



WEB COPY

CMA NO.1013 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 03 / 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. Govindhan
2. Minor Manikandan
3. Minor Vijayakumar
(Minors are represented by their Guardian /
father - 1st appellant - Govindan)
4. Jayaraman
5. Kasiyammal ... Appellants /
Petitioners

Vs.

1. Ramalingam
2. The Divisional Manager,
The New India Assurance Company Limited,
CSI Building, 2nd floor No.1,
Officer's Line, Near the Ooris College,
Vellore. ... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 12, 2017 made in M.C.O.P. No.186 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Tiruvannamalai.



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For Appellants : Mr.A.G.F.Terry Chella Raja

WEB COPY For First Respondent : Notice Served – No appearance

For Second Respondent : Mr.Michael Viswasam

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated July 12, 2017 passed in M.C.O.P. No.186 of 2015 on the file of the 'Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai' ['Tribunal' for short] the appellants / claimants 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 petitioners is that on May 8, 2013 at about 11.30 a.m., the deceased - Sarasu, travelled in a Tractor bearing Registration No. TCF-4337 attached with Trailer bearing Registration No.TN-32-S-2601, and alighted from the same at Thideerkuppam Village. But, before she moved away from the aforesaid Tractor, its driver moved it



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in a rash and negligent manner and dashed against the deceased – Sarasu.

Due to this, the deceased sustained fatal injuries and died on the spot. The first petitioner is the husband of the deceased, the petitioners 2 and 3 are her Minor sons, the petitioners 4 and 5 are her parents-in- law. The accident occurred due to the negligence on the part of owner cum driver of first respondent. At the time of accident, his vehicle was insured with the second respondent. Hence, the petitioners filed the claim petition seeking compensation of Rs. 10,00,000/ (Rupees Ten Lakhs Only) against the respondents.

First Respondent's Case :

4. The first respondent remained absent and was set *ex-parte* by the Tribunal.

Second Respondent' case :

5. The second respondent filed a counter affidavit stating that at the time of accident, the first respondent did not possess a valid driving license and his vehicle did not have valid documents. As per the Registration Certificate of the first respondent's vehicle, its seating capacity including the Driver is only one. But at the time of accident, 3



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persons travelled in the aforesaid Tractor. Hence, the deceased was an unauthorized passenger in the aforesaid vehicle. Therefore, the owner-cum-driver of the Tractor violated the law and the policy conditions. The aforesaid accident occurred only due to the own negligence of the deceased who suddenly alighting from the Tractor. Hence, the second respondent is not liable to pay any compensation to the petitioners. Accordingly, the second respondent prayed to dismiss the petition.

Tribunal :

6. The Tribunal framed the following points for consideration:

- “1. Whether the accident occurred due to rash and negligent driving of the driver of the Tractor bearing Registration No.TCF-4377 attached with Trailer bearing Registration No.TN-32-S-2601?*
- 2. Whether the petitioners are entitled to compensation? If so, what shall be the quantum and from whom?”*

7. During trial, on the side of the petitioners, the first petitioner was examined as P.W.1 and one Mr.Ayyadurai was examined as P.W.2 and Ex-P.1 to Ex-P.3 were marked. On the side of the respondents, one Mr.S.Sridhar - Administrative Officer of the second respondent Insurance Company was examined as R.W.1 and Ex-R.1 to Ex-R.5 were



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marked.

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8. After considering the materials and evidence, by relying on Ex-P.1 – First Information Report (FIR) and the evidence of P.W.2, the Tribunal concluded that the accident had happened due to rash and negligent driving of the owner cum driver - first respondent. The claimant did not file any document to prove the income of the deceased. Considering the deceased's age *i.e.*, 30 years and avocation at the time of accident, the tribunal has taken a sum of Rs.6,000/- as monthly income and applied future prospects at the rate of 50% and eventually, arrived at a compensation of Rs.17,32,000/-, payable by the first respondent to the petitioners. It dismissed the original petition *qua* the second respondent / insurance company holding that the deceased was a gratuitous / unauthorised passenger who travelled in the goods vehicle and hence, the 2nd respondent / Insurance Company is not liable to pay any compensation to the petitioners.

