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C.M.A.No.60 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.No.60 of 2023

and

C.M.P.No.538 of 2023

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

... Appellant / 4th Respondent

-VS-

1. G.Poornima
2. Minor R.Bhuvaneshwari
Rep. by her mother - G.Poornima
3. V.Ramamoorthy Sastrigal
4. R.Savithiri

... Respondents 1 to 4/Petitioners 1 to

5. M.N.Krishnamoorthy

... 5th Respondent/1st Respondent

6. M/s.The National Insurance Co. Ltd.,
No.165, Nethaji Street,



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Manjakuppam, Cuddalore.

7. P.Venkatesh

... 6th Respondent/2nd Respondent

... 7th Respondent/3rd Respondent

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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the final Award dated 26th April, 2022 passed in M.C.O.P. No.1522 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Court) at Cuddalore.

For Appellant	: Mr.J.Michael Visuvasam
For R1 to R5	: Mrs.Ramya V.Rao
For R6	: Mrs.R.Srividya
For R7	: No Appearance

J U D G M E N T

R. SAKTHIVEL,J.

Feeling aggrieved by the Award dated April 26, 2022 passed in M.C.O.P. No.1522 of 2016 on the file of the 'Motor Accident Claims Tribunal (Special Subordinate Court) at Cuddalore' (in short 'Tribunal'), the 4th respondent therein / Insurance Company has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to

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as per their array in the Original Petition.

WEB CO PETITIONERS' CASE

3. On January 10, 2016 at about 02.30 a.m., the deceased – Ravi was driving a car bearing Registration No.TN-22-CH-9267 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 - Ravi (and a front co-passenger, namely S.Ramanarayanan who is none other than the son of the owner of the car / first respondent) passed away. According to the petitioners, who are the wife, minor daughter and parents of the deceased, at the time of accident, the deceased was a 27 years old Pandit earning a sum of Rs.50,000/- per month. Before the Tribunal, owner and insurer of the said car, as well as owner and insurer of the said lorry, were arrayed as Respondent Nos.1 to 4 respectively. Stating that the lorry was insured with the 4th respondent and that 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



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interest and costs from the respondents.

WEB CO RESPONDENT NOS.1 & 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.

CASE OF 2ND RESPONDENT / INSURER OF 1ST RESPONDENT'S CAR IN THE COUNTER

5. 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 the deceased's driving license, Registration Certificate, and 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

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petition.

**WEB CO CASE OF 4TH RESPONDENT / INSURER OF 3RD RESPONDENT'S
LORRY IN THE COUNTER**

6. The allegation that the lorry driver was the root cause of the accident is denied. 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, on the side of petitioners, the 1st petitioner was examined as P.W.1 and a passenger of the said car (who also got injured in the accident), namely Vignesh was examined as P.W.2 and Ex-P.1 to Ex-P.13 were marked by P.W.1. On the side 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

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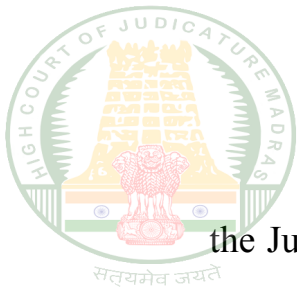
R.W.1 & R.W.2 respectively and a copy of charge sheet was marked as Ex-

WEB CORRECTION

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, though there was no document produced in proof of income of the deceased, on the basis of Ex-P.8 – Bank Passbook, Ex-P.9 – Bank Account Statement, Ex-P.10 -PAN Card and Exs-P.11 & P.12 - Income Tax Returns for the assessment years 2014-15 (financial year 2013-14) & 2015-16 (financial year 2014-15) respectively, the income of the deceased was taken as Rs.21,000/- per month. The Tribunal, upon considering the age of the deceased as 28 years based on Ex-P.6 – Post-mortem Report, applied multiplier of 17 as per the Judgment of the Hon'ble Supreme Court in **Sarla Verma -vs- Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, and deducted 1/3rd towards personal expenses after adding 40% towards future prospects as per

