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CMA NO.2722 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 13 / 11 / 2024

JUDGMENT DELIVERED ON: 28 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.2722 OF 2023

AND

CMP NO.25089 OF 2023

Magma HDI General Insurance
Company Limited,
Represented by Branch Manager,
Navins Presiding, third floor,
New No.17/19, Old No.103,
B Block, 3A Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.
Old Office Address : No.110, 2nd Floor,
Barabar Plaza, Villanur main Road,
(Near IOB bank) Reddiyarpalayam,
Puducherry – 605 010.

... Appellant /
2nd Respondent

Vs.

1. Sachhala Pavitramma
2. Chanchala Guravaiah
3. Samu Velu (Minor)
4. Reetha (Minor)
5. Thabeetha (Minor)

(The respondents 2 to 5 are minors
represented by their mother / next
friend - first respondent)



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6. Venkatamma

7. Venkataswami

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... Respondents 1 to 7 /
Petitioners

8. Mohamd Iqbal

... 8th Respondent /
1st Respondent.

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated March 2, 2022 made in M.C.O.P.No.887 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Puducherry.

For Appellant : Mr.B.Murugavel

For Respondents 1-7 : Mr.Prakash Adiapadam

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated March 2, 2022 passed by the ‘Motor Accident Claims Tribunal (II Additional District Judge), Puducherry’ [‘Tribunal’ for short], the second respondent therein / Insurance Company has preferred this Civil Miscellaneous Appeal praying to set aside the Award.



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2. For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Accident Claim Petition.

Petitioners' case

3. The case of the petitioners is that on June 1, 2019 at about 08.30pm, the deceased – Chiranjeevi was crossing Cuddalore – Puducherry Main Road by walk, in front of AA Kanshika Agencies Kattuppam, Puducherry, from east to west direction. At that time, the first respondent's vehicle - Nissan Sunny car bearing Registration No.TN-50-AD-0506, proceeding from South to North direction in a rash and negligent manner, dashed against the deceased. As a result, the deceased suffered injuries all over his body and passed away on the way to hospital. The accident happened only due to rash and negligent driving of the driver of the Nissan Sunny Car. The first respondent is the owner of the vehicle and the same was insured with the second respondent. Therefore, the claimants filed a claim petition before the Tribunal seeking compensation of Rs.50,00,000/- (Rupees fifty Lakhs only) from the respondents.



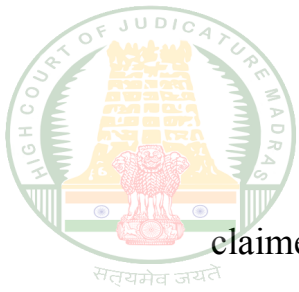
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Respondents' case

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4. The first respondent filed counter stating that the deceased without exercising abundant caution suddenly darted across the road and caused the accident. Hence the accident has occurred solely due to the negligent crossing of the deceased and not due to any negligence on the part of the driver of the first respondent's vehicle. At the time of accident, the driver possessed a valid driving license and the vehicle driven by him was also properly insured with the second respondent. Accordingly, the first respondent prayed to dismiss the petition.

5. The second respondent filed counter stating that the deceased -Chiranjeevi died due to injuries sustained in an accident involving some other means and the claimants have falsely filed the claim petition seeking compensation from the respondents. Even otherwise, the accident would have occurred that only due to the negligence of the deceased himself, as he darted across the Main Road under the influence of alcohol. Further, there are willful breaches of Insurance Policy conditions and the provisions of the Motor Vehicle Act. Hence third respondent is not liable to pay any compensation. The compensation



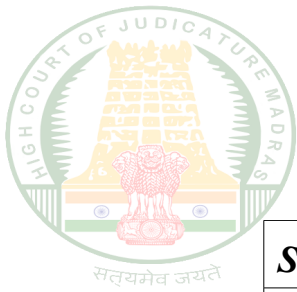
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claimed by the claimants are exorbitant, arbitrary and excessive. Hence, the second respondent prayed to dismiss the petition.

Tribunal

6. During trial, on the side of claimants, the first claimant was examined as P.W.1 and Ex-P.1 to Ex-P.16 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex-X.1 and Ex-X.2 were marked.

