IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.08.2020

Judgment Delivered on : 16.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBBIAH
and
THE HONOURABLE Mr.JUSTICE C.SARAVANAN

C.M.A. Nos. 3996 and 4000 of 2019
and
CMP.No.22591 of 2019 in CMA.No.3996 of 2019
and
CMP.No.22607 of 2019 in CMA.No.4000 of 2019

CMA.No.3996 of 2019:

M/s. United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Salem 636 007. .. Appellant/4th Respondent in C.M.A.No.3996 of 2019

Versus

1. T.Babu
S/o.Thangavelu

2. Minor Harshina
D/o.T.Babu

3. Minor Trishvina
D/o.T.Babu
(Minors 2 & 3 are represented by their father, next friend and guardian T.Babu) ...Respondents 1 to 3/ Petitioners 1 to 3

4. Praveen Traders
No.1093, TNHB Colony,
Mambakkam Main Road,
Chithalapakkam, Chennai. ...4th Respondent/1st Respondent

5. HDFC Ergo General Insurance Co. Ltd.,
Empire Arcade, No.356/1,
Omalur main Road,
Opp. New Bus Stand, Salem 636 004.
...5th Respondent/2nd Respondent

6. A.Dhiaaneswaran
S/o.Anandhan ..6th Respondent/3rd Respondent

CMA.No.4000 of 2019:

United India Insurance Company Ltd.,
5, Big Bazar Street,
Dharapuram-638656,
Tirupur District. .. Appellant /5th Respondent

Vs.

1.R.Amutha
W/o. Late Aravindan

2. Minor Roshitha
D/o. Late Aravindan

3. Minor Harshitha
D/o. Late Aravindan
(Minors 2 & 3 rep. by their mother,
next friend and guardian R.Amutha)

4. Rajamani
W/o. M.K.Mani

5.M.K.Mani
S/o.Krishnasamy Nadar ...Respondents 1 to 5/Petitioners 1 to 5

6. Praveen Traders
No.1093, TNHB Colony,
Mambakkam Main Road,
Chithalapakkam, Chennai. ... 6th Respondent/1st Respondent

7. HDFC Ergo General Insurance Co. Ltd.,
Chithalapakkam, Chennai ...7th Respondent/2nd Respondent

8. A.Dhiaaneswaran
S/o.Anandhan ...8th Respondent/3rd Respondent

9. Kumarasamy .. 9th Respondent/4th Respondent

PRAYERs in CMA.Nos.3996 and 4000 of 2019: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.11.2018 made in MCOP. Nos. 121 and 853 of 2016, respectively on the file of the Motor Accidents Claims Tribunal, II Additional District Court, II Additional District Judge, Special District Judge, (FAC), Salem.

Appearance in CMA.No.3996 of 2019:

For appellant : Mr. S. Arunkumar

For respondents
for R1 : Ms.Rajeshwari Karthikeyan
for R2 & R3 : Mr.C.Veeraraghavan
for R4 : set ex-parte before the Tribunal
for R5 : Mr.N.Somasundaar
for R6 : No appearance

Appearance in CMA.No.4000 of 2019:
For appellant : Mr.S.Arunkumar

For respondents
for RR1 to 5 : Mr.C.Veeraraghavan
for RR-6 and 8 : No appearance
for R7 : Mr.N.Somasundaar
for R9 : Notice sent returned with endorsement "no such addressee"

COMMON JUDGMENT

R. SUBBIAH, J

These appeals are heard through Video Conferencing.

2. Both these appeals are preferred by the Insurance Company questioning their liability to pay the compensation amount to the respective claimants, as also the quantum of compensation awarded by the Tribunal. Though the Tribunal had dismissed M.C.O.P.No.121 of 2016 (C.M.A.No.3996 of 2019) as against the fourth and fifth respondents and also dismissed M.C.O.P.No.853 of 2016 (C.M.A.No.4000 of 2019) as against the sixth, seventh and ninth respondents, a counsel had entered appearance for the fifth respondent in C.M.A.No.3996 of 2019 and for the seventh respondent in C.M.A.No.4000 of 2019.

