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CMA NO.2580 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20 / 12 / 2024

JUDGMENT DELIVERED ON: 29 / 01 / 2025

CORAM:

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

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1. Vinitha
2. Minor. Atchya Keerthi
(Minor rep. by his next friend /
mother / first petitioner - Vinitha)
3. Sarasa
4. Perumal

... Appellants /
Petitioners

Vs.

1. Victor Doss
2. The United India Insurance Company Limited,
No.235, Gandhi Market Road,
Arni, Tiruvannamalai District.
3. Naresh Kumar

... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated November 18, 2022 made in M.C.O.P.No.279 of 2018 on the file of the III Additional Sessions Judge, Vellore @ Tirupattur in so far as dismissal of the claim petition against respondents 1 and 2 herein, and to enhance the quantum of compensation.



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For Appellants : Mr.P.Subbiah, Senior Counsel
for M/s.Elizabeth Ravi

For Second Respondent : Mr.M.Krishnamoorthy

For Respondents 1 & 3 : No Appearance

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the dismissal of the claim petition against respondents 1 and 2 herein, as well as by the quantum of compensation awarded, vide Award dated November 18, 2022 passed in M.C.O.P. No.279 of 2018 on the file of the 'III Additional Sessions Court, Vellore @ Tirupattur' ['Tribunal' for short], the appellants / petitioners therein have preferred this Civil Miscellaneous Appeal.

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

PETITIONERS' CASE:

3. The case of the claimants is that on May 16, 2016 at about 3.00 p.m., the deceased - Saravanan was standing near his motor cycle bearing Registration No.TN-23-BM-7278 on the roadside of the service road to the Vaniyambadi to Ambur Main Road near IELC School. At that



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time, a car bearing Registration No.TN-23-BT-9706 belonging to first respondent, driven in a rash and negligent manner, dashed against the deceased - Saravanan. Due to the impact, the said Saravanan suffered grievous injuries and died on the spot. Further, after the first respondent's car hit the deceased, another car bearing Registration No.TN-23-AC-9905 belonging to third respondent dashed the backside of the first respondent's car. The deceased died only due to the rash and negligent driving of the driver of the car bearing registration No. TN-23-BT-9706. At the time of accident, the deceased was earning more than a sum of Rs.15,000/- per month as an employee of Mohib Shoes Company. At the time of accident, the first respondent's vehicle was insured with the second respondent. Hence, the claimants filed the claim petition seeking compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs only) from respondents 1 and 2.

FIRST RESPONDENT'S CASE :

4. The first respondent is the owner of the car bearing Registration No.TN-23-AC-9706. He filed a counter affidavit stating that his car was not involved in the accident. The first respondent stated that on May 16, 2016, it being an election day, he went to IELC School to cast his vote parking his car outside the School in the service road. Then, he came



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to know that the third respondent's car bearing Registration No. TN-23-AC-9905, driven in a rash and negligent manner, dashed against the deceased and then, collided with his car. The first respondent is not a necessary party to the claim petition. Accordingly, he prayed to dismiss the claim petition.

SECOND RESPONDENT CASE:

5. The second respondent, insurer of the first respondent's car, filed a counter affidavit reiterating the averments contained in the first respondent's counter. In addition to that, it is stated that First Information Report (FIR) was lodged by first petitioner / wife of the deceased against the third respondent's car bearing Registration No. TN-23-BT-9905. Further, the third respondent has admitted that his vehicle caused the accident vide letter dated November 24, 2018 addressed to the second respondent's investigating authority. The respondents 1 and 2 were falsely impleaded in the claim petition, and they are neither necessary parties nor liable to pay any compensation. As the third respondent's car does not have a valid insurance, the petitioners have filed the claim petition against respondents 1 and 2, contrary to the FIR preferred by the deceased's wife / 1st petitioner. Accordingly, it prayed to dismiss the Claim Petition.



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6. During trial, on the side of petitioners, the first petitioner / wife of the deceased was examined as P.W.1 and one Saritha, eye witness to the accident, was examined as P.W.2 and one Nafeel Ahmed, Admin Manager, Mohib shoes Company was examined as P.W.3 and Ex-P.1 to Ex-P.15 were marked. On the side of the respondents, the first respondent was examined as R.W.1 and former Motor Vehicle Inspector, Ambur - Kulothungan was examined as R.W.2 and one Chitti Babu, official from the second respondent - insurance company was examined as R.W.3 and Ex-R.1 to Ex-R.6 were marked.

