BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1140 of 2024
&
C.M.P(MD)Nos.11915 & 15842 of 2024

The Branch Manager,

M/s.Cholamandalam General Insurance Company Ltd.,

D.No.2, Dare House, 2nd Floor,

N.S.C. Bose Road,

Chennai – 600 001. ... Appellant/ 3rd Respondent

Vs.

1.Punitha

2.Narmadha Devi

3.Naveena Devi

4.Minor Dineshkumar ...Respondents 1 to 4 / Petitioners 1 to 4

(Minor Rep. By his mother and natural guardian 1st respondent)

5.Sivakumar

6.Selvi ...Respondents 5 & 6/ Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 20.06.2023 made in MCOP No.171 of 2017 on the file of Motor Accident Claims Tribunal cum Principal District and Sessions Court, Virudhunagar at Srivilliputhur, and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.N.Shyllappakalyan

For Respondents : Mr.N.Tamil Mani – R1 to R4

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant (3rd respondent-Insurance Company) has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 20.06.2023 passed in MCOP No.171 of 2017 by the file of Motor Accident Claims Tribunal cum Principal District and Sessions Court, Virudhunagar at Srivilliputhur.

2. Brief case of the claimant before the lower Court is as follows:

(a) The deceased Karuppasamy was working as Special Sub Inspector of Police at Nagaiahpuram Police Station, Peraiyur Sub Division, Madurai District. On 13.02.2017 at about 11.45 p.m., he met with an accident. At the time, he was returning from Nagaiahpuram Police Station to T.Kallupatti, riding a Hero Honda Motor Bike bearing Registration No.TN 67 K 6405 in a slow speed, duly observing the traffic rules and regulation. As he neared the Anjaneya Temple from North to South from T.Kallupatti to Madurai Main Road, the 1st Respondent approached, driving his Mini Goods Vehicle bearing Registration No. TN 59 BL 3618 in a rash and negligent manner without following the traffic rules. He drove from the opposite direction on the said road and dashed against the two wheeler of the deceased, Karuppasamy. Due to the sudden impact, Karuppasamy sustained grievous injuries on his head and all over his body, and succumbed to injuries on the spot. The accident occurred due to the negligent driving of the 1st respondent. At that time one Shankar, son of Rajagopal, and his friend Kaliappan, son of Kalimuthu were driving from North to South direction on the said Road in a two wheeler. They witnessed the said accident.

(b) At the time of accident, the deceased was aged about 52 years. He was hale, healthy and energetic. He was working in the Police Department as a Special Sub Inspector, and was earning a sum of Rs.45,896/- per month, and had handed over the same to the petitioner. The deceased was the only breadwinner of the family. If he had not met with an accident, he would later be promoted as Inspector of Police and get higher salary.

(c) The 1st petitioner is the wife of the deceased, the 2nd and 3rd petitioners are daughters of the deceased, and the 4th petitioner is the minor son of the deceased. The 1st petitioner is a patient and is not employed. The 4th petitioner is a minor and is a school-going student. Due to the death of his father, his higher education and future academic attainment have been affected. The petitioners depend upon the income of the deceased. After the death of the petitioner's husband, the petitioners income and the access to essential commodities were affected. The first petitioner lost her husband at a young age. This loss can not be compensated in terms of money.

(d) The 1st respondent drew the vehicle in a rash and negligent manner, and the accident occurred due to his negligence. If the 1st respondent had driven the vehicle in a proper manner, the accident would not have occurred. The 1st respondent was employed with the 2nd respondent, and during his course of employment, the accident occurred. Therefore, the 2nd respondent is vicariously liable to pay the compensation to the petitioners. At the time of the accident, the 2nd respondent's vehicle bearing Registration No. TN 59 BL 3618, was insured with the 3rd respondent, and the insurance policy was in force. Hence, both the respondents are jointly and severely liable to pay compensation to the petitioners.

(e) The petitioner further states that a criminal case has been registered by the Inspector of Police, T.Kallupatti Police Station in Crime No.41/2017 for the offence under sections 279, 304(A) and 201 of IPC as against the 1st respondent and the same is pending before the learned Judicial Magistrate Court, Peraiyur.

(f) The respondents are liable to pay a sum of Rs.50,000/- to the petitioners for “No fault liability” as the first mentioned claim at the first instance.

