IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.01.2025	09.01.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 1537 OF 2021

1. P.Chandrakala
2. P.Duraibabu .. Appellants

- Vs –

1. Narander Kumar Sharma

2. L.P.Logistics
No.100, 2nd Floor,

Aathinath Bhagwan Garden Street

Gandhi Main Road, Chennai – 66.

3. The Manager
HDFC Ergo General Insurance Co. Ltd.
Old No.559, New No.528, 3rd floor
Anna Salai, Teynampet, Chennai – 18. .. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 29.01.2021 passed by the Motor Accident Claims

Tribunal (Special District Court to Deal with MCOP Cases No.I), Tiruvallur, in MCOP No.119/2018.

For Appellants : Mr. R.Nalliyappan

For Respondents : Mr. S.Arunkumar for R-3
No Representation for RR-1 & 2

JUDGMENT

Aggrieved by the judgment and decree passed by the Motor Accident Claims Tribunal (Special District Court to Deal with MCOP Cases No.I), Tiruvallur, in MCOP No.119/2018, as being meagre, the claimants, who are the daughter and son of the deceased has filed the present appeal.

2. The brief facts of the case necessary for the disposal of this appeal are as under :-

At about 1100 hours on 1.7.2018, when the deceased was standing on the side of the road near Kannan Rice Mill, Pondhavakkam Village, the vehicle, belonging to the 1st respondent, being driven by its driver in a rash and negligent manner, dashed against the deceased, in which the deceased suffered grievous injuries and the treatment initially at Government Hospital, Tiruvallur and, thereafter, for five days at Government Hospital, Chennai, being not successful, the deceased succumbed to the said injuries. The claimants, the daughter and son of the deceased, have, therefore, filed the claim petition in MCOP No.119 of 2018 claiming compensation.

3. Before the Tribunal, the claimants examined two witnesses as P.W.s 1 and 2 and marked Exs.P-1 to P-8. On the side of the 3rd respondent/insurer, while no witness was examined, however, Exs.R-1 to R-7 were marked. On the basis of the oral and documentary evidence, the Tribunal, ordered payment of compensation in a sum of Rs.18,61,676/- along with interest at 7.5% p.a. and apportioned the same equally between the claimants and directed the 3rd respondent/insurer to pay the compensation. Aggrieved by the inadequate compensation awarded by the Tribunal, the present appeal has been preferred by the claimants.

4. Learned counsel appearing for the appellants submits that the finding recorded by the Tribunal that the rider of the vehicle was not possessed of any

valid licence and, therefore, the 3rd respondent insurer cannot be mulcted with any responsibility to pay the compensation and, therefore, directed the 1st and 2nd respondents to pay the compensation is wholly perverse and the same deserves interference. Even otherwise, it is submitted by the learned counsel for the appellants that the Tribunal ought to have directed the 3rd respondent to pay the compensation and recover the same from the owner of the vehicle and to that extent the award requires modification.

5. It is the further submission of the learned counsel that the deceased was eking her livelihood as a coolie and earning a sum of Rs.13,705/- per month, however, the Tribunal has fixed the notional income of the deceased at Rs.6500/- which is grossly meagre and the same requires enhancement.

6. It is the further submission of the learned counsel that no compensation has been awarded under the head love and affection and transportation and, therefore, necessary compensation requires to be awarded by this Court under the aforesaid heads.

7. It is the further submission of the learned counsel that the compensation awarded under the heads loss of estate and funeral expenses is on the lower side and, therefore, the same requires to be enhanced.

8. Per contra, learned counsel appearing for the 3rd respondent, viz., insurance company submits that the driver of the motorcycle being not possessed of a valid driving licence, absolving the insurer from payment of compensation is fully justifiable. In the alternative, it is the submission of the learned counsel that the compensation awarded by the Tribunal is just and reasonable and the same does not require any interference. It is the further submission of the learned counsel that there is no loss of dependency, as the claimants are married and settled and, therefore, the loss on account of the death of the deceased would not have an impact on the life of the claimants. Further, learned counsel fairly conceded that the insurance company has not challenged the award on the ground that it has been absolved from payment of compensation and if at all this Court feels that there is material in the contention advanced by the appellants, this Court has to grant liberty to recover the

compensation from the owner of the vehicle, if the insurer is directed to pay the compensation to the claimants.

9. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

10. The factum of negligence, which has been fastened on the rider of the motor cycle and the consequential fixation for payment of compensation on the heads of the owner and the insurer of the vehicle jointly and severally is not put in issue. Therefore, this Court is not venturing into the aspect of negligence and the finding recorded on this aspect by the Tribunal is confirmed.

11. Insofar as the finding of the Tribunal that the rider of the motorcycle was not possessed of any licence and, therefore, the insurer cannot be made liable to pay the compensation, it should not be lost sight of that it has been the consistent view of the courts that where the vehicle is insured properly, but the rider of the vehicle is not possessed of a proper licence, the insurer ought to be

directed to pay the compensation as per the terms of the policy in view of the benevolent nature of the Motor Vehicles Act and, thereafter, recover the same from the owner of the vehicle.

12. The appeal is laid before this Court by the claimants not only seeking enhancement on the ground that the notional income fixed is meagre as the deceased was earning a sum of Rs.16,900/- per month by doing coolie work and adding future prospects, the loss of dependency requires to be enhanced, but also for a direction to the 3rd respondent to pay the compensation and, thereafter, recover the same from the owner of the vehicle.