7. The Tribunal after considering the evidence available on record came to the conclusion that the accident happened only due to the rash and negligent driving of the third respondent's car bearing Registration No.TN-23-AC-9905 and accordingly, the claim petition was dismissed against the respondents 1 & 2. With regard to quantum of compensation the Tribunal took a sum of Rs.7,500/- as salary of the deceased, deducted 1/4th amount towards personal expenses and computed compensation as extracted below:



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Sl.No.	Head	Amount
1.	Loss of Income [7,500 (I) + 3000 (FP) x12x17x3/4] = Rs.16,06,500/-	Rs.16,06,500/-
2.	Loss of love and affection & consortium	Rs.40,000/-
3.	Loss of estate	Rs.15,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.16,76,500/-

8. Feeling aggrieved by the Award in so far as the dismissal of the claim petition against respondents 1 and 2 and the quantum of compensation awarded, the claimants have filed the present Civil Miscellaneous Appeal.

ARGUMENTS:

9. Learned Counsel appearing for the appellants / petitioners would submit that the accident involving the deceased occurred only due to the rash and negligent driving of the first respondent's car. The petitioners have proved the same by examining P.W.2, who is an eye witness to the accident. Her evidence corroborated the case of the claimants and there is no reason to reject it. The FIR was laid at the instance of the wife of the deceased / first petitioner based on hearsay evidence *i.e.*, based on the narration of the general public. Only thereafter it came to light that it was the first respondent's car bearing Registration



No. TN-23-BT-9706 that hit the deceased and caused his death. In these circumstances, Ex-P.1 – FIR would not be fatal to the case of the claimants.

9.1. He would further argue that the compensation awarded by the Tribunal is not based on the documentary evidence available. Even though the Admin Manager of the deceased's employer was examined to substantiate his employment and salary, it was discarded by the Tribunal and a notional monthly income of Rs.7,500/- was fixed without any basis. For loss of love and affection as well as consortium, a sum of Rs.40,000/- was awarded. As per the decision of the Honourable Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi* reported in *(2017) 16 SCC 680*, at least Rs.40,000/- has to be awarded towards consortium to each of the claimants. Accordingly, the learned Counsel for the appellants / claimants would pray for allowing this Civil Miscellaneous Appeal.

10. No appearance on the part of the respondents 1 and 3 despite notice and despite their name being printed on the cause list.



11. Learned Counsel appearing for the second respondent /

Insurance Company would submit that Ex-P.1 – FIR was preferred by the wife of the deceased and she herself has stated therein that it is the third respondent's car bearing Registration No. TN-23-AC-9905 that hit the deceased and caused the accident. Ex-P.6 and Ex-P.7 – Motor Vehicle Inspection Reports [M.V.I. Reports] of the cars of Respondent Nos.1 & 3 would reveal the true picture that it was the third respondent's car that hit the deceased and caused his death. P.W.2 is none other than the sister of the deceased and her evidence is false. The petitioners have filed this claim petition falsely impleading the respondents 1 and 2 for the reason that the third respondent's car had no valid insurance at the time of accident. Hence, respondents 1 and 2 are not liable to pay compensation. He would also submit that the Tribunal has awarded a just and fair compensation to the petitioners and it need not be interfered with by this Court. Accordingly, he would pray to dismiss the Civil Miscellaneous Appeal against respondents 1 and 2.

DISCUSSION:

12. This Court has considered the submissions made on either side and perused the materials available on record. The main point that



arises for determination is whether the accident was caused by the first respondent's car bearing Registration No.TN-23-BT-9706 as alleged by the petitioners in their claim petition, or by the third respondent's car bearing Registration No.TN-23-AC-9905 as contended by the respondents 1 and 2.