3. In a motor accident that had taken place on 22.10.2015 at about 3.30 am, two persons, by name Anusha and Aravindan, have died instantaneously. On their death, their respective legal heirs have filed two Claim Petitions seeking compensation as against the owner of the Car, it's insurer, owner of the lorry as also its insurer seeking compensation of Rs.1,50,00,000/- and Rs.2,00,00,000/-.

4. According to the claimants, on the fateful day on 22.10.2015, at about 3.30 am, the deceased Aravindan was driving the Ford Car bearing Registration No.TN 11 E 7090 on Chennai to

Salem Highway. In the car, the other deceased Anusha and others were occupants. While the Car was nearing Chinnasalem Kaniyamur, it dashed against the rear side of a Lorry bearing Registration No.TN40 Y 0591, which was parked on the left side of the road. In the impact, the said Anusha, who was an occupant of the Car and Aravindan, who drove the car, have sustained grievous injuries all over their body and died on the spot.

5. In the claim petition filed in MCOP No. 121 of 2016, the legal heirs of deceased Anusha have contended that due to the negligent driving of the driver of the car by the deceased Aravindan, the accident had occurred. Rather, in the Claim Petition filed in MCOP No. No. 853 of 2016, filed by the legal heirs of the deceased Aravindan, it was stated that the lorry was parked negligently on the middle of the road without any warning sign to caution the other motorists and therefore, the accident had occurred.

6. The appellant in these appeals, who is the insurer of the Lorry bearing Registration No.TN-40-Y-0591, was arrayed as Fourth Respondent in both the claim petitions. The Claim Petitions were contested by the Appellant Insurance Company by contending that the accident was due to the rash and negligent driving of the driver of the car, which was driven by one of the deceased, by name Aravindhan. According to the appellant, the lorry was parked on the extreme left side of the road after putting in place the signals and parking lamps while the driver of the Lorry went to a nearby shop. The appellant also disputed the age, avocation and other details furnished by the claimants and prayed for dismissal of both the claim petitions.

7. Since the issue involved in both the claim petitions is one and the same, the Tribunal conducted a joint trial, in which the claimants examined 6 witnesses as Pws1 to 6 and 80 documents, i.e., Exs.P1 to P80 were marked. On the side of the appellant-Insurance Company, Rws1 and 2 were examined. A copy of the Insurance Policy was marked as Ex.R1. On behalf of the claimants in M.C.O.P. No. 853 of 2016 pertaining to the death of Aravindhan, they have examined one Vijayachandran as P.W.4, who is the Assistant Manager of Max Hyper Market India Private Limited, where the deceased was employed. Through PW4, Exs.X-2 to X-9 were marked.

8. The Tribunal, after analysing the evidence had come to the conclusion that the accident had occurred due to the negligent act of the Lorry bearing Registration No.TN-40-Y-0591, which was insured with the appellant Insurance Company. It was the specific finding of the Tribunal that the driver of the lorry did not exercise due care and caution while parking the

lorry. It was also concluded that there is no evidence to show that the driver of the lorry had put any indication or any signal to caution the motorists plying on the road about the parking of the lorry, so that they can avert any accident. Therefore, the Tribunal fixed the entire liability on the part of the driver of the Lorry and consequently directed the insurer of the Lorry, viz., United India Insurance Co. Ltd. to pay the compensation.

9. As regards the quantum of compensation, it was contended before the Tribunal that the deceased was an M.Sc., and M.Phil holder. At the time of accident, the deceased Anusha was 32 years old and she was working as Project Coordinator in Noevos Market Research and Analysis Private Limited, Nagercoil and earning a sum of Rs.15,000/- per month. However, the Tribunal, by placing reliance on Ex.P10, series of pay slips for the month of April 2015 to September 2015, had taken the monthly salary of the deceased Anusha at Rs.40,000/- per month. By adding 50% towards future prospects, the loss of income per month was taken at Rs.60,000/-. By deducting 1/3rd of the amount towards personal expenses of the deceased, the monthly Loss of Income of the deceased was arrived at Rs.40,000/-. Applying multiplier '16', the Tribunal awarded a sum of Rs.76,80,000/- towards Loss of Dependency. By adding other non-pecuniary loss of the claimants, a total sum of Rs.78,10,000/- was awarded to the deceased Anusha and the Tribunal has directed the appellant-Insurance Company to pay the said compensation amount. Aggrieved by the same, C.M.A. No. 3996 of 2019 has been filed.