7. The Tribunal after considering the evidence available on record, found that the accident occurred due to the rash and negligent driving of the 1st respondent's vehicle's driver. At the time of accident, the car which caused accident was insured with the second respondent / Insurance Company. Accordingly, the Tribunal held that the respondents 1 and 2 are jointly liable to pay the compensation to the claimants. Considering the age of the deceased and nature of his job, the Tribunal has taken a sum of Rs.12,000/- as loss of monthly income, added 40% future prospects, applied the multiplier of 17 and deducted 1/5th amount towards personal expenses and thereby awarded compensation as stated below:-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of income	Rs.27,41,760/-
2.	Loss of spousal consortium to the first petitioner	Rs.44,000/-
3.	Loss of parental consortium to the petitioners 2 to 5	Rs.1,76,000/-
4.	Loss of filial consortium to petitioners 6 & 7	Rs.88,000/-
5.	Towards Transport expenses	Rs.10,000/-
6.	Towards funeral expenses	Rs.16,500/-
7.	Loss of estate	Rs.16,500/-
Total		Rs.30,92,760/- rounded off to Rs.30,93,000/-

8. Challenging the fixation of liability and the quantum of compensation, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments

9. The learned Counsel for the appellant / insurance company would submit that the accident had occurred due to rash and negligent act of the deceased. The first respondent's car was driven carefully duly following all the traffic rules, but the deceased negligently crossed the



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road in an inebriated state, and invited the accident. The driver of the first respondent's vehicle has been examined as R.W.2 and he has deposed that he was driving the car in the left (west) side of the road. The deceased suddenly crossed the road from east to west direction. The accident took place on the left side centre of the road. Further, he would draw the attention of this Court to deposition of P.W.1 and argue that the first respondent's driver stopped the car and took the deceased to the hospital. If really the first respondent's driver was negligent and caused the accident, he would not have stopped the car and rushed the deceased to the hospital. His conduct after the accident has to be taken into consideration. He would stress on the above point and argue that the accident happened occurred only due to negligent act of the deceased. The Tribunal did not consider the post-mortem report and Chemical examiner's report marked as Ex-X.1 and Ex-X.2 respectively. Ex-X.1 and Ex-X.2 reveal the fact that the deceased had 0.287 grams alcohol content in his blood. In this regard, he would rely on the decision of the Supreme Court of India in ***Iffco Tokio General Insurance Company Limited -vs- Pearl Beverages Limited*** reported in (2021) 7 SCC 704. Accordingly, he prayed to allow the appeal.



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10. Per contra, the learned Counsel appearing for the respondents 1 to 7 / petitioners would submit that the deceased consumed alcohol at the time of the accident. However, merely because the deceased had consumed alcohol at the time of accident, it cannot be presumed that he was negligent. Had the first respondent's driver driven the car carefully, the accident could have been averted. P.W.1, who is none other the wife of the deceased and she had witnessed the occurrence and her evidence is credible. Hence, there is no warrant to interfere with the Award of the Tribunal. Accordingly, he prayed for dismissing the appeal.

Discussion

11. This Court considered both side submissions and perused the evidence and materials available on records.

12. The factum of accident is admitted, now the question that has to be examined is, whether the first respondent's driver was negligent or the deceased himself was the reason for the accident. P.W.1, who is none other than the wife of the deceased witnessed the accident. According to her, the accident occurred due to the negligence of the first



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respondent's driver; it was the first respondent's car that hit her husband while he was waiting to cross the road. The first respondent's driver was examined as R.W.2 and according to him it is the deceased who fell onto the right side of the car. The First Information Report (FIR) was registered against the first respondent's driver and it reads that the first respondent's car hit the deceased while he was crossing the road. Ex-A.7 – Final Report was also laid against the first respondent's driver. Admittedly, at the time of accident, the deceased had consumed alcohol and was under its influence. Ex-X.2 would show that 0.287 grams of Alcohol was found in his blood, which means he was severely intoxicated and he could not have walked steadily and crossed the road carefully. In this regard, it is apposite to refer to the Judgment of Hon'ble Supreme Court in ***Pearl Beverages Limited's Case*** relied on by the appellant's side, wherein Paragraph Nos.10 and 11 reads thus:-

"10. In a Manual for Physicians in national Drug Dependence Treatment Centre, All India Institute of Medical Sciences, New Delhi the effects of alcohol have been stated as under:

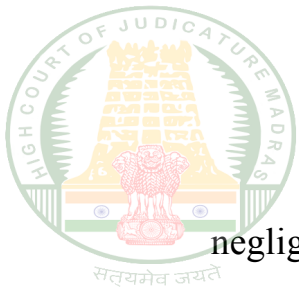


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DAC mg/dl	Effects
< 80	Euphoria, feeling of relaxation and talking freely, clumsy movement of hands and legs, reduced alertness but believes himself to be alert. Noisy, moody, impaired judgment, impaired driving ability.
100-200	Electroencephalographic changes begin to appear, blurred vision, unsteady gait, gross motor in-coordination, slurred speech, aggressive, quarrelsome, talking loudly.
200-300	<i>Amnesia for the experience - blackout</i>
300-350	Coma
355-600	May cause or contribute to death

11. It would thus be seen that in terms of the above referred compilation issued by AIIMS, if the quantity of alcohol in the blood is 100 or more mg/dl (100 ml), it leads to vision getting blurred, the gait become unsteady and the coordination gets affected. These changes, in our opinion, can occur only when someone is already under the influence of alcohol by that time. The judgment of the drinker as well as his driving ability gets affected even where the quantity of alcohol in the body is 80 mg or more per 100 ml of the blood. "

13. It could be evinced from a comprehensive reading of the evidence available on record that the accident occurred while the deceased was crossing the road primarily due to the rashness and the



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negligence of the first respondent's driver. Though the deceased was in an inebriated mood, had the first respondent's driver been careful & cautious, followed all the road safety norms and maintained optimal speed, the accident could have probably been averted. In these circumstances, this Court is of the view that the first respondent's driver as well as the deceased contributed to the accident. Accordingly, this Court fixes **75%** negligence on the driver of the first respondent and **25%** on the deceased. It is true that merely because a person is in an inebriated mood, negligence cannot be presumed on him. But, in the facts and circumstances of this case, considering that the deceased was severely intoxicated, it is most likely that he could have not crossed the road in a careful and steady manner, that too during the night hours. The Tribunal was not right in overlooking the deceased's intoxication levels, on the ground that he was merely a pedestrian. The Tribunal ought to have mulcted contributory negligence on the deceased.

14. As far as the quantum of compensation is concerned, at the time of accident, the deceased was 30 years [Ex-P.5 – Post-mortem Report]. The claimants did not produce any documents to substantiate his monthly income. Hence, the Tribunal had taken notional income at

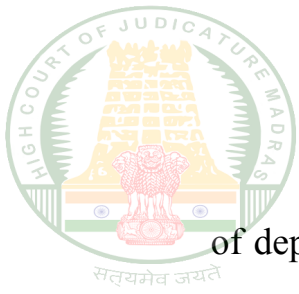


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Rs.12,000/-, applied 40% increase for future prospects, deducted 1/5th as his personal expenses, and applied the correct multiplier of 17, all in tune with the judgments of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi*** reported in (2017) 16 SCC 680 and ***Sarla Verma -vs- Delhi Transport Corporation*** reported in (2009) 6 SCC 121, to arrive at a sum of Rs.27,41,760/- as compensation under the head of loss of income. The compensation awarded under all the other conventional heads are reasonable and in tune with ***Pranay Sethi's Case*** (cited *supra*). Totally, the Tribunal has awarded a sum of Rs.30,92,760/-, rounded off to Rs.30,93,000/- as compensation to the petitioners. There is no warrant to interfere with the said quantum arrived at by the Tribunal.

15. To sum up, this Court fixes 75% negligence upon the driver of the first respondent and 25% on the deceased. Quantum of compensation needs no interference. The appellant / Insurance Company is directed to deposit 75% of the compensation amount awarded by the Tribunal, which comes to **Rs.23,19,750/- (Rupees Twenty Three Lakhs Nineteen Thousand Seven Hundred and Fifty only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date

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of deposit, to the credit of M.C.O.P. No.887 of 2019 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw the same by filing proper application. The share apportioned by the Tribunal holds good. Further, the claimants are entitled to proportionate costs and Advocate fees as per Rules.

Conclusion

16. Resultantly, the Civil Miscellaneous Appeal is allowed in part with proportionate costs and a modified Award is passed as detailed above. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

28 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

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To
The Motor Accident Claims Tribunal,
II Additional District Judge,
Puducherry.

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2722 OF 2023

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