



WEB COPY

C.M.A.Nos.470 and 2123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.01.2025
Pronounced on	08.04.2025

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**C.M.A.Nos.470 and 2123 of 2023**

and

C.M.P.No.3945 of 2023**C.M.A.No.470 of 2023**

M/s.The IFFCO-TOKIO General Insurance Co. Ltd.,
No.43/3, First Floor,
100 Feet Road, Mudaliarpet,
Pondicherry-605 004.

... Appellant/4th Respondent

-vs-

1. K.Vijayalakshmi

2. M.N.Krishnamoorthy @ Sankaranarayanan,

... Respondents 1&2/Petitioners 1&2

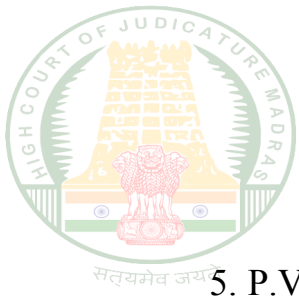
3. M.N.Krishnamoorthy

... 3rd Respondent/1st Respondent

4. M/s.The National Insurance Co. Ltd.,

No.165, Nethaji Street,
Manjakuppam, Cuddalore.

... 4th Respondent/2nd Respondent



C.M.A.Nos.470 and 2123 of 2023

5. P.Venkatesh
WEB COPY

... 5th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the final Award dated 20th April, 2022 passed in M.C.O.P.No.1523 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Court) at Cuddalore.

For Appellant	: Mr.J.Michael Visuvasam
For R1 & R2	: Mrs.Ramya V.Rao
For R3 & R5	: No Appearance
For R4	: Mrs.R.Srividya for Mr.R.Ravichandran

C.M.A.No.2123 of 2023

1. K.Vijayalakshmi
2. M.N.Krishnamoorthy @ Sankaranarayanan ... Appellants/Petitioners

-vs-

1. M.N.Krishnamoorthy
2. M/s.The National Insurance Co. Ltd.,
No.165, Nethaji Street,
Manjakuppam, Cuddalore.
3. P.Venkatesh
4. The IFFCO-TOKIO General Insurance Co. Ltd.,
No.43/3, First Floor,
100 Feet Road, Mudaliarpeta,
Pondicherry-605 004. ... Respondents/Respondents

Page No.2 of 19



C.M.A.Nos.470 and 2123 of 2023

WEB COPY

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to allow the appeal and enhance the compensation awarded vide Award dated 20th April, 2022 passed in M.C.O.P.No.1523 of 2016 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Cuddalore.

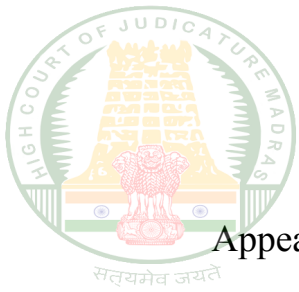
For Appellants	: Mrs.Ramya V.Rao
For R2	: Mrs.R.Srividya
For R1 & R3	: No Appearance
For R4	: Mr.J.Michael Visuvasam

COMMON JUDGMENT

R.SAKTHIVEL,J.

Feeling aggrieved by the Award dated April 20, 2022 passed by the 'Motor Accidents Claims Tribunal / Special Subordinate Court, Cuddalore', ['Tribunal' for short] in M.C.O.P.No.1523 of 2016, the fourth respondent therein / Insurance Company has preferred C.M.A.No.470 of 2023 praying to set aside the Award, while the petitioners therein have preferred C.M.A.No.2123 of 2023 praying to enhance the compensation. This Common Judgment will dispose of both the Civil Miscellaneous

Page No.3 of 19



Appeals.

WEB COPY



C.M.A.Nos.470 and 2123 of 2023

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

PETITIONERS' CASE

3. Petitioners are father and mother of the deceased - S.Ramanarayanan. On January 10, 2016 at about 02.30 a.m., the deceased – S.Ramanarayanan was travelling in the Car bearing Regn.No.TN-22-CH-9267, driven by another deceased – Ravi, on Chennai-Trichy National Highways near Chepauk Komugi Bridge. At that time, a lorry bearing Registration No.TN-34-D-3677, driven by its driver in a rash and negligent manner, dashed against the said car. Consequently, the deceased - S.Ramanarayanan passed away in the accident. Before the Tribunal, owner of the car who is also the father of the deceased – S.Ramanarayanan, insurer of the Car, as well as the owner and the insurer of the lorry were arrayed as Respondent Nos.1 to 4 respectively. At the time of accident, the deceased was aged about 23 years and he was a Caterer earning a sum of Rs.75,000/- per month. Stating that the lorry was insured with the 4th respondent and that

Page No. 4 of 19



C.M.A.Nos.470 and 2123 of 2023

the accident occurred due to the careless and reckless driving of the driver of the 3rd respondent's lorry, the petitioners filed the Claim Petition before the Tribunal seeking compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with interest and costs from the respondents 3 and 4.