10. So far as the case of the deceased Aravindhan is concerned, corresponding to M.C.O.P. No. 853 of 2016, it was claimed that the deceased Aravindhan was 39 years old at the time of accident and working as Category Manager in SPAR Max Hyper Market India Private Limited. According to the claimants, the deceased was earning a sum of Rs.1,00,000/- per month and they have also produced Exs.P-30 to P-41 and Ex.P55 to P80 to prove his employment and income. That apart, one Mr. Vijayachandran, Assistant Manager of the company was examined as P.W.4, through whom Exs.X-2 to X-9 were marked. The Tribunal, taking note of Ex.X5, payment slip indicating the annual income of the deceased at Rs.6,03,905/- and Ex.X6, salary certificate, which shows his annual income as Rs.7,00,530/-, had taken the sum of Rs.7,00,530/- as his annual income. By adding 50% towards his future prospects, the Tribunal arrived at a sum of Rs.10,50,795/- as his annual loss of income. By deducting 1/4 towards his personal expenses, the sum of Rs.7,88,096/- was determined as the actual loss of income of the deceased per annum. By applying multiplier '15', a sum of Rs.1,18,21,440/- was awarded as loss of dependency. By adding various other amounts towards non-pecuniary loss, the Tribunal awarded a total

sum of Rs.1,19,91,440/- to the legal heirs of the deceased Aravindhan. Challenging the same, the appellant has filed C.M.A. No. 4000 of 2019.

11. The learned counsel for the appellant/United India Insurance Company submitted that in both the claim petitions, common evidence was recorded. The husband of the deceased Anusha, who was one of the occupants in the Car, was examined as PW1 and he had clearly stated in his evidence that at the time of accident, the Lorry was parked only on the left extreme side of the road and it was the deceased, who drove the Ford Car bearing Registration No.TN-11-E-7090 in a rash and negligent manner, and hit the rear side of the Lorry at a high speed. Thus, the accident had occurred only due to the negligence of the deceased Aravindan. In his evidence, absolutely no whisper was made about the failure on the part of the driver of the Lorry in parking the vehicle without switching on the rear side parking lamp. Only when a leading question was put to PW1, he had chosen to allege that the parking light on the Lorry was not switched on.

12. Further, the learned counsel for the appellant / United India Insurance Company submitted that, on the side of the claimants, in order to prove that the accident had occurred only due to the parking of the Lorry without switching on the warning signal, they examined one Chembian, PW5, who was an eye witness to the accident. He has stated in his evidence that he is running an eatery between 6.00 am and 10.00 p.m. at the accident place. He has also stated in his evidence that the driver of the Lorry left the vehicle without switching on the parking lamp to warn the motorists plying on the road. However, the accident had occurred at 3.30 am in the morning and therefore, his presence in the accident spot is doubtful.

13. The learned counsel for the appellant/United India Insurance Company further submitted that the FIR was filed against the driver of the Car, viz., Aravindan, who died on the spot. The Police has also filed the final report as "charge abated", which was marked as Ex.X-1. However, the Tribunal refused to accept Ex.X1 filed through PW2, Inspector of Police, on the ground that he is not the investigation officer who investigated the case. According to the learned counsel for the appellants, at the time of the accident, the Lorry was parked only on the mud portion of the road, which is evident from the accident sketch marked as one of the documents in Ex.X-1 series. It is the driver of the Car, viz., Aravindan, who came in a rash and negligent manner, moved away from the Tar portion of the road and hit the rear side of the lorry, which was parked on the mud portion of the road. Under such circumstances, the Tribunal ought to have fixed the entire liability only on the

part of the driver of the Car bearing Registration No.TN.11-E-7090 and exonerated the United India Insurance Company from paying the compensation amount. In the event the Court comes to the conclusion that there is contributory negligence on the part of the driver of the Lorry, only 20% negligence may be fixed on the part of the Lorry and accordingly, he prayed for modifying the compensation awarded by the Tribunal in both the Claim Petitions.