(g) The petitioners claimed a sum of Rs.50 lakhs, including the no fault liability claim with interest at the rate of 9% per annum.

3. The brief averments contained in the counter affidavit filed by the third respondent are as follows:

(a) The 3rd respondent denied the allegations contained in the petitions, save those that are specifically admitted in the counter.

(b) The accident did not take place in the manner alleged by the petitioners. The petitioners suppressed the real facts of the accident and the real manner in which the accident occurred. A reading of the FIR that reported the death of Special Sub Inspector of Police, Karuppasamy conclusively established that the 2nd respondent's vehicle was not involved in the accident. The 2nd respondent's vehicle has been brought into the picture solely with the objective of claiming compensation from the 3rd respondent Insurance Company. It is reliably learnt that the 2nd respondent is hand-in-glove with the petitioners for bringing the claim application. The 2nd respondent's vehicle did not cause the accident. As evident from the record, the deceased was working as Special Sub

Inspector of Police, Nagaiahpuram Police Station. There is no nexus for the deceased to be traveling in the place where the accident was reported. From the reading of the FIR, it can be inferred to be the result of a 'hit and run' case by an unknown vehicle. There is no iota ofevidence to connect the vehicle of the 2nd respondent with the accident. Even the criminal records and the claim application have established that the vehicle of the 2nd respondent was not involved in the accident. The 1st respondent was not in charge of the vehicle at the time of the accident. The 1st and 2nd were respondent brought into the picture only for the compensation that can be recovered from this respondent.

(c) It is not admitted that at the time of accident, the 2nd respondent's vehicle bearing Registration No.TN 59 BL 3618 was insured with the 3rd respondent Insurance Company, and the petitioners are put to strict proof of the same through documentary evidence.

(d) The age of the deceased and the relationship between the petitioners and the respondents are put strict proof by documentary evidence.

(e) At the time of accident, the deceased Karuppasamy was not in possession of any valid and effective driving license to drive the motorcycle bearing Registration No.TN 67 K 4605. So, this accident occurred due to the rash and negligent act of the deceased. This respondent is not liable to give any compensation to the petitioners.

(f) In the claim petition, the motorcycle bearing Registration No.TN 67 K 4605, its owner, and its insurance company were not added as parties. They are, however, important parties. The claim petition is to be dismissed on the ground of non-joinder of necessary parties.

(g) At the time of accident, the 1st respondent did not have a valid and effective driving license to drive the vehicle bearing Registration No.TN 59 BL 3618. So the 2nd respondent violated the Motor Vehicles Act and insurance policy condition. Therefore, this respondent is not liable to give any compensation to the petitioners.

(h) The entire restricted claim of Rs.50,00,000/- (Rupees Fifty Lakhs only) by the petitioners is too high, excessive and arbitrary, and not based on any legal standards.

(i) Hence, the claim petition is liable to be dismissed.

4. The learned counsel for the respondents 1 to 4 argued that after investigation, in the final report, the Investigation Officer concluded that the vehicle belonging to the 2nd respondent which was driven by the 1st respondent was indeed involved in the accident. The forensic report also confirmed the same. The deceased was working in the Police department. The claimants produced the relevant documents to prove his salary and age. The insurance policy taken by the 2nd respondent with the 3rd respondent was in force and the 3rd respondent is liable to pay compensation. Therefore the Trial Court properly fixed the compensation, and no interference is required, and the appeal is liable to be dismissed.

5. On the side of the petitioners, PW1 to PW3 were examined, and Exs.P1 to Exs.P16 were marked. On the side of the respondents, RW1 and RW2 were examined, and Exs.R1 to Exs.R4 were marked.

6. The Trial Court, after considering the evidence and

records, allowed the petition and awarded a compensation of Rs 65,36,212/- under the following heads :

Loss of Income	Rs.63,61,212/-
Loss of Love and affection	Rs.1,00,000/-
Loss of consortium	Rs.50,000/-
Funeral expenses	Rs.25,000/-
Total	Rs.65,36,212/-

The learned Judge directed the 3rd respondent-Insurance Company to pay the entire amount within a period of one month.

7. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company, who is the 3rd respondent before the lower Court, against the quantum of compensation with the following grounds among others :

1. That the judgment and decree of the Tribunal is contrary to law, weight of evidence, probabilities and circumstances of the case and is liable to be set aside.