13. An FIR was registered against the third respondent based on the complaint given by the first petitioner. The petitioners have marked the copy of the FIR registered in this case as Ex-P.1, which means they are relying on FIR. But they have not marked any Rough Sketch or Final Report. P.W.1 / first petitioner did not witness the accident and only based on what she heard, the complaint was given. In other words, the first petitioner gave the complaint before the police based on the hearsay narration of the accident. In the said complaint, the first petitioner has stated that the accident happened only due to the rash and negligent driving of the third respondent's vehicle. It is possible that since she had not witnessed the accident herself, she could have wrongly preferred a complaint against the third respondent initially based on hearsay evidence. However, it has to be noted that P.W.2, eye witness to the accident, is none other than the sister of the deceased. She has deposed that she witnessed



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the accident and attributed negligence to the first respondent, whose car according to her hit the deceased leading to his death. She has further deposed that she learnt that the complaint was preferred against the third respondent only after the claim petition. Considering the close relationship between P.W.2 and first petitioner, this Court is of the view that had the accident really occurred due to the negligence on the part of the first respondent, then P.W.2, who is also an eye-witness to the accident, would have definitely informed the same to her sister-in-law / 1st petitioner before filing a complaint with the police. It is highly improbable that P.W.2 was not aware that the complaint was filed against the third respondent and not against the first respondent. Hence, her evidence is not believable. Even otherwise, they could have informed the police that it was the first respondent's car that caused the accident. There is no evidence available on record to suggest that they informed the police about the same or to show the outcome of the police investigation. Initial burden always lies upon the petitioners. It is true that a lenient approach has to be taken in such cases, for the Motor Vehicles Act, 1988 is a beneficial and social welfare legislation, however, the same cannot be let to be misused. The claimants failed to discharge their initial burden.



14. On the other hand, the first respondent entered into witness box as R.W.1 and deposed along the lines of his counter affidavit.

Further, in this regard, concerned Motor Vehicle Inspector was examined as R.W.2, who deposed that the third respondent's vehicle has sustained damage on its front side. To that effect, Ex-P.7 = Ex-R.4 – M.V.I. Report of the third respondent's car was marked. Ex-P.7 = Ex-R.4 reads that the following parts of the third respondent's car were damaged:

- (i) Front Windshield
- (ii) Front both side headlights
- (iii) Front bumper
- (iv) Radiator
- (v) Right side rear-view mirror
- (vi) Left side fender
- (vii) Left side steering end
- (viii) Front right side tyre
- (ix) Right side wheel disk

14.1. From the above, it is seen that the third respondent's car has sustained damage to its front portion, which could most probably be due to a front end collision.



15. The first respondent's vehicle was also sent for motor vehicle inspection and the pursuant M.V.I. Report has been marked as Ex-P.6 = Ex-R.2, which would show that his vehicle has sustained damage only on its rear. No damage to the front portion has been shown in Ex-P.6 = Ex-R.2. Relevant extract of Ex-P.6 = Ex-R.2 reads thus:

“Rear bumper dent and damaged left side back door slight scratches”

16. Both M.V.I. Reports viz., Exs-P.6 & P.7 would show that there were no mechanical defects in both the vehicles. Petitioners' case is that the first respondent's car first hit the deceased and then, the third respondent's car collided with the rear end of the first respondent's car. If really the accident had occurred as claimed by the petitioners, the first respondent's car would have sustained damage to its front. Whereas the first respondent's car has suffered damage on its back side alone which makes the first respondent's version that his car was stationed on the roadside and the third respondent's car collided with its rear after hitting the deceased plausible. From Exs-P.1, P.6 & P.7 coupled with the evidence of R.W.1 and R.W.2, it is clear that the accident occurred only due to the rash and negligent driving of the third respondent's car bearing



Registration No.TN-23-AC-9905, which first hit the deceased and then collided with the first respondent's car. Hence, the Tribunal is right in concluding that the accident occurred only due to the rash and negligence on the part of third respondent. Accordingly, the Tribunal fastened the liability to pay compensation on the third respondent, and relieved the first and second respondents from any liability. The findings given by the Tribunal in relation to liability are based on proper evidence and does not call for any interference by this Court.

17. As far as the quantum of compensation is concerned, the Tribunal has taken a sum of Rs.7,500/- as monthly income of the deceased. The claimants' side marked Ex-P.15 - Salary Certificate of the deceased and also examined the Admin Manager of Mohib Shoes Company as P.W.3. The evidence of P.W.3 and Ex-P.15 reveal that the deceased earned a sum of Rs.8,619/- as monthly gross salary. It is settled law that the gross salary alone has to be taken into account after excluding the amount payable towards income tax and other taxes. In this case without assigning any reason, Rs.7,500/- alone was taken as monthly income of the deceased by the Tribunal which is incorrect. In view of the evidence of P.W.3 and Ex-P.15, this Court takes Rs.8,619/- as monthly income of the deceased.