14. With regard to the quantum of compensation awarded by the Tribunal to the legal heirs of the deceased Anusha, is concerned, it is the submission of the learned counsel for the Insurance Company that the compensation amount awarded in MCOP.No.121 of 2016 is on the higher side. It is further stated that the deceased was working as a Project Co-ordinator in Noevos Market Research and Analysis Pvt. Ltd. at Nagercoil and earned a sum of Rs.50,000/- p.m. In order to prove the said income, the claimants produced Ex.P-9, offer letter and Ex.P10, salary slips for the months of April to September 2015. Based on the salary slips, the Tribunal fixed Rs.40,000/- as monthly income of the deceased. However, the bank statement was not produced to show that the salary was deposited in her account. Further, the Tribunal failed to note that if the deceased had earned a sum of Rs.40,000/- per month, she would have definitely paid income tax. But no document has been filed to show that the deceased was an Income Tax Assessee. Further, the salary slips do not reveal about the Provident Fund and Professional Tax particulars deducted from her salary. Hence, it is clear that Exs.P-9 and 10 were created with the help of Computer to make an untenable claim. Further, whether the deceased was working in the said Company, is also doubtful, since she was said to have been working in a Company at Nagercoil, but she was residing at Salem. Therefore, in the absence of any tangible documentary evidence, the Tribunal ought not to have fixed Rs.40,000/- as the monthly income of the deceased. At the same time, considering the qualification of the deceased and her prospects of employment, a sum of Rs.20,000/- may be fixed as monthly income and accordingly, the amount awarded under the head "Loss of Dependency" may be modified.

15. So far as the quantum of compensation awarded by the Tribunal to the legal heirs of the deceased Aravindan, is concerned, it is the submission of the learned counsel for the Insurance Company that the compensation awarded in MCOP.No.853 of 2016 is also on the higher side. He further submitted that it is alleged that at the time of the accident, the deceased Aravindan was aged about 39 years and earning Rs.1,00,000/- per month as a Category Manager in M/s.Spar Max Hyper Market India Pvt. Ltd., and also as a partner in M/s.Sri Vinayak Industries. Further, in order to prove that the deceased was working as

Category Manager in M/s.Spar Max Hyper Market India Pvt. Ltd., Assistant Manager (HR) of the said Company, one Vijayachandran, was examined as PW4 and through him, service particulars, appointment order, salary particulars and increment orders were marked. But they have not produced Bank Statement to show the credit entry of monthly salary in the account of the deceased Aravindan. In order to prove the income of the deceased as Category Manager in M/s.Spar Max Hyper Market India Pvt. Ltd., the claimants filed Ex.P-33, Salary Certificate and Ex.P-40, Income Tax Return of the deceased for the year 2015-16. Similarly, in order to show that the deceased was running flour business along with his wife in the name and style of M/s.Sri Vinayak Industries and earning income from that business also, the wife was examined as P.W.3. Further, Exs.P-34 to 39 were marked to show that the deceased was running a Flour business along with his wife in the name and style of M/s.Sri Vinayak Industries and earning income from that business also. Furthermore, the Tribunal, without appreciating the cross examination of P.W.3 being the wife of the deceased Aravindan and P.W.4 Vijayachandran, who was working as Assistant Manager (HR) in M/s.Spar Max Hyper Market India Pvt. Ltd., fixed a sum of Rs.7,00,530/- as the annual income of the deceased Aravindan and added 50% of the same towards future prospects. Further, the Income Tax Returns for the financial period 01.04.2015 to 31.03.2016 was not filed by the claimants. Under such circumstances, the sum of Rs.7,00,530/- fixed by the Tribunal as annual income to the deceased Aravindan is extremely on the higher side. Therefore, by fixing a sum of Rs.40,000/- as monthly income and by adding 40% of the amount towards future prospects, the amount awarded by the Tribunal under the head "Loss of Income" may be modified.