9. Dissatisfied with the quantum of compensation and liability, the petitioners have filed this appeal seeking enhancement of the compensation.

Arguments :



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10. Mr.A.G.F.Terry Chella Raja, learned counsel appearing

for the appellant / petitioners would argue that Ex-P.1 - FIR was registered against the owner cum driver of the Tractor attached with Trailer. The evidence of P.W.2, eyewitness, is trustworthy. Based on the FIR and the evidence of P.W.2, the Tribunal rightly came to a conclusion that the first respondent drove the Tractor attached with Trailer in a rash and negligent manner and caused the accident. However, the Tribunal wrongly came to the conclusion that the deceased was travelling in the tractor as an unauthorised gratuitous passenger. The Tribunal erroneously decided that the first respondent alone was liable to pay compensation and dismissed the petition as against the second respondent. Further, he would argue that the accident happened in the year 2013. At the time of accident, the deceased was 30 years old, and working as an Agricultural labourer specifically engaged in sugarcane harvesting, and hence, notional income of deceased taken by the Tribunal at Rs.6000/- per month is on the lower side. Accordingly, he prayed to enhance the award amount to Rs.25,00,000/-.



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11. Per contra, Mr. Michael Viswasam, learned Counsel appearing for the insurance company / second respondent would argue that the deceased was travelling in the first respondent's Tractor as a gratuitous/ unauthorised passenger which was not covered under the Insurance Policy. Hence, the second respondent is not liable to compensate the petitioners under any circumstances. The Tribunal was right in dismissing the original petition against the second respondent. There is no need to interfere with the said finding of the Tribunal. Accordingly, he prayed to dismiss the Civil Miscellaneous Petition.

12. Despite service of notice, the first respondent did not choose to appear before this Court and contest the appeal.

Discussion :

13. This Court has considered the submissions made on either side and perused the materials available on record. The factum of accident is admitted. The issues to be determined in this Civil Miscellaneous Appeals are the manner of accident, liability to pay compensation, and the quantum of compensation.



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14. Ex-P.1 - FIR was registered against the first respondent

under Sections 279, 337, and 304-A of Indian Penal Code, 1860, based on the first petitioner's information to the police. However, it is admitted that the first petitioner did not see the occurrence. His complaint to the police regarding the accident was based on the information he received. After investigation, the police filed Final Report against the first respondent. Admittedly, the deceased was working as an agricultural labourer engaged in harvesting and loading of sugarcane. At the time of accident, the Trailer attached to the Tractor was carrying a load of sugarcane. P.W.2 is said to be an eye witness to the accident. He has deposed that the accident occurred due to the rash and negligence driving of first respondent who drove the Tractor without due care and caution. According to P.W.2, the deceased had alighted from the Tractor, and that is when the first respondent proceeded to drive the tractor in a rash and negligent manner leading to the deceased getting crushed by the Tractor's wheels. There is no reason to reject the evidence of P.W.2. In these circumstances, considering the facts and circumstances, this Court is of the view that the deceased was not a gratuitous passenger. The moment the deceased got down from the Tractor, she is considered a third party as far as the Tractor



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attached with Trailer is concerned. Admittedly, the Tractor attached with the Trailer is insured with the second respondent / insurance company. The second respondent / insurance company also admitted that the accident was due to the negligent driving of the first respondent. Hence, the second respondent / insurance company is liable to pay the compensation to the dependents of the deceased. The Tribunal without appreciating the evidence in the right perspective, erroneously concluded that the deceased was a gratuitous / unauthorised passenger and hence, dependants of the deceased are not entitled to any compensation under second respondent. The said finding is liable to be set aside.

