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C.M.A.No.3332 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.3332 of 2021
and
Cross Objection No.3 of 2022
and
C.M.P.No.18959 of 2021

C.M.A.No.3332 of 2021

Cholamandalam MS General Insurance Co. Ltd.,
No.443, Magnum Towers, 3rd floor,
Dr.Nanjappan Road,
Coimbatore 641 018

...Appellant

Vs.

1. K.Bhanupriya
2. Minor Nivedha
3. Minor Hari Haran
(Minors represented by their guardian
and mother K.Bhanupriya)
4. Mangeeswari
5. Palanisamy
6. A.Kasiyappan

...Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 3rd day of November, 2018 made in M.C.O.P.No.502 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam.

For Appellant	: Mr.K.Vinod
For Respondents	:
For R1 to R5	: Mr.Nalliyappan
For R6	: No Appearance

Cross Objection No.3 of 2022

1. K.Bhanupriya
2. Minor Nivedha
3. Minor Hari Haran
(Minors represented by their guardian
and mother K.Bhanupriya)
4. Mangeeswari
5. Palanisamy

...Cross Appellants

Vs.

1. Cholamandalam MS General Insurance Co. Ltd.,
No.443, Magnum Towers, 3rd floor,
Dr.Nanjappan Road,



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Coimbatore 641 018

2. A.Kasiappan

...Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C to enhance the award with interest at the rate of 18% per annum and costs.

For Cross Appellants : Mr.R.Nalliyappan

For Respondents :

For R1 : Mr.K.Vinod

For R2 : No Appearance

COMMON JUDGMENT

The above Civil Miscellaneous Petition is directed against the order passed by the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam dated 03.11.2018 made in M.C.O.P.No.502 of 2015.

2. The Cross-Objection has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 03.11.2018 made in M.C.O.P.No.502 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam



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3. Shortly stated, on 21.05.2015 at about 3.00 p.m., the deceased Karuppasamy was riding his TVS XL Super moped bearing Registration No.TN 41 AL 1071 at Vaalaparai to Pollachi main road in the direction of south to north at the left extreme end of the road. When the deceased Karuppasamy reached near Rajalakshmi Thirumana Mandapam, at that time a Maruthi 800 car bearing Registration No.TN 41 AA 4429 came in a rash and negligent manner in the same direction and hit the back side of the deceased Karuppasamy vehicle, which made the deceased Karuppasamy fell down and caused the accident. Due to the accident, he sustained serious head injury. Immediately, he was taken to the A.R.Ortho Hospital, Pollachi for first aid and thereafter, for further treatment, he was admitted at the Coimbatore Medical College Hospital. However, the said karruppasamy succumbed to his injuries and died at about 9.40 p.m. At the time of accident, the said Karuppasamy was aged about 26 years, who was a Mason and his earning was a sum of Rs.9000/- per month. Accordingly, claiming for compensation for a sum of Rs.30,00,000/- has been made by the legal heirs of the deceased.



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4. The appellant/Insurance Company in their counter statement resisted the claim of the claimants stating that the accident did not take place as narrated in the claim petition. It is further submitted that the accident took place only due to the carelessness of the deceased, since the deceased drove his motorcycle in a negligent manner with high speed without following the traffic rules and came into the line of motion of the vehicle and dashed against the car. It is also further submitted that the two vehicles involved in the accident, the owner and insurance company of the motorcycle bearing Registration No.TN 41 AL 1071 is also necessary party in this petition. Hence, this petition is bad for non joinder of necessary parties. Hence prays for dismissal of the above petition.

5. Based on the pleadings, the Tribunal has formulated the following points for consideration:

1. விபத்தானது யாருடைய கவனக்குறைவு மற்றும் அஜாக்கிரதையால் ஏற்பட்டது?
2. மனுதாரருக்கு இழப்பீடு யாரால் கொடுக்கப்பட வேண்டும்?
3. இழப்பீட்டின் அளவு என்ன?
4. மனுதாரருக்கு கொடுக்க வேண்டிய வேறு பரிகாரங்கள் என்ன?



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6. The Tribunal after considering the materials placed on record, it came to the conclusion that the accident took place as alleged and claimants are entitled to claim compensation jointly and severally from the owner and driver of the car bearing Registration No.TN 41 AA 4429. Hence, the Tribunal directed the 2nd respondent/ Insurance Company to pay the compensation of Rs.22,44,600/- carrying interest at the rate of 7.5% per annum. The conclusive portion of the Tribunal is extracted here under:

"9.இறுதியில் இந்த மனு அனுமதிக்கப்படுகிறது, மனுதாரருக்கு 2ம் எதிர்மனுதாரர் இழப்பீடாக ரூ.22,44,600/- செலுத்த வேண்டுமென்றும் உத்திரவிடப்படுகிறது. இழப்பீட்டுத்தொகைக்கு மனு தாக்கல் செய்து தேதியிலிருந்து தொகை செலுத்தும் தேதி வரை 7.5% வீதம் வட்டியும் செலுத்த வேண்டும். இழப்பீட்டுத் தொகையை உத்திரவு தேதியிலிருந்து ஒரு மாதத்திற்குள் நீதிமன்றத்தில் MAC Tribunal (Subordinate Judge) Sathyamangala, SBI Current Account No:36022156650 IFSC Code No.SBI N0001498 என்ற கணக்கில் வைப்பீடு செய்ய வேண்டும். மேற்படி இழப்பீட்டுத் தொகையை மனுதாரர்களுக்கு தலா ரூ.4,48,920/- வழங்க வேண்டும் என்று உத்தவிடப்படுகிறது. 2 மற்றும் 3ம் மனுதாரர்கள் இளவராக இருப்பதால் அவர் மேஜராகும் வரை அவர்களது பங்கு தொகையை தேசியமயமாக்கப்பட வங்கியில் வைப்பீடு செய்ய உத்திரவிடப்படுகிறது.