2. That the Tribunal ought to have exonerated the Appellant since the 6th Respondent/2nd Respondent Vehicle bearing Registration No.TN 59 BL3618 was not at all involved in the alleged accident.

3. That the Tribunal ought to have considered that as per Ex.P3 Motor Vehicle Inspection Report of the 6th Respondent/2nd Respondent, it shows damages, but per contra the section alteration report shows that the damages were rectified in order to get over from the case.

4. That the Tribunal failed to note the contention of this Appellant as to how the 6th Respondent/2nd Respondent's vehicle was identified to have been involved in the alleged accident, was not at all considered as an issue, and it was not framed as an issue in the judgment.

5. Though PW2 in his cross examination says that he identified the 1st Respondent accused with the help of CCTV footage, no such evidence was produced to prove the same.

6. That the Tribunal failed to note that the deceased also belongs to the investigator's family. In order to help the deceased family, the 1st respondent was brought into the picture.

7. That the Tribunal failed to consider the evidence of RWI and ought to have exonerated this Appellant.

8. That the Tribunal had not even considered the Appellants' plea of non-involvement and had not framed the question as an issue as well. On this ground alone, the order of the learned Trial Judge is liable to be set aside.

9. Without prejudice, the Tribunal erred in considering the last pay drawn income of Rs.45,896/- of the deceased for the alleged accident in the year 2017, and fixed future prospects at 40%, which is against the judgment of the Hon'ble Apex Court.

10. Without prejudice, the Tribunal failed to consider the family pension to be received by the Respondents 1 to 4/Petitioners on the death of the deceased before fixing the loss of income, and erroneously awarded a sum of Rs. 65,36,212/- without sufficient documentary evidence.

11. Without prejudice, the Tribunal failed to deduct the income tax amount from the income of the deceased.

12. Without prejudice, the Tribunal ought not to have awarded interest for the future prospects.

13. That viewed from any angle, the quantum of the compensation awarded at Rs.63,61,212/- by the Tribunal is against the pleadings, facts, evidence and reality as well as against the well laid principles of law.

14. That the judgment and decree of the Tribunal is even otherwise illegal and erroneous and is liable to be set aside. Hence, prayed to allow the Civil Miscellaneous Appeal.

8. Heard the learned counsel on either side and perused the material available on records.

9. In this case, the points for consideration are:

1.Whether the vehicle bearing Registration No. TN 59 BL 3618 was involved in the said accident?
2.Whether the quantum of claim amount arrived by the Trial Court is far too excessive?

10. Point No.1

The parties are arrayed in the Civil Miscellaneous Appeal, as per their own ranking before the Trial Court in M.C.O.P. No.171 of 2017.

11. As per the Appellant/3rd respondent Insurance Company, the vehicle bearing Registration No. TN 59 BL 3618 was not at all involved in the accident. As per Ex.P3, Motor Vehicle Inspection Report of the 6th respondent/2nd respondent, it shows damages. But per contra the section alteration report shows that the damages were rectified in order to get over from the case. It is not established by the petitioners that the 6th respondent / 2nd respondent vehicle was involved in the accident. PW2 in his cross-examination said that he identified the vehicle with the help of CCTV footage, but no such evidence was produced to prove the same. Since the deceased belongs to the Police Department, in order to help his family, the 1st respondent was brought into the picture. The inspection was done on the vehicle bearing Registration No. TN 59 BL 3618 only after 14 days from the date of accident. Hence it is proved that the said vehicle was not at all involved in the accident.

12. On the side of the petitioners, the FIR was marked as Ex.P1 by P.W.1. FIR registered Crime No.41/2017 at T.Kallupatti Police Station on 14.02.2017. In column No.7 of the FIR (the details of known/suspected/unknown accused with full particulars) it was mentioned that the driver was unidentified.

13. The complaint was lodged by one Ramakrishnan, Special Sub Inspector of Police. He had given a complaint, stating that on 13.02.2017 at about 22.00 hours, he was on patrol duty. On information, he found the dead body of the deceased Special Sub Inspector of Police, Karuppasamy, with head injury and a right leg fracture. He also found that his vehicle was damaged on the front side. He had intimated the same to the concerned station for due action.