RESPONDENT NOS.1 AND 3

4. Respondent Nos.1 & 3 are the owners of the said car and the said lorry respectively. They did not appear and choose to contest the petition and hence, were set *ex-parte* before the Tribunal.

SECOND RESPONDENT'S CASE

5. It is the case of the second respondent that there was negligence on the part of the driver of the lorry bearing Registration No. TN-34-D-3677, as he drove the lorry in a rash and negligent manner, causing the accident. In the absence of proof of negligence on the part of the car driver, the 2nd respondent is not liable to pay any compensation to the petitioners. Furthermore, the petitioners must establish the age, income, and occupation of the deceased. At the time of the accident, the deceased was not wearing seatbelt. The validity of driving license of driver of the car, its

Page No.5 of 19



C.M.A.Nos.470 and 2123 of 2023

Registration Certificate, Permit *etc.*, was disputed. The First Information Report (FIR) was registered with a false narration of facts. Stating that the compensation claimed is unsustainable and excessive, the 2nd respondent prayed for the dismissal of the claim petition.

FOURTH RESPONDENT'S CASE

6. It is the case of the fourth respondent that the allegation that the lorry driver was the root cause of the accident is not true. As per FIR and charge sheet, the car driver was responsible for the accident. Since the car driver / deceased – Ravi died in the accident, the case was closed as abated. Therefore, the 2nd respondent – insurer of the car is liable to compensate the petitioners. Consequently, the claim against the 4th respondent / insurer of the lorry is not maintainable, and therefore, the 4th respondent has prayed for the dismissal of the claim petition against it.

TRIBUNAL

7. Before the Tribunal, the 1st petitioner was examined as P.W.1 and an ocular / injured witness to the occurrence, namely, Vignesh was examined as P.W.2 and Ex-P.1 to Ex-P.7 were marked by P.W.1. On the side

Page No. 6 of 19



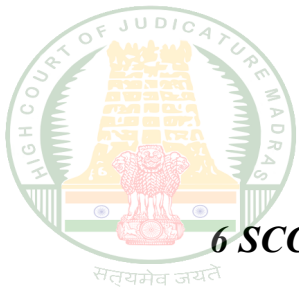
C.M.A.Nos.470 and 2123 of 2023

of the respondents, one Singaravelan, Special Sub Inspector of Police (S.S.I.), Veppur and one Santhyalakshmi, Legal Officer of the 4th respondent were examined as R.W.1 & R.W.2 respectively and a copy of charge sheet was marked as Ex-R.1.

8. The Tribunal, after considering the evidence available on record, held that the accident had occurred on account of fault on the part of driver of the lorry. Accordingly, the Tribunal held that the 4th respondent, being insurer of the lorry, is liable to pay the compensation to the petitioners.

9. With regard to quantum of compensation, there was no document produced in proof of income of the deceased. The income of the deceased, who was a bachelor at the time of accident, was notionally taken as Rs.10,000/- per month by the Tribunal. Then the Tribunal, upon considering the age of the deceased, added 40% towards future prospects, applied the multiplier of 18 as per the Judgment of the Hon'ble Supreme Court in *Sarla Verma -vs- Delhi Transport Corporation*, reported in (2009)

Page No. 7 of 19



C.M.A.Nos.470 and 2123 of 2023

6 SCC 121, and deducted half of the amount toward personal expenses, and

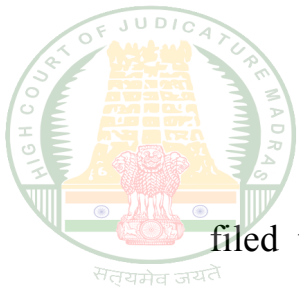
computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Loss of income (Rs.10,000+40% $\times$ 12 $\times$ 18-1/2)	Rs.15,12,000/-
2.	Loss of Estate	Rs.16,500/-
3.	Loss of Parental Consortium -	Rs.44,000/-
4.	Funeral Expenses	Rs.16,500/-
	Total	Rs.15,89,000/-

10. Feeling aggrieved by the Award, the 4th respondent / insurer of the lorry has preferred C.M.A.No.470 of 2023. Whereas, dissatisfied with the Award amount, the petitioners have preferred C.M.A. No.2123 of 2023 praying to enhance the Award amount.

ARGUMENTS

11. Mr.J.Michael Visuvasam, learned counsel for the appellant in C.M.A.No.470 of 2023 / 4th respondent / insurer of the lorry would argue that FIR was registered against the driver of the car. The petitioners, having



C.M.A.Nos.470 and 2123 of 2023

filed the claim petition based on the FIR, cannot turn around and say contrary to the FIR that the accident had occurred due to the rash and negligent driving of driver of the lorry. He would further argue that the manner of the accident itself establishes that the driver of the car alone was negligent and sole cause of the accident. The Tribunal failed to consider the said aspects and by merely relying on the evidence of an eyewitness / P.W.2, fastened the liability on the 4th respondent /insurer of the lorry, which is erroneous. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award of the Tribunal.