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the Judgement of Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi* reported in (2017) 16 SCC 680, and awarded compensation as stated below:-

Sl. No.	Head	Amount
1.	Loss of income (Rs.21,000 + 40% x 12 x 17 - 1/3)	Rs.39,98,400/-
2.	Loss of Estate	Rs.16,500/-
3.	Loss of Consortium (spousal, parental and filial) - Rs.44,000/- each	Rs.1,32,000/-
4.	Funeral Expenses	Rs.16,500/-
Total		Rs.41,63,400/-

10. Feeling aggrieved by the liability fastened on it as well as by the quantum of compensation awarded by the Tribunal, the 4th respondent insurer of the lorry has preferred this appeal.

ARGUMENTS:

11. Mr.J.Michael Visuvasam, learned counsel for the appellant / 4th respondent / insurer of the lorry would argue that FIR was registered against the driver of the car. The petitioners, having filed the claim petition based on the FIR, cannot turn around and say contrary to the FIR that the



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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 deceased 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 respondents 1 to 4 herein / petitioners as well as for 5th respondent herein / 1st respondent / owner of the car, 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 diversion, travelled

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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 the 4th respondent / insurer of the lorry and hence, no interference is warranted in this regard and consequently, the appeal is liable to be dismissed.

12.1. Further, she would contend that the Tribunal erroneously deducted 1/3rd towards personal expenses while it ought to have deducted only 1/4th, as the 3rd petitioner / father of the deceased – Ravi is an old age person who was also financially dependent on the deceased - Ravi. Accordingly, she would pray to enhance the compensation by deducting 1/4th in the place of 1/3rd towards personal deductions.

13. Mrs.R.Srividya, learned counsel for the 6th respondent / 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

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hence, it is the insurer of the lorry / 4th 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 the Civil Miscellaneous Appeal.

DISCUSSION:

14. Heard 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 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.

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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



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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 driver – Ravi passed away in the accident, while 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, mere non filing of FIR or protest petition on the side of the petitioners is not sufficient to impute negligence on the car driver – Ravi.

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 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



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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, this Court has perused Ex-P.11 and Ex-P.12 - Income Tax Returns for the assessment years 2014-15 (financial year 2013-14) & 2015-16 (financial year 2014-15) respectively. They both have been acknowledged on July 31, 2014 and July 27, 2015 respectively *i.e.*, before the accident. Ex-P.12, which pertains to the financial year immediately preceding the year of accident, shows that the deceased earned a gross sum of Rs.2,56,740/- per annum which means he earned around Rs.21,395/- per month on an average. The Tribunal, on the basis of Ex-P.8 – Bank Passbook, Ex-P.9 – Bank Account Statement, Ex-P.10 -PAN Card as well as Exs-P.11 & P.12, has rightly fixed Rs.21,000/- as



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the income of the deceased. Thereafter, 40% future prospects was added in line with ***Pranay Sethi's Case*** (cited *supra*) and multiplier of 17 was applied considering the age of the deceased as 28 years on the basis of Ex-P.6 – Post-mortem Report. The date of birth of the deceased – Ravi is April 6, 1989 as per Exs-P.10 to P.12. It is true that in the presence of Ex-P.10 to Ex-P.12 documents, which would clearly show the age of the deceased as 26 years, the Tribunal ought not to have relied on Ex-P.6 - Post-mortem Report to conclude his age as 28 years. However, the multiplier for the age group of 26 - 30 years is 17 and since the multiplier would be the same either way, no prejudice is caused to the petitioners and the same needs no interference.

