IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 2206 of 2015
&
Cross. Objection No. 74 of 2017

C.M.A. No. 2206 of 2015

1.United India Insurance Co. Ltd
Divisional Office, M.M.Reddy Complex,
Old Bangalore Road, Hosur.

2.United India Insurance Co. Ltd.,
Divisional Office, 1200 3-A,
Old Bangalore Road, Hosur ... Appellants

Vs.

1.D.Chithra
2.Minor D.Lathiika
P.Renganayaki(Died)
3.N.Mohan
4.Sundram Plastics Ltd.,
(A Division of LAC Ltd.,)
Thally Road, Belagondapalli Post,
Hosur ... Respondents

Cross. Objection No. 74 of 2017

1.D.Chithra
2.Minor D.Lathiika ...Cross Objectors

Vs

1.United India Insurance Co. Ltd
Divisional Office, M.M.Reddy Complex,
Old Bangalore Road, Hosur.

2.United India Insurance Co. Ltd.,
Divisional Office, 1200 3-A,
Old Bangalore Road, Hosur

3.N.Mohan

4.Sundram Plastics Ltd.,
(A Division of LAC Ltd.,)
Thally Road, Belagondapalli Post,
Hosur ...Respondents

Prayer in C.M.A. No. 2206 of 2015: Appeal filed under Section 173 of Motor Vehicles Act,1988 against the award and decree dated 29.01.2014 made in M.C.O.P.No.41 of 2006 on the file of The Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.

Prayer in Cross Objection No.74 of 2017:Cross Objection filed under Order 41 Rule 22 CPC against award and decree dated 29.01.2014 made in M.C.O.P.No.41 of 2006 on the file of the Motor Accidents Claim Tribunal, the Principal District Judge, Krishnagiri.

For Appellants in CMA 2026/15 and respondent 1 and 2 in Cros.Obj 74/17 : Mr.S.Arun Kumar

For Respondents 1 and 2 in CMA 2026/15 and for Cross Objectors in Cros.Obj 74/17 : Mr.D.Shivakumaran for R1, R2

Not ready in Notice for R3,R4 in CMA.2026/2015

COMMON JUDGMENT
(Delivered by M.M.Sundresh,J.)

The appeal is filed by the insurance company and the cross objection is filed by the claimants before the Tribunal in MCOP No.41 of 2006.

2. The deceased, aged about 40 years, was working as Assistant General Manager (Operations) in Sundaram Auto Components Limited, Hosur. The claimants 1 to 3 are widow, daughter and mother (since deceased). A claim was made for a sum of Rs.3 crores, restricted to Rs.1,50,00,000/-.

3. The Tribunal fixed the income by placing reliance upon Ex.P11 at Rs.77,749/- per month. After due deduction towards the income tax and addition towards future prospects at 30% of the income per month, the Tribunal fixed the annual income at Rs.10,91,595/-. Annual dependency was arrived at by deducting one-third from Rs.10,91,595/-. Accordingly, a sum of Rs.7,27,730/- per annum has been arrived at. To this multiplier '15' was adopted by taking note of the age of the deceased at 40 years. Thus, the pecuniary loss was arrived at Rs.1,09,15,950/-. To the said sum, amounts under conventional heads have been added and total compensation was arrived at Rs.1,09,70,950/-, which was apportioned between the first and second claimants.

4. Learned counsel appearing for the insurance company would submit that the Tribunal has committed a gross error in fixing the liability entirely on the insurance company, after holding that the negligence was with the driver of both the vehicles. Admittedly, in this case, the deceased (P.P.Devaraj) was driving a car. Secondly, it is submitted that there was no basis for fixing the income of the deceased, especially when he has stated to be an income tax assessee.

5. On the last occasion, this Court directed the counsel appearing for the claimants to produce Form-16 of the deceased. Accordingly, the same was produced by way of an additional affidavit.

6. Learned counsel appearing for the insurance company would submit that the aforesaid document can be taken as a basis for fixing the income.

7. Learned counsel appearing for the claimants submitted that the assessment can be made based upon Form-16 produced. However, he submitted that there is nothing to reduce the multiplier fixed by the Tribunal. Similarly, he submitted that the the loss of consortium can be fixed at Rs.40,000/- as per the Constitution Bench judgment of the Apex Court reported in National Insurance Company Limited v. Pranay Sethi and others reported in (2017)16 SCC 680, and so is the case of loss of love and affection. Learned counsel further submitted that for the funeral expenses and loss of estate Rs.15,000/- each may be fixed. Learned counsel appearing for the appellant insurance company does not have any serious objection to it.

8. We find that the Tribunal has committed an error in fixing the entire liability on the appellant after coming to the conclusion of contributory negligence. In such view of the matter, the award of the Tribunal requires interference. However, while we fix the income as per Form-16, we are of the view that negligence need not be fixed at 50% each on the part

of the insurance company and on the part of the deceased. Therefore, we fix negligence at 80% on the part of the insurance company as against 20% on the part of the deceased. Accordingly, the following possible assessment is arrived at, which is extracted hereunder:-

1	Income as per Form - 16 + 30% Future Prospects	8,49,764 + 2,54,929 = 11,04,693/-
2	Income Tax Deduction at 30% slab	11,04,693 - 3,35,947 = 7,68,747/-
3	Less 1/3 personal expenses	7,68,747 - 2,56,249 = 5,12,497/-
4	Annual Dependency	5,12,497/-
5	15 years Multiplier (Deceased was 40 years old)	5,12,497/- x 15 = 76,87,455/-
6	Pecuniary Loss	76,87,455/-
7	Loss of Consortium	40,000/-
8	Loss of love and affection	40,000/-
9	Funeral expenses and last rites	15,000/-
10	Loss to estate	15,000/-
11	Total	77,97,455/-

Less - Contributory Negligence by deceased 20% - 15,59,491/-

80% - 62,35,964/-”

9. Thus, a sum of Rs. 62,35,964/- has been arrived at as compensation payable to the claimants/respondents. We round off it to Rs.63 lakhs. Thus, we fix the apportionment for claimants 1 and 2 at Rs.33 lakhs and Rs.30 lakhs respectively. The interest as fixed by the Tribunal holds good. The entire award amount is directed to be deposited within a period of eight weeks from the date of receipt of a copy of this order. The first claimant is permitted to withdraw 50% of the award amount with interest directly and the balance amount is ordered to be deposited into a Nationalized Bank for a period of three years and she is entitled to receive the interest once in six months. The 2nd claimant share amount is ordered to be deposited into a Nationalized Bank till the minor claimant attains majority and the 1st claimant, who is the mother of the minor is permitted to receive only the interest once in every six months on behalf of her for her maintenance. On the minor claimant attaining majority, she is entitled for her entire award amount.

In view of the above, the appeal is partly allowed and the cross-objection is dismissed. No costs. Consequently, connected MP No. 1 of 2015 is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssm
To:

The Principal District Judge,
Motor Accidents Claim Tribunal,
Krishnagiri.

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

+1cc to Mr.D.Shivakumaran , Advocate SR.No. 17187
+1cc to Mr. S.Arun Kumar, Advocate SR.No. 18370

C.M.A. No. 2206 of 2015
&
Cross. Objection No. 74 of 2017

A.SK(20/06/2019)