12. Per contra, Mrs.Ramya V. Rao, learned counsel appearing for the appellants in C.M.A. No.2123 of 2023 / petitioners would contend that the accident happened during wee hours on January 10, 2016, and P.W.2, who is an injured witness has clearly deposed that the accident occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver . She would further contend that it is clear from the evidence of R.W.1 / S.S.I. that the car proceeded from South to North in the correct lane and the lorry, which was proceeding from North to South, had taken

Page No.9 of 19



C.M.A.Nos.470 and 2123 of 2023

diversion, travelled in the deceased's lane and dashed against the car. From the evidence of R.W.1, it is discernible that the accident had occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver. There is no infirmity or illegality in fixing the liability on 4th respondent / insurer of the lorry and hence, no interference is warranted in this regard and consequently, C.M.A.No.470 of 2023 is liable to be dismissed.

12.1. Further, she would argue that the fixation of notional income at Rs.10,000/- is very low and the same be enhanced to Rs.15,000/- per month considering cost of living prevailing at the time of accident as well as the facts and circumstances. Thus, she prayed to allow C.M.A. No.2123 of 2023 and enhance the compensation.

13. Mrs.R.Srividya, learned counsel for the 4th respondent in CMA No.470 of 2023 / 2nd respondent / insurer of the car, referring to the evidence of R.W.1 / S.S.I. in regard of the manner of accident, would contend that the accident occurred due to the rashness and negligence on the part of the driver of the lorry and hence, it is the insurer of the lorry / 4th



C.M.A.Nos.470 and 2123 of 2023

respondent who is liable to pay compensation. There being no negligence on the side of the car, 2nd respondent being its insurer, is not liable to pay any compensation. Accordingly, she prayed to dismiss both the Civil Miscellaneous Appeals against her client, the insurer of the car.

DISCUSSION

14. Heard the learned counsel on either side and perused the evidence and materials available on record.

15. The accident occurred in the wee hours of January 10, 2016. Driver of the car, namely Ravi and front co-passenger, namely S.Ramanarayanan passed away in the accident. One of the co-passenger / injured, namely Vignesh had been examined as P.W.2, and he had deposed that they were proceeding on the left lane as per rules towards Chennai and at that time, the 3rd respondent's lorry came in the opposite direction in their lane (left lane) in a rash and negligent manner and caused the accident. Further, R.W.1 / S.S.I. had deposed that the deceased's car was travelling in

Page No.11 of 19

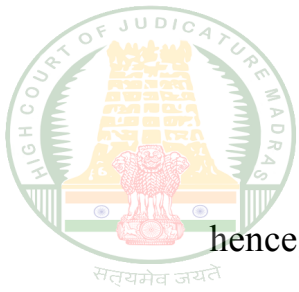


WEB.COM

the left lane in accordance with the rules and norms, and it was the lorry which was diverted onto the left lane / deceased's lane due to road maintenance.

16. From the above evidence of the ocular / injured witness and the S.S.I., it is discernible that the car was proceeding in the correct lane. Though the lorry was diverted onto the left lane for road maintenance, the lorry driver, for he is travelling in the opposite lane, ought to have taken more care and caution. The burden is upon the 3rd respondent / owner of the lorry and the 4th respondent / the lorry's insurer to prove that the lorry's driver drove the lorry in a careful and cautious manner while proceeding in the left lane / deceased's lane. In these circumstances, the 4th respondent / insurer of the lorry ought to have examined the lorry driver, who is the competent person to depose in this regard, but it failed to do so.

17. Though the FIR has been lodged against the driver of the car, it has to be noted that it has been lodged by the lorry driver. He naturally would have preferred the complaint in terms favourable to him and



hence, the FIR alone cannot be taken to fix negligence in this case. One may argue that if really the lorry driver was negligent, the petitioners' side would have preferred a complaint too, or at least denied the FIR by filing protest petition. On the face of it, the argument may seem plausible. But one has to look deeper through the lens of facts and circumstances of this case. The accident occurred in the wee hours. Two occupants including the petitioners' son – S. Ramanarayanan passed away in the accident, and the remaining three occupants were injured in the accident and admitted in the hospital. There is no evidence available on record to show whether the factum of registration of FIR and the pursuant closure report was intimated to the petitioners' side or not. Considering the cumulative facts and circumstances, this Court is of the view that non filing of FIR or protest petition on the side of the petitioners is not sufficient to impute negligence on the car driver.

