the unmarried deceased has to be necessarily restricted to Rs.15,000/- per annum as a non earning person for the purpose of assessing the compensation payable as per the Second Schedule.

7.Per contra, the learned counsel appearing for the claimants would submit that the right front tyre of the Car suddenly burst and the car was dragged to left side and hit against the electricity post on the road side. due to the accident, his son Shiek Mohammed Shakeel died on the spot. Immediately, the deceased was taken to the Coimbatore Medical College



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Hospital wherein he has been declared as brought dead due to the grievous injuries. At the time of death, the deceased was aged 15 ½ years and was studying Plus one in ALO Matriculation School, Coimbatore. The 1st respondent is the driver of the Car, the 2nd respondent as the owner of the vehicle and the 3rd respondent as the insurer of the vehicle, they are liable to pay a sum of Rs.5,00,000/- towards compensation for the death of the deceased Shiek Mohammed Shakeel.

8.Heard the learned counsel appearing on either side and perused the papers.

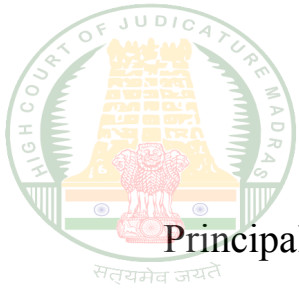
9.On perusal of the records, it is seen that at the time of accident, the deceased was aged 15 ½ years and was studying Plus one in ALO Matriculation School, Coimbatore. Considering the same, the notional income can be enhanced to a sum of Rs.40,000/- per annum from Rs.24,000/- to which future prospects of 40% is to be added. Therefore, the annual income would work out to a sum of Rs.56,000/- (Rs.40,000 + 16,000/- = Rs.56,000/-). After deducting 50% amount towards his



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personal expenses, the annual contribution to the family would be a sum of Rs.28,000/-. Considering his age, the appropriate multiplier to be adopted is 18. Therefore, the loss of dependency to the family would be a sum of Rs.5,04,000/- (Rs.28,000/- x 18 =Rs.5,04,000/-). The claimants 1 and 2 who are the parents of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. Therefore, a sum of Rs.80,000/- is granted under the head of loss of love and affection to the parents. A sum of Rs.15,000/- is granted towards loss of estate. Further, the Tribunal has not awarded funeral expenses for the death of the deceased. Hence, Rs.15,000/- is granted under the head of funeral expenses. Therefore, The enhanced compensation would be a sum of Rs.6,14,000/-.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire compensation amount of Rs.6,14,000/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.339 of 2003 on the file of the learned



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Principal Subordinate Judge, Motor Accidents Claims Tribunal,

Coimbatore, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the claimants 1 and 2 are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2025

Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order
mps

To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.



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T.V. THAMILSELVI, J,

mps

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