18. The deceased's wife, minor child, mother and father are shown as dependants of the deceased at the time of accident. In the document, namely Ex-P.11 - Legal Heirship Certificate issued by the Tahsildar, it is shown that the fourth claimant - Perumal / father was 50 years old as on August 18, 2016. The claimants' side filed Aadhaar card of the fourth claimant and his date of birth is mentioned as May 21, 1972, which means he would have been 44 years old at the time of accident. Either ways, he would have been an earning member. Hence, the fourth claimant shall not be considered as financially dependent on the deceased. Therefore, the claimants 1 to 3, namely wife, minor child and mother alone are considered to be financial dependents of the deceased. Hence, out of the loss of earning of the deceased, deducting one third amount would be fair and just, and also be in tune with ***Pranay Sethi's Case*** (cited *supra*).

19. Ex-P.2 - Post-mortem Report states that the deceased was aged 28 years old at the time of accident. Hence, the appropriate multiplier as per Judgment of Hon'ble Supreme Court ***Sarla Verma -vs- Delhi Transport Corporation*** reported in (2009) 6 SCC 121, is 17. Taking monthly income at Rs.8,619/-, adding 40% future prospects, deducting



1/3rd as his personal expenses and applying the multiplier of 17, this Court arrives at a sum of **Rs.16,40,935/-** as compensation under the head 'loss of income'.

20. That apart, the claimants 1 to 4 are dependants for the purpose of consortium. The fourth claimant / father may not be financially dependent on the deceased, but he would have definitely suffered loss of love, affection, bonding, emotional as well as practical support, *etc.* Hence, he is also entitled to consortium. As per ***Pranay Sethi's Case*** (cited *supra*), compensation mentioned therein under the conventional heads should be increased by 10% every three years. Accordingly, the first claimant is entitled to a sum of Rs.44,000/- towards Loss of spousal consortium. The 2nd claimant is entitled to a sum of Rs.44,000/- towards Loss of parental consortium. The claimants 3 and 4 are entitled to a sum of Rs.44,000/- each towards filial consortium. The claimants are also entitled to Rs.16,500/- towards funeral expenses and another Rs.16,500/- towards loss of estate as per ***Pranay Sethi's Case*** (cited *supra*).

21. Accordingly, the claimants are entitled to get an enhanced compensation of Rs.18,49,976/- (Rupees Eighteen Lakhs Fourty Nine



Thousand Nine Hundred and Seventy Six only) from the third respondent as detailed below:-

S.No.	Head	Amount in Rs.
1.	Loss of Income (8,619+3447 = 12,066 x 12x 17 x2/3)	Rs.16,40,976/-
2.	Loss of Filial Consortium (44000 x 2)	Rs.88,000/-
3.	Loss of Spousal Consortium	Rs.44,000/-
4.	Loss of Parental Consortium	Rs.44,000/-
5.	Loss of Estate	Rs.16,500/-
6.	Funeral Expense	Rs.16,500/-
Total		Rs.18,49,976/-

22. The third respondent is directed to deposit the enhanced compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited, to the credit of M.C.O.P.No.279 of 2018 on the file of the III Additional Sessions Court, Vellore, Tirupattur, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. The modified compensation shall be apportioned in a manner proportionate to the apportionment made by the Tribunal. The share amount of the minor second claimant shall be invested in any one of the Nationalised Banks, for until she attains the age of majority, and the first claimant being her mother and natural guardian is permitted to withdraw the interest accrued



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thereon once in three months for maintenance and welfare of the minor.

Deficit court fee, if any, shall be paid by the claimants within a period of four weeks from the date of receipt of a copy of this Judgment. The appellants / petitioners are entitled to proportionate costs and advocate fees as per law.

CONCLUSION:

23. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs against third respondent alone and the compensation awarded by the Tribunal is **enhanced to Rs.18,49,976/- (Rupees Eighteen Lakhs Forty Nine Thousand Nine Hundred and Seventy Six Only)** as detailed above. The Civil Miscellaneous Appeal is dismissed *qua* respondents 1 and 2.

[J.N.B., J.]

[R.S.V., J.]

29 / 01 / 2025

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CMA NO.2580 OF 2023

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av/tk

To
The III Additional Sessions Judge,
Vellore @ Tirupattur.

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2580 OF 2023

29 / 01 / 2025