18. As per the evidence of P.W.2, the driver of the lorry was responsible for the accident. The evidence of R.W.1 / S.S.I. that on account of diversion, it was the lorry driver who barged into the lane in which the



WEB.COM

car was proceeding to Chennai in the righteous direction, dashed against the car and caused the accident, is plausible and strengthens the case of the petitioners. The Tribunal, after considering the facts and circumstances, by relying on the evidence of P.W.2 and R.W.1, found the 3rd respondent's lorry's driver negligent. Ex-P.4 – Motor Vehicle Inspection Report [M.V.I. Report] and Ex-P.5 – Insurance Policy document of the lorry would show that the 3rd respondent's lorry was insured with the 4th respondent at the time of accident and accordingly, the Tribunal held the 4th respondent as the insurer of the lorry is liable to pay compensation to the petitioners. This Court finds no reason to deviate from the said findings of the Tribunal.

19. As regards the quantum of compensation, the Tribunal fixed Rs.10,000/- as notional income of the deceased, which appears on the lower side. Considering the age of the deceased, his alleged occupation, the cost of living prevailing at the time of accident and other facts and circumstances, this Court is of the view that the deceased would have earned not less than Rs.12,000/- per month. Bearing in mind *Aandal's Case* [*Andal -vs- Abhinav Kannan*, reported in (2019) (1) TN MAC 5], this Court



C.M.A.Nos.470 and 2123 of 2023

takes the notional income of the deceased at Rs.12,799/- per month. As per

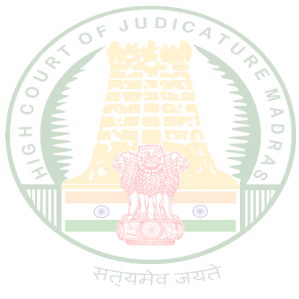
the Supreme Court's guidelines in *National Insurance Co. Ltd. vs. Pranay*

Sethi reported in *AIR 2017 SC 5157*, a 40% increase for future prospects is granted. Then, multiplier of 18 is applied and since the deceased died as a bachelor, one-half deduction towards personal expenses is made, all in terms of the dictum laid down by the Supreme Court in *Sarla Varma's case* (cited *supra*). Accordingly, this Court arrives at a sum of Rs.19,35,058 as compensation under the head of loss of income. Further, filial consortium awarded to the petitioners is not in tune with *Pranay Sethi's Case* (cited *supra*) and hence, the same is enhanced to Rs.88,000/- (Rs.44,000/- each). In all other aspects, the Award of the Tribunal appears to be just and fair and therefore, warrants no interference.

20. The compensation now modified by this Court is tabulated hereunder:

Sl.No.	Head	Amount
1.	Loss of income (Rs.12,798+40% $\times$ 12 $\times$ 18-1/2)	Rs.19,35,058/-
2.	Loss of Estate	Rs.16,500/-

Page No.15 of 19



WEB COPY



C.M.A.Nos.470 and 2123 of 2023

Sl.No.	Head	Amount
3.	Loss of Filial Consortium	Rs.88,000/-
4.	Funeral Expenses	Rs.16,500/-
	Total	Rs.20,56,058/-

21. The appellant in CMA No.470 of 2023 / 4th respondent / insurer of the lorry is directed to deposit the enhanced compensation of ***Rs.20,56,058/- [Rupees Twenty lakh fifty-six thousand and fifty-eight only]*** awarded by this Court, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and costs, less the amount already deposited, if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their share as apportioned by the Tribunal along with proportionate interest, less the amount already withdrawn, if any, by filing suitable applications before the Tribunal. The claimants shall pay necessary Court Fee, if any, for the enhanced compensation within one month from the date of receipt of a copy of this Judgment.



C.M.A.Nos.470 and 2123 of 2023

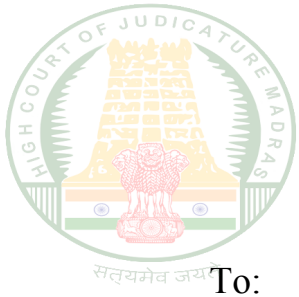
RESULT:

WEB COPY

22. For the foregoing reasons, the Civil Miscellaneous Appeal in CMA No.470 of 2023 filed by the Insurance Company is dismissed and that in CMA No.2123 of 2023 filed by the petitioners stand partly allowed. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
08.04.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
ar/tk



C.M.A.Nos.470 and 2123 of 2023

To:

WEB COPY

1. Motor Accident Claims Tribunal /
Special Subordinate Judge,
Cuddalore.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.



WEB COPY



C.M.A.Nos.470 and 2123 of 2023

J.NISHA BANU,J.,
AND
R.SAKTHIVEL,J.,
ar/tk

PRE-DELIVERY JUDGMENTS IN
C.M.A.Nos.470 and 2123 of 2023

08.04.2025

Page No.19 of 19