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C.M.A.No.3392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3392 of 2024

1.Bhuvaneswari
2.Loyapriya (Minor)
3.Dhamotharan (Minor)
4.Muthulakshmi
(The 2nd and 3rd minor petitioners are rep. by her
Mother and N.F.Bhuvaneswari, 1st petitioner) ... Appellants

Vs.

1.M/s.Bvm Storage Solutions Pvt. Ltd.,
No.70, Adam Nagar Road,
Nagalkeni, Chrompet,
Chennai 600 044.

2.The Manager,
HDFC ERGO General Insurance Company,
R R Towers II, 2nd Floor,
No.94/95, Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032. ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the civil miscellaneous appeal by enhancing the compensation awarded in the judgment and decree, dated 03.09.2024, in M.C.O.P.No.2601 of 2018, on the file of the Motor Accident Claims Tribunal (In the II Court of Small Causes, Chennai).



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C.M.A.No.3392 of 2024

For Appellants : Mr.K.Balaji
For Respondents : R1 – No Appearance
Mr.K.Vinod for R2

J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the order passed by the Motor Accident Claims Tribunal (In the II Court of Small Causes, Chennai) dated 03.09.2024 in M.C.O.P.No.2601 of 2018.

2.The learned counsel appearing for the appellants submitted that on 30.12.2017 at about 07.15 hours, the deceased Rajasekaran was walking at the left side of the Thiruneermalai Main Road, near Solid Waste Management Office, Chennai. At that time, the driver of the Van bearing Registration No.TN-22-CQ-9094 which came behind, drove the vehicle in a rash and negligent manner and hit the deceased, due to which, the deceased died on the spot.

3.The learned counsel appearing for the appellants further submitted that thereafter, the dependants of the deceased Rajasekaran / appellants / claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.65 Lakhs as



C.M.A.No.3392 of 2024

compensation. After adjudication, the Tribunal awarded a sum of Rs.27,65,300/- as compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of realization with proportionate costs and directed the first respondent to deposit the compensation. Aggrieved by the quantum of compensation and discharge of the Insurance Company from liability, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants further submitted that the first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle. After adjudication, the Tribunal arrived at a conclusion that the driver of the vehicle owned by the first respondent drove the vehicle under the influence of alcohol and hence the second respondent Insurance Company is not liable to pay compensation and directed the first respondent to deposit the compensation amount. The learned counsel further submitted that the said finding is perverse and not sustainable one, in view of the decision of the High Court of Kerala at Ernakulam reported in **2023 LiveLaw (Ker) 52 [Muhammed Rashid @ Rashid vs. Girivasan E.K.]**, since in the said decision the High Court of Kerala at Ernakulam after following the decisions of the Hon'ble Apex Court reported in **AIR**



C.M.A.No.3392 of 2024

2011 SC 2951 [Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited]; (2001) 4 SCC 342 [New India Assurance Company Vs. Kamala and others]; (2004) 13 SCC 224 [Oriental Insurance Company Limited Vs. Nanjappan]; and the decision of the Hon'ble Division Bench of the High Court of Andhra Pradesh reported in **2014 SCC OnLine AP 232 [Deputy Manager (Legal) Vs. Manju Devi and others]** held that even if there is a condition in the policy certificate that driving of a vehicle in an intoxicated condition is violation of the terms and conditions of the policy, still the Insurance Company is liable for payment of compensation.

5.The learned counsel appearing for the appellants further submitted that the deceased was 37 years at the time of accident and he was doing centering work and was earning a sum of Rs.700/- per day. The accident is of the year 2017, however, the Tribunal fixed the notional monthly income of the deceased as Rs.13,700/- and awarded a meagre compensation to the claimants and hence, the appellants are entitled for enhanced compensation.

6.Per contra, the learned counsel appearing for the second



C.M.A.No.3392 of 2024

respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8. The accident and the manner in which the accident happened are not disputed. This appeal has been filed questioning the discharge of the Insurance Company from liability and the quantum of compensation.

9. Similar issue has already been considered by the High Court of Kerala at Ernakulam reported in **2023 LiveLaw (Ker) 52 [Muhammed Rashid @ Rashid vs. Girivasan E.K.]**, the relevant portion of which reads as follows:

"17. Regarding the question of violation of the terms and conditions of Insurance Policy, and the liability of the insurance company to indemnify and to recover the same



C.M.A.No.3392 of 2024

from the insured, the Apex Court in **New India Assurance Co. v. Kamala & Others [(2001) 4 SCC 342]**, held that When a valid Insurance Policy has been issued in respect of a vehicle as evidenced by a Certificate of Insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the Policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured, if as per the Policy conditions the insurer had no liability to pay such sum to the insured.

18. In **Oriental Insurance Company Limited v. Nanjappan [(2004) 13 SCC 224]**, the Apex Court held that, When there is a violation to the terms and conditions of the Policy, Insurance Company is held to be not liable, but Insurance Company has to pay the awarded Compensation and recover the same from the insured by initiating the proceedings before the Executing Court to protect and safeguard the interests of Insurance Company.

19. In **Bajaj Allianz General Insurance Co.Ltd., rep by its Deputy Manager (Legal) vs. Manju Devi and Others [2014 SCC OnLine AP 232]**, a Division Bench of the High Court of Andhra



C.M.A.No.3392 of 2024

Pradesh held that 'Even if there is any violation of terms and conditions of the Policy, the Insurance Company is under an obligation to satisfy the claim of Third parties; since the liability of the Insurance Company during subsistence of the liability under the Policy is statutory in nature and at best, the Insurance Company has to satisfy the Compensation and recover the same from the insured.'