14.It is true that in the First Information Report, the name of the accused / 1st respondent is not seen. But in the final report, the 1st respondent has been arrayed as an accused, and the same was filed on 12.09.2017, before the Judicial Magistrate, Peraiyur. However, the respondent did not challenge that a false case had been foisted against him. Therefore, the contention of the appellant that the vehicle bearing Registration No. TN 59 BL 3618 was not involved in the accident, has been proved to be false.

15. Ex.P3 is the MVI report issued by the Motor Vehicle Inspector, RTO Office, Madurai. When perused, it reveals that the vehicle bearing Registration No. TN 59 BL 3618 Ashok Leyland Dost, load vehicle belonging to the 2nd respondent was damaged on both its

right and front sides, the front of its right side rear wheel mudguard was broken, and the right side rear wheel disc was bent. Likewise, the vehicle bearing Registration No. TN 67 K 6405, which was driven by the deceased Karuppasamy was also had a damaged front wheel, broken mudguard front fork, headlight and front light, broken right and left side indicator lights, bent front bumper, bent rear brake pedal, and a broken left side body cover (below rider seat). The Vehicle Inspector opined that the accident did not occurr due to any mechanical fault. The above documents prove that the 1st respondent's vehicle was involved in the accident.

16. Further, one Rajendran, Sub Inspector of Police who registered the FIR, investigated the case and filed a final report has been examined as PW3. He had stated that he had arrested the accused with the help of CCTV camera footage. He gathered the material objects and sent the same to the forensic lab and as per Ex.P.16. The paint found in the place of occurrence and on the vehicle which was involved in the accident are one and the same. During cross examination, it was stated by the 1st respondent that CCTV camera footage was not produced before the Court. However, the Motor Accident Claims Tribunal is not a

criminal Court to hold detailed enquiry. It is a beneficial legislation. The available material evidence clearly proved that the 1st respondent's vehicle was involved in the accident and that the accident had occurred due to the negligent driving of the 1st respondent, and that the 2nd respondent is the owner of the vehicle. It is also proved that at the time of accident, the vehicle bearing Registration No. TN 59 BL 3618 was insured with the 3rd respondent, and that the insurance policy was valid at the time of accident, which was mentioned in the MVI report. Further it revealed that the driver of the vehicle, respondent No.1, was holding a valid driving license bearing No. TN5920150006204 which remained valid up until 19.09.2019.

17. MVI report further shows that the deceased was also holding driving license bearing No.TN5820080007983 which was valid up until 12.11.2020. The contention of the appellant that the 1st respondent was not holding a driving license is proved false.

18. Therefore, it is clearly proved that the 1st respondent's vehicle was involved in the accident. His vehicle was also found with damages. But the first respondent, without filing any complaint against

the deceased, absconded from the place of occurrence. It can be inferred that the accident took place due to negligent driving of the 1st respondent, and that at the time of accident, the 1st respondent's vehicle was insured with the 3rd respondent and the same was in force. Further, the deceased also had a valid driving license.

19. The 3rd respondent filed a complaint before the Police Crime Branch, stating that the vehicle bearing Registration No. TN 59 BL 3618 was falsely implicated and that a false charge sheet had been filed and that their company had been falsely implicated in the case. One Mr.Srinivas has been examined as RW2 during cross examination. He had admitted that he had not filed any private complaint against the Police for filing a false final charge sheet.

20. The Junior Assistant of the RTO office has been examined as RW1, but the respondent could not get any favorable answers from the said witness. In Ex.P16, it was clearly stated that the accident had not occurred due to any mechanical problem. Therefore, we are satisfied that the first respondent's vehicle was involved in the accident, and that the third respondent insurance company is liable to pay compensation. Point No.1 is answered accordingly.

21. The learned counsel for the Appellant argued that the Tribunal failed to consider the family pension to be received by the Respondents 1 to 4/Petitioners upon the death of the deceased before fixing the loss of income and hence erroneously awarded a sum of Rs. 65,36,212/- without sufficient documentary evidence, and that awarding other heads are highly excessive and not reasonable.

22. In connection to this, we rely upon the judgement in ***Sebastiani Lakra and Others Vs. National Insurance Company Ltd., and another*** reported in ***2019(17) SCC 465***, in which paragraph No.14 held as follows :

> *"14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore,*

applying the same principles, the said amount cannot be deducted."

Hence, the argument advanced by the learned counsel for the appellant is unsustainable.