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1ம் மனுதாரர் மேற்படி 2 மற்றும் 3 மனுதாரர்களின் வைப்பீட்டுத்தொகையில் கிடைக்கும் வட்டியை 3 மாதத்திற்கு ஒருமுறை நேரடியாக பெற்றுக்கொள்ள அனுமதிக்கப்படுகிறது. தொகை செலுத்திய பிறகு மனுதாரர் தொகையைப் பெற்றுக் கொள்ள நடவடிக்கை எடுக்கவில்லை எனில் இழப்பீட்டுத் தொகையை தேசியமயமாக்கப்பட்ட வங்கி ஒன்றில் 3 ஆண்டுகளுக்கு வைப்பீடு செய்ய உத்தரவிடப்படுகிறது. பாக்கி நீதிமன்ற கட்டணத்தை மனுதாரர் 10 நாட்களுக்குள் செலுத்த வேண்டுமென்றும் உத்தரவிடப்படுகிறது. வழக்குரை"ர் கட்டணத்தை மேலே கண்ட வங்கி கணக்கில் செலுத்த வேண்டுமென்று உத்தவிடப்படுகிறது."

7. Against the said award dated 03.11.2018 made in M.C.O.P.No.502 of 2015, the appellant/Insurance Company has come out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the claimants has come out with the present cross objection for enhancement of compensation.

8. Through this appeal, award has been challenged on grounds namely the quantum, multiplier applied and with regard to deduction towards personal expenses. There is no dispute with regard to the manner of accident



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as alleged by the claimants. But for rash and negligent driving of the vehicle, the said accident would not have happened. The finding recorded by the Tribunal in this regard is confirmed.

9. There is a dispute with regard to the income of the deceased. According to the claimants, the deceased was working as a Mason and was earning Rs.9,000/- per month. However, the Tribunal has fixed a sum of Rs.12,000/- per month as monthly income of the deceased.

10. The learned counsel appearing for the appellant/Insurance Company would submit that in the absence of any proof of income, the Tribunal has erroneously fixed the monthly income of the deceased at the rate of Rs.12,000/- per month requires interference.

11. On the other hand, the learned counsel appearing for the claimants would submit that the date of accident was of the year 2015. At that point of time, the income of the Mason per day would not be less than Rs.1000/-. Since there is no documentary evidence for proving the income of the



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deceased, considering the facts and circumstances of the case, this Court thinks fit that the monthly income of the deceased can be fixed at Rs.10,000/- which would be reasonable.

12. In the cross objections, it is submitted that the Tribunal has failed to award any amount towards future prospects. Applying the principles laid down in the judgment of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, the Tribunal ought to have awarded compensation under the head of Future Prospects. Accordingly, taking into consideration the age of the deceased, at that time of accident he was 26 years old, the claimants are entitled for 40% of future prospects.

13. The learned counsel appearing for the appellant/Insurance Company would further submit that the Tribunal has erroneously applied multiplier '18' instead of '17', which is applicable for the age 26. The said multiplier is found to be acceptable and accordingly, multiplier '17' is applied. The Tribunal erred in taking $1/5^{\text{th}}$ instead of $1/4^{\text{th}}$ for the personal expenses of the deceased.



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The Tribunal ought to have taken $1/4^{\text{th}}$ for the personal expenses of the deceased, since there are five dependents. Therefore, applying multiplier '17' and deducting $1/4^{\text{th}}$ towards the personal expenses of the deceased, the compensation granted by the Tribunal towards loss of income is enhanced to Rs.21,42,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 17 X $3/4$ }.

14. It is also submitted that though the claimants are wife, children and parents of the deceased, the Motor Accident Claims Tribunal has awarded only a sum of Rs.1,50,000/- for loss of love and affection. Applying the Principles of *Megma General Insurance Co. Ltd., vs. Nanu Ram @ Chuhru Ram* reported in *AirOnline 2018 SC 189*, the claimants are entitled for Loss of Consortium and Loss of Filial Consortium. Accordingly, a sum of Rs.2,00,000/- has been awarded.

15. It is also found that the Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- has been awarded under the head loss of estate. Since the Tribunal has awarded compensation for



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funeral expenses as Rs.15,000/-, the claimants are not entitled to any amount as compensation for transportation. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of income	20,73,600/-	21,42,000/-	Enhanced
2	Loss of Consortium and Loss of Filial Consortium	1,50,000/-	2,00,000/-	Enhanced
3	Funeral expenses	15,000/-	15,000/-	Confirmed
4	Transportation	6,000/-	-	Set aside
5	Loss of estate	-	15,000/-	Granted
	Total	Rs.22,44,600/-	Rs.23,72,000/-	enhanced by Rs.1,27,400/-

16. The compensation awarded by the Tribunal at Rs.22,44,600/- is hereby enhanced to Rs.23,72,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt



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of a copy of this judgment, to the credit of M.C.O.P.No.502 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam.

On such deposit, the 1st respondent/wife is permitted to withdraw an amount of Rs.8,72,000/- along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The respondents 4 and 5, who are the parents of the deceased are permitted to withdraw Rs.2,50,000/- each (Totally Rs.5,00,000/-) along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The minor respondents 2 and 3 are entitled to Rs.5,00,000/- each (Totally Rs.10,00,000/-) along with proportionate interest and the share of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till they attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3. The respondents 1 to 5 are directed to pay the necessary Court fee for the enhanced amount of compensation now determined by this Court.



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17. In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is dismissed and the Cross Objection filed by the respondents 1 to 5 is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

02.02.2024

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The Motor Accident Claims Tribunal, Sathyamangalam.

2. The Section Officer,
VR Section,
High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

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