15. As regards the quantum of compensation, the Tribunal has taken a sum of Rs.6000/- as notional income and applying 50% increase for future prospects and deducting 1/4th of the amount as her personal expenses, computed the compensation as tabulated hereunder:-

Sl.No.	Head	Amount
1.	Loss of Income	Rs.13,77,000/-
2.	Loss of Consortium to the first petitioner	Rs,1,00,000/-
3.	Loss of love and affection of the Minor petitioners 2 and 3 at the rate of Rs.1,00,000/- each	Rs.2,00,000/-
4.	Loss of love and affection of the petitioners 4 and 5 at the rate of Rs.15,000/ each	Rs.30,000/-
5.	Funeral expenses	Rs.25,000/-
Total		Rs.17,32,000/-



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16. As regards monthly income, it is true that the deceased was an agricultural labourer engaged in harvesting and loading of sugarcane. It is apposite to mention that the nature of this work undeniably requires significant physical strength and endurance. Hence, considering the nature of her work, this Court is of the view that she would earn at least a sum of 500/- per day. Even if she works for 20 days in a month, she can easily earn a sum of Rs.10,000/- as monthly income.

17. Ex-P.2 - Post-mortem Report establishes that the deceased was 30 years old at the time of her death and hence the Tribunal has rightly applied the multiplier of 17 as per the Judgment of Hon'ble Supreme Court in *Sarla Verma -vs- Delhi Transport Corporation* reported in *(2009) 6 SCC 121*.

18. The first petitioner is the husband of the deceased, the petitioners 2 and 3 are her Minor sons, and the petitioners 4 and 5 are her parents-in- law. Considering the social status of the deceased, this Court is of the view that the deceased's income would have been a significant contribution to the family and hence, her family including her husband and minor children would have been dependent on her income. Hence, the



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petitioners 1 to 3 are the financial dependants of the deceased. The

petitioners 4 and 5 are not financial dependants. Hence, 1/3rd deduction

has to be made towards her personal expenses as per the Judgment of the

Hon'ble Supreme Court in *National Insurance Company Limited vs.*

Pranay Sethi & Others [(2017) 16 SCC 680]. Accordingly, this Court

arrives at a sum of **Rs.19,04,000/-** as compensation under the head 'loss of income'.

19. That apart, the petitioners 1 to 3 are entitled to Loss of consortium of Rs.40,000/- each. They are also entitled to a sum of Rs.15,000/- towards 'funeral expenses' and another sum of Rs.15,000/- towards 'loss of estate'.

20. It is settled law that irrespective of the compensation claimed, it is the duty of the Court to award a just and fair compensation [*Kavita Balothiya -vs- Santosh Kumar*, reported in *2024 SCC OnLine SC 2627*. Accordingly, the claimants are entitled to get enhanced compensation of Rs.20,54,000/-(Rupees twenty lakhs fifth four thousand only) from the second respondent / insurance company and this Court arrived at the compensation as detailed below:-



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<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of Income [(10000+4000 = 14,000) x 12x 17 x 2/3]	Rs. 19,04,000/-
2.	Loss of Parental Consortium (40000 x 2)	Rs.80,000/-
3.	Loss of Spousal Consortium	Rs.40,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-
Total		Rs.20,54,000/-

21. The second respondent / Insurance Company 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, to the credit of M.C.O.P.No.186 of 2015 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. Upon such deposit, the first petitioner is entitled to a sum of Rs.5,54,000/- and the Minor petitioners 2 and 3 are entitled to a sum of Rs.7,50,000/- each. The share amount of the minor petitioners 2 and 3 shall be deposited in any one of the Nationalised Banks, for until they attain majority and the first petitioner being their father and natural guardian is permitted to withdraw the interest accrued thereon once in three months for the maintenance and



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welfare of the minors. The deficit court fee, if any, shall be paid by the petitioners within a period of four weeks from the date of receipt of a copy of this Judgment. Petitioners 4 and 5 not being financial dependents of the deceased are not entitled to any compensation.

Conclusion :

22. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal viz. Rs.17,32,000/- is hereby **enhanced to Rs.20,54,000/- (Rupees twenty lakhs fifty four thousand only)** along with proportionate cost.

[J.N.B., J.]

[R.S.V., J.]

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To
The Motor Accidents Claims Tribunal
Special Sub Court,
Tiruvannamalai.



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J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av/tk

PRE-DELIVERY JUDGMENT MADE IN
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