20. Even if, there is a condition in the Policy Certificate that driving of a vehicle in an intoxicated condition is violation of the terms and conditions of the Policy, still the Insurance Company is liable for payment of compensation. Undoubtedly, when the driver is in an inebriated state, certainly, his consciousness and senses will be impaired so as to render him unfit to drive a vehicle. But the liability under the Policy is statutory in nature and so the Company is not liable to be exonerated from payment of compensation to the victim.

10.In the decision cited supra, the High Court of Kerala at Ernakulam after following the decisions of the Hon'ble Apex Court reported in **AIR 2011 SC 2951 [Ramachandrappa Vs. Manager,**



C.M.A.No.3392 of 2024

Royal Sundaram Alliance Insurance Company Limited]; (2001)

4 SCC 342 [New India Assurance Company Vs. Kamala and others]; (2004) 13 SCC 224 [Oriental Insurance Company Limited Vs. Nanjappan]; and the decision of the Hon'ble Division Bench of the High Court of Andhra Pradesh reported in **2014 SCC OnLine AP 232 [Deputy Manager (Legal) Vs. Manju Devi and others]** held that even if there is a condition in the policy certificate that driving of a vehicle in an intoxicated condition is violation of the terms and conditions of the policy, still the Insurance Company is liable for payment of compensation.

11.Following the dictum laid down in the decision of the High Court of Kerala at Ernakulam reported in **2023 LiveLaw (Ker) 52 [Muhammed Rashid @ Rashid vs. Girivasan E.K.]**, this Court holds that the second respondent Insurance Company is liable to pay the compensation to the claimants. The second respondent Insurance Company shall deposit the award amount before the Tribunal and thereafter recover the same from the first respondent in the manner known to law.

12.Insofar as the quantum of compensation is concerned, the



C.M.A.No.3392 of 2024

tribunal after elaborately discussing the factual aspects awarded a sum of Rs.25,89,300/- for loss of dependency, Rs.40,000/- for loss of spouse consortium for the first appellant, Rs.80,000/- for loss of parental consortium for the appellants 2 and 3, Rs.40,000/- for loss of filial consortium for the fourth appellant, Rs.1,000/- for loss of estate, Rs.15,000/- for funeral expenses and arrived at a total compensation of Rs.27,65,300/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

13.The accident is of the year 2017. The deceased was 37 years at the time of accident and he was doing centering work. Hence, he could have easily earned a sum of Rs.15,000/- per month. Hence, this Court fix a sum of Rs.15,000/- as the monthly notional income of the deceased. The Tribunal has rightly awarded 40% of income towards future prospects and has rightly deducted 1/4 of the amount towards personal expenses and has rightly adopted the multiplier 15. Hence, the amount awarded for loss of dependency works out to Rs.28,35,000/- [$\text{Rs.15,000/-} \times 40\% = \text{Rs.6,000/-}$; $\text{Rs.15,000/-} + \text{Rs.6,000/-} = \text{Rs.21,000/-}$; $\text{Rs.21,000/-} \times \frac{1}{4} = \text{Rs.5,250/-}$; $\text{Rs.21,000/-} - \text{Rs.5,250/-} = \text{Rs.15,750/-}$; $\text{Rs.15,750/-} \times 12 \times 15 = \text{Rs.28,35,000/-}$].



C.M.A.No.3392 of 2024

14.The amount awarded under the head loss of estate, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for loss of estate is enhanced to Rs.15,000/- from Rs.1,000/-. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.

15.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of dependency	Rs.25,89,300/-	Rs.28,35,000/-
2.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3.	Loss of spouse consortium for the 1 st appellant	Rs. 40,000/-	Rs. 40,000/-
4.	Loss of parental consortium for the appellants 2 and 3	Rs. 80,000/-	Rs. 80,000/-
5.	Loss of filial consortium for the 4 th appellant	Rs. 40,000/-	Rs. 40,000/-
6.	Loss of estate	Rs. 1,000/-	Rs. 15,000/-
	Total	Rs.27,65,300/-	Rs.30,25,000/-

16.The appellants/ claimants are entitled to total compensation of Rs.30,25,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.



C.M.A.No.3392 of 2024

WEB COPY

17.The civil miscellaneous appeal is partly allowed. The order passed in M.C.O.P.No.2601 of 2018 dated 03.09.2024 by the Motor Accidents Claims Tribunal (In the II Court of Small Causes, Chennai), is modified to the above extent.

18.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. Thereafter, the second respondent Insurance Company shall recover the said amount from the first respondent in the manner known to law. On such deposit being made, the appellants 1 and 4 are permitted to withdraw their shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants 2 and 3 are permitted to withdraw their shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to their majority. If the appellants 2 and 3 are still minors, their shares shall be kept in an interest yielding fixed



C.M.A.No.3392 of 2024

deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minors shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minors.

19.The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing/ representing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal (In the II Court of Small Causes, Chennai), shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

20.The civil miscellaneous appeal is partly allowed. No costs.

22.01.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
(In the II Court of Small Causes, Chennai).

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C.M.A.No.3392 of 2024

M.DHANDAPANI,J.
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C.M.A.No.3392 of 2024

22.01.2025