20. Then the Tribunal deducted 1/3rd of the total income towards personal deductions. While doing so, the Tribunal failed to note that, as per Ex-P.13 – Legal Heir Certificate, the father of the deceased / 3rd petitioner is a septuagenarian. Generally father is not considered a dependent as he would have his own income. But in this case, the father being in his 70s, would have naturally been financially dependent on the deceased / his son and hence, the just deduction would be 1/4th. With 1/4th



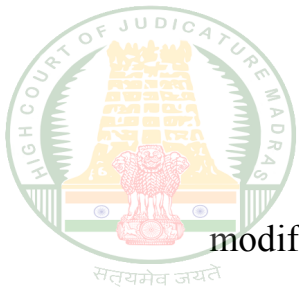
deduction, the compensation under the head of loss of income would be

Rs.44,98,200/-.

21. Further, the Tribunal has jointly awarded a sum of Rs.44,000/- as filial consortium to the parents of the deceased, which is not in tune with *Pranay Sethi's Case* (cited *supra*). It ought to have awarded Rs.44,000/- each. Compensation towards filial consortium needs to be enhanced accordingly.

22. Accident claims under the Motor Vehicles Act, 1988 being a piece of beneficial legislation, it is the duty of the Court to ensure that the compensation awarded is just, fair and reasonable. Though the petitioners have not preferred any appeal or cross-objection, considering their arguments, this Court is inclined to enhance the compensation in the aforesaid manners. In all other aspects, the Award of the Tribunal appears to be just, fair and reasonable and therefore, warrants no interference.

23. The following table summarises the compensation now



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modified by this Court:

Sl.No.	Head	Amount
1.	Loss of income (Rs.21,000 + 40% x 12 x 17 - 1/4)	Rs.44,98,200/-
2.	Loss of Estate	Rs.16,500/-
3.	Loss of Consortium (spousal, parental and filial) - Rs.44,000/- each	Rs.1,76,000/-
4.	Funeral Expenses	Rs.16,500/-
Total		Rs.47,07,200/-

24. The appellant / 4th respondent / insurer of the lorry is directed to deposit the enhanced compensation of **Rs.47,07,200/- [Rupees Forty-seven lakh seven thousand and two hundred 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.

24.1. On such deposit, the first to fourth respondents / claimants are entitled to the enhanced compensation as apportioned by the Tribunal. The first, third, and fourth respondents / first, third, and fourth



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claimants are permitted to withdraw their share along with proportionate interest, less the amount already withdrawn, if any, by filing suitable applications before the Tribunal.

24.2. Since the second respondent / second claimant is a minor, her share is directed to be deposited in an interest bearing Fixed Deposit in any nationalized bank until she attains the age of majority. The first respondent / first claimant, being the natural guardian / mother of the second respondent / second claimant, is permitted to withdraw the interest accrued thereon once in six months for the welfare of the second respondent / second claimant.

24.3. The petitioners are directed to pay the Court Fee, if any, for the enhanced compensation within one month from the date of receipt of a copy of this Judgment.

RESULT:

25. Accordingly, this Civil Miscellaneous Appeal filed by the 4th respondent / Insurance Company stands dismissed. With a view to award

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a just, fair and reasonable compensation, the compensation awarded by the

WEB COPY Tribunal is enhanced to **Rs.47,07,200/-** subject to payment of necessary

Court Fee, if any, by the petitioners. In view of the facts and circumstances,

there shall be no order as to costs in this Civil Miscellaneous Appeal.

Consequently, connected Civil Miscellaneous Petition is closed.

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

08.04.2025

Index: Yes / No

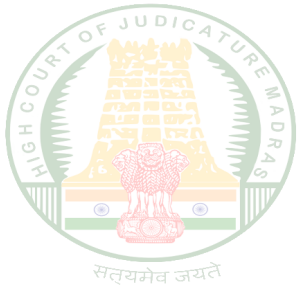
Internet: Yes / No

Speaking Order/ Non Speaking Order

ar/tk

To:

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



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C.M.A.No.60 of 2023

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

PRE-DELIVERY JUDGMENT MADE IN
C.M.A.No.60 of 2023

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