13. There is no dispute that the vehicle was insured with the 3rd respondent, which has been admitted. In such circumstances, merely because the rider of the vehicle was not possessed of a valid driving licence, the insurer cannot be allowed to go free, but should be made to compensate the claimants and recover the compensation from the owner of the vehicle. In view of the ratio laid down in a catena of judgments, the finding of the Tribunal directing respondents 1 and 2 to pay the compensation is set aside and instead, the 3rd

respondent, insurer, is directed to pay the compensation to be quantified to the claimants/appellants and, thereafter recover the same from the owner of the vehicle.

14. The concept of notional income was coined by the Apex Court in the case of ***Syed Sadiq & Ors. – Vs – United Indi Insurance Co. Ltd. & Ors. (MANU/SC/0033/2014)***, wherein for an accident of the year 2007, the Apex Court had fixed the notional income in respect of daily wage labourers at Rs.6,500/-. In the present case, the deceased, who is aged about 48 years, is stated to have been doing coolie work and had met with her death in the year 2018. The Tribunal, fixing the notional income at Rs.6,500/- as fixed in the year 2008 and on the basis of the cost of inflation index had fixed the notional income at Rs.13,705/-. The said method adopted cannot be said to be erroneous as on the basis of a yardstick, the amount has been fixed. However, this Court is of the considered view that the Tribunal could have rounded off the amount to the nearest thousands, which would have been the prudent approach, as the fixation is notional income and not on the basis of any quantitative yardstick. In such

circumstances, this Court deems it fit and proper to fix the notional income of the deceased at Rs.14,000/- per month.

15. The deceased was aged has been taken to be about 48 years on the date of her death by the Tribunal on the basis of the post-mortem report. However, there is no material evidencing the age of the deceased. In the above circumstances this Court is of the considered view that it would be just and reasonable to adopt 25% increase towards future prospects as the age of the deceased borders near 50 and is not definitely fixed. Therefore, applying the ratio laid down by the Apex Court in ***National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (2) TNMAC 609 (SC))***, this Court fixes the future prospects of the deceased at 25% and after deducting one-third towards the personal expenses of the deceased, arrives at the monthly loss of dependency to the family at Rs.11,667/- (Rs.14000 * 25%/100 = Rs.17,500 – 5833 = Rs.11667/=). Applying multiplier of 13 as fixed by the Apex Court in ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.(AIR 2009 SC 3104)*** and approved by the Constitution Bench in *Pranay Sethi case,* the loss of dependency payable to the claimants is quantified at Rs.18,20,052/= (Rs.11667 * 12 * 13 = Rs.18,20,052/=).

16. Insofar as the compensation under the head *'Loss of Love and Affection'* is concerned, though explicitly the same is not quantified by the Constitution Bench in *Pranay Sethi case (supra),* however, notwithstanding the same, it should be pointed out that *'Loss of Consortium'* for the spouse is awarded, which would strengthen the award under *'Loss of Love & Affection'* to the children, who also suffer the loss on the death of their parent or vice-versa. Therefore, this Court awards a sum of Rs.40,000/= to each of the claimant, totalling a sum of Rs.80,000/= in all under the head *'Loss of Love & Affection'.*

17. However, the Tribunal has awarded a sum of Rs.40,000/- under the head *'Loss of Consortium'.* It is to be pointed out that the claimants are the daughter and son of the deceased and, therefore, no amount can be awarded under the aforesaid head and, accordingly, the compensation awarded under the said head is rejected.

18. The award of compensation at Rs.15,000/- under the head 'Loss of Estate', Rs.15,000/- under the head 'Funeral Expenses' and Rs.10,000/- under the

head 'Transportation to Hospital' are based on the decision of the Apex Court in *Pranay Sethi case* and though the claimants seek enhancement, but the same cannot be granted.

19. Accordingly, the compensation awarded by the Tribunal is modified as under :-

Compensation Awarded under	**Amount Awarded by**	
	The Tribunal (Rs.)	**This Court (Rs.)**
Loss of Dependency	17,81,676/=	18,20,052/=
Loss of Estate	15,000/=	15,000/=
Loss of Love & Affection	-	80,000/=
Funeral Expenses	15,000/=	15,000/=
Transportation	10,000/=	10,000/=
Loss of Consortium	40,000/=	-
Total	**18,61,676/=**	**19,40,052/=**

20. In the result, the appeal is allowed in part by enhancing the compensation from Rs.18,61,676/= to Rs.19,40,052/=, which shall be paid by the 3rd respondent insurer to the claimants/appellants herein along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit . The claimants are entitled to equal share in the aforesaid compensation quantified by this Court. The 3rd respondent insurer is directed to deposit the

entire compensation to the credit of MCOP No.119/2018 on the file of the Motor Accident Claims Tribunal (Special District Court to Deal with MCOP Cases No.I), Tiruvallur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the compensation in equal apportionment to the bank account of the respective claimants/appellants through RTGS within a period of four weeks thereafter. The 3rd respondent is granted liberty to proceed against the owner of the vehicle for recovery of the compensation and equally it is open to the owner of the vehicle to produce the valid licence at the time of recovery proceedings to counter the recovery. There shall be no order as to costs in this appeal.

09.01.2025

Index : Yes / No

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M.DHANDAPANI, J.

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To

The Presiding Officer
Motor Accident Claims Tribunal
(Special District Court to Deal with MCOP Cases No.I)
Tiruvallur.

PRE-DELIVERY JUDGMENT IN
C.M.A. NO. 1537 OF 2021

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