23. Point No.2 :

Now we are to decide whether the quantum fixed by the trial court is proper or liable to be set aside.

24. Admittedly, the deceased Karuppasamy was working in the Police Department. The pay slip of the deceased issued for the month of January 2017 was produced as Ex.P.8, which shows that the last pay received by the said Karuppasamy was Rs.45,896/- and that the certificate was issued by the Superintendent of Police, Madurai District. The age of the deceased as per the driving license Ex.P7 and Aadhar Card Ex.P6 shows that he was born on 22.06.1964. The date of accident is 13.02.2017. Therefore at the time of accident, he was 52 years old.

25. The petitioners are the legal heirs of the deceased as per Ex.P10- legal heirship certificate. He left behind his wife - 1st petitioner, two daughters - 2nd and 3rd petitioners, and one minor son - 4th petitioner. The total number of legal heirs are four. In ***Sarla Verma and others vs.***

Delhi Transport Corporation, reported in ***2000 (9) SCC 310***, the Honorable Apex Court in Para 14 of the judgment held as follows :

> *"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."*

In this case too, the dependent family members are four in number. The trial Judge properly deducted ¼th of the amount from the salary towards the personal expenditure of the deceased. We do not wish to interfere with the said deduction as per the guidelines stipulated in the above case.

26. As far as future prospect is concerned, the Trial Judge, in addition to salary, added 40% as future prospects. Here, we refer to the leading judgment rendered by the Hon'ble Supreme Court of India in ***National Insurance Company Limited vs. Pranay Sethi and Others*** reported in ***AIR 2017 SC 5157. Para 61*** of the judgment concludes that

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40

to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

27. Therefore, for fixation of future prospects in clause (iii), while determining the income, an addition of 50% of actual salary to the income of the deceased should be made, in instances where the deceased had a permanent job and was below the age of 40 years. The addition should be of 30%, if the age of the deceased was between 40 to 50 years.

In case the deceased was between the age of 50 to 60 years, the addition should be 15%.

28. However, the Trial Court fixed the future prospects at 40%, which is improper, as the deceased was aged about 52 years at the time of accident. Therefore, his future prospects should be 15% in addition to the salary and not a 40% as fixed by the Trial Judge, in view of the guidelines stipulated in the above judgment. We modify the future prospects from 40% to 15% as follows.

29. The total salary of the deceased at the time of his death is Rs.45,896/- and deducting 1/4th of personal income at Rs.11,474/- (45,896 – 11,474) = Rs.34,422/-. Adding 15% future prospects at Rs. 5163/- (34,422 + 5163) = Rs.39,585. Therefore, the deceased's annual income is (39,585 x 12) Rs.4,75,020/-.

Multiplier 11 to be applied (4,75,020 x 11)		= Rs. 52,25,220
Loss of estate	Rs.15,000 +	
loss of consortium	Rs. 40,000 +	
Funeral expenses	Rs.15,000	= Rs. 70,000

Total compensation arrived at		= Rs. 52,95,220
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30. The Civil Miscellaneous Appeal is partly allowed and the award passed by the trial Court is modified as follows :

(1) The Appellant/3rd respondent-Insurance Company is directed to pay a sum of Rs.52,95,220/- (Rupees Fifty Two Lakhs Ninety Five Thousand Two Hundred and Twenty only) towards compensation to the respondents 1 to 4 /petitioners along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount. Deduct the amount if already deposited to the credit of M.C.O.P.No. 171/2017 on the file of the Principal District Court/Motor Accident Claims Tribunal, Virudhunagar at Srivilliputhur, within a period of four weeks from the date of receipt of a copy of this order.

(2) On such deposit, the respondents 1 to 3/claimants 1 to 3 are permitted to withdraw their share, deduct the amount already withdrawn, if any, together with proportionate interest and costs, as apportioned by the Tribunal, by filing an appropriate petition before the Tribunal.

(3) The Tribunal is directed to deposit the share of the minor 4th respondent/4th petitioner in a nationalized bank until he attains majority. The 1st respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months.

(4) There shall be no order as to costs.

(5) Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) & (R.P., J.)
22.01.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM

To

1.The Principal District and Sessions Court,
Motor Accident Claims Tribunal
Virudhunagar at Srivilliputhur,

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.1140 of 2024

22.01.2025