16. The learned counsel appearing for HDFC Ergo General Insurance Co. Ltd. has submitted that the negligence on the part of the lorry driver has been established by the evidences of PWs.1, 3 and 5 and RW1. The Tribunal on the touchstone of preponderance of probability, had rightly held that the respondents 3 and 5 in MCOP.No.853 of 2016, viz., the owner of the Lorry and its insurer are liable to pay compensation.

17. The learned counsel appearing for HDFC Ergo General Insurance Co. Ltd. also submitted that the Supreme Court, in a catena of decisions, had observed that when the negligence is attributable on the part of the vehicle which was dangerously stationed or parked on the highway or road, without the parking indicators, signals or lights, the issue of negligence should be decided based on the evidence of eye witness and preponderance of probabilities, without giving undue weightage to the rough sketch or site map, which could be misleading as regards the occurrence of accident.

18. The learned counsel appearing for the claimants adopted the submissions made by the learned counsel appearing for the insurer of the Car / HDFC Ergo General Insurance Company with regard to the rash and negligent aspect. In addition, they also submitted that the Tribunal, by placing reliance on the evidence of eye witness, correctly had come to the conclusion that the accident had occurred due to the negligent parking of the lorry, insured with the appellant/Insurance Company. In fact, on the side of the appellant/Insurance Company, no contra evidence was produced. In the absence of any oral evidence on the side of the appellant/Insurance Company, by merely placing reliance on the accident sketch, fixing liability on the part of the insurer of the Car, is not legally sustainable. However, with regard to the quantum of compensation, they have submitted that, before the Tribunal, tangible evidence was produced to prove the income of the deceased. Only based on the said documents, the Tribunal has passed the award. Hence, such a well considered award need not be interfered with. Thus, they sought for dismissal of the appeals.

19. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record. It is the case of the claimants that while the deceased Aravindan was driving the Ford Car bearing Registration No.TN-11-E-7090 on the Chennai - Salem Highway along with the deceased Anusha and others at Chinnasalem Kaniyamur, the car dashed against the rear side of the Lorry bearing Registration No.TN40 Y 0591. As a result of which, the said Anusha and Aravindan sustained grievous injuries all over their body and died on the spot. Hence, the legal heirs of the respective deceased persons, have filed the above claim petitions as against both the owners of the vehicles and their respective insurers. The Tribunal, after analysing the evidence, had come to the conclusion that the accident is the result of the negligent act of the driver of the lorry, who had parked the Lorry on the middle of the road. Thus, the Tribunal fixed the liability solely on the Lorry driver and consequently directed its insurer to pay the compensation amount. Aggrieved over the same, these appeals have been filed by the insurer of the Lorry.

20. Ex.P-1 - FIR was registered against the driver of the car and final report was also filed as "charge abated", since the driver of the car died on the spot itself. Under such circumstances, we are of the opinion that fixing the liability entirely on the part of the lorry driver, is not sustainable. On carefully going through the evidence and the materials available on record, it is clear that PW5, Chembian, has stated that the Lorry was not parked on the mud portion of the road. At the same time, we find that the accident occurred at 3.30 am, and from the evidence on record, it is seen that the driver of the

Lorry had not switched on the rear side parking lamp. Hence, there is certain negligence on the part of the Lorry driver also. Therefore, the finding of the Tribunal that the driver of the Lorry is solely responsible for the accident, is set aside, instead liability shall be fixed 40% on the driver of the Lorry and 60% on the deceased, who drove the Ford Car.

CMA.No.3996 of 2019:

21. So far as the quantum of compensation in CMA.No.3996 of 2019 is concerned, the deceased Anusha is the wife of the first respondent and mother of the respondents 2 and 3. It is the case of the claimants before the Tribunal that the deceased was an M.Sc., M.Phil. graduate and working as a Project Coordinator in Noevos Market Research and Analysis Pvt. Ltd., at Mailyil Arcade, Nagercoil, and receiving Rs.50,000/- per month as salary. She was 32 years at the time of accident. To prove the income of the deceased, they produced offer letter, Ex.P9 and pay slip, Ex.P10. The offer letter shows that the deceased was a Project Co-ordinator in Noves Market Research and Analysis Pvt. Ltd., and the salary offered was Rs.40,000/-. Hence, the Tribunal fixed Rs.40,000/- as monthly income of the deceased.

22. Now, it is the submission of the learned counsel for the Insurance Company that Exs.P9 and 10 are created with the help of computer to make untenable claim. Further, the salary slip did not reveal about the deduction of Provident Fund and Professional Tax. If really, the deceased Anusha had earned a sum of Rs.40,000/- as salary, the said amount would have been transferred only through Bank, but no Bank statement was produced before the Tribunal to establish the same. Furthermore, the deceased was residing at Salem, whereas, the Company is in Nagercoil. Therefore, the Tribunal ought not to have relied on the said documents and fixed Rs.40,000/- as monthly income.

23. It is further seen that none of the officials from the Noevos Market Research and Analysis Pvt. Ltd., in which the the deceased Anusha was said to have been working, was examined. Hence, we find some force in the submissions of the learned counsel for the appellant. Therefore, we are of the opinion that a sum of Rs.40,000/- fixed as monthly income of the deceased appears to be on the higher side. However, considering the educational qualification of the deceased, we are inclined to fix a sum of Rs.25,000/- as monthly income. If Rs.25,000/- is fixed as monthly income and 40% of the same is added towards future prospects, the amount comes to Rs.35,000/- (25,000/- + 10,000/-). If 1/3 of the amount is deducted towards personal expenses, the amount works out to Rs.23,334/- (35,000 - 11,666) and the annual loss of income comes to Rs.2,80,008/- (23,334 x 12). Considering the age of the deceased being 32 years, If multiplier "16" is adopted, the amount works out to

Rs,44,80,128/-. Accordingly, the sum of Rs.76,80,000/- awarded by the Tribunal under the head "Loss of Dependency" is reduced to Rs,44,80,128/-.

24. Further, the sum of Rs.60,000/- awarded by the Tribunal under the head "Loss of Love and Affection" is set aside, instead a sum of Rs.80,000/- is awarded under the head "Loss of Love and Affection" by awarding Rs.40,000/- to each of the claimants 2 and 3.

25. The amount awarded by the Tribunal under all other heads are just, fair and reasonable and therefore, they are hereby confirmed

26. Thus, the total compensation awarded in C.M.A.No.3996 of 2019 is tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Dependency	76,80,000	44,80,128
2	Loss of Love and Affection to the respondents 2 and 3	60,000	80,000
3	Loss of Consortium to R1	40,000	40,000
4	Loss of Funeral Expenses	15,000	15,000
5	Loss of Estate	15,000	15,000
	Total	Rs.78,10,000/-	Rs.46,30,128/-

27. Thus, the total sum of Rs.78,10,000/- awarded by the Tribunal in MCOP.No.121 of 2016 towards compensation, is hereby reduced to Rs.46,30,128/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. Out of the said amount, 40% of the amount has to be deposited by the insurer of the lorry, viz., United India Insurance Co. Ltd./Appellant herein, before the Tribunal and the remaining 60% of the amount has to be deposited by the insurer of the car, viz., HDFC Ergo General Insurance Co. Ltd. before the Tribunal. The amount, if any deposited by the appellant Insurance Company shall be adjusted and the balance amount, if any, shall be deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw his share as apportioned by the Tribunal. Insofar as the minor claimants 2 & 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed

Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority. The interest accrued thereon shall be withdrawn by the first claimant/father once in three months. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. If any amount is already deposited by the sixth respondent, as directed by the Tribunal, the same shall be withdrawn by him.

CMA.No.4000 of 2019:

28. It is the case of the claimants in CMA.No.4000 of 2019 that the deceased Aravindan was working as a Category Manger in SPAR Max Hyper Market India Pvt. Ltd., Chennai and also a partner in Sri Vinayak Industries and earning Rs.1,00,000/- per month. At the time of the accident, the age of the deceased was 39 years. In order to prove the income of the deceased, the claimants produced Exs.P30 to P41 and Exs.P55 to P80. They also examined one Vijayachandran, Assistant Manager of Max Hyper Market India Pvt. Ltd., Chennai as PW4 and through him service particulars, appointment order, salary particulars and increment orders were marked as Exs.X3 to X7. In Ex.X4 appointment letter, annual remuneration is mentioned as Rs.5,50,000/-. Ex.X5 payment slip reveals that the deceased received a sum of Rs.6,03,905/- per annum as salary. Though it is the contention of the claimants that the deceased Aravindan was earning Rs.84,000/- per month from his business, sufficient record was not provided. However, the Tribunal by taking a sum of Rs.7,00,530/- as annual income and by adding 50% towards future prospects, arrived at a sum of Rs.10,50,795/- [7,00,530 + 350265]. Thereafter, by deducting 1/4 towards personal expenses, the Tribunal arrived at the annual loss of income as Rs.7,88,096/-. Considering the age of the deceased being 39 at the time of the accident and by applying multiplier "15", the Tribunal awarded a sum of Rs.1,18,21,440/- under the head "Loss of Dependency". If the deceased would have earned Rs.7,00,530/- as annual income, he would have definitely paid income tax. Further, TDS certificate, Professional Tax and PF remittance, were not produced by the employer. Furthermore, the bank statement regarding the credit of salary, was also not produced. Moreover, no evidence was produced to show that the the Flour business, which was run by the deceased along with his wife in the name and style of M/s.Vinayaka Industries, was closed. In any event, the Tribunal disbelieved the version of the claimants that the deceased was also earning income through the Flour Mill Business. The Tribunal also did not take into account the so-called income earned by the deceased through such business. Further, in the absence of evidence to show the statutory remittance such as Income Tax and other taxes by the deceased out of his earnings, the Tribunal ought not to have taken a sum of Rs.7,00,530/- as annual income. In this context, the learned counsel for the appellant submitted that, by fixing a sum of Rs.40,000/- as

monthly income, the amount awarded by the Tribunal could be modified.

29. Considering the facts and circumstances of the case, it would be appropriate to fix a sum of Rs.45,000/- as monthly income of the deceased Aravindan. If Rs.45,000/- is fixed as monthly income and 40% of the same is added towards future prospects, the amount works out to Rs.63,000/- (45,000 + 18,000). Thus, the annual income works out to Rs.7,56,000/-.

30. With regard to the Assessment Year 2015-16, Income Tax slab rates are as follows:

Income		Percentage of tax
Upto 2,50,000	-	No tax
2,50,000 – 5,00,000	-	10%
5,00,000 – 10,00,000	-	20%
Above 10,00,000	-	30%

31. The Income Tax deduction in the case of the deceased Aravindan is determined as follows:

Income		Percentage of tax		Amount of Tax
Upto 2,50,000	-	No tax	-	0
2,50,000 – 5,00,000	-	10%	-	25,000
5,00,000 – 7,56,000	-	20%	-	51,200
		Total		76,200

32. Therefore, the total tax payable by the deceased Aravindan for the relevant financial year is Rs.76,200/-. Hence, by deducting the tax amount payable, the actual annual income is determined at Rs.6,79,800/- [7,56,000 - 76,200]. If 1/4 of the amount is deducted towards personal expenses, the amount works out to Rs.5,09,850/- (6,79,800 - 1,69,950). Considering the age of the deceased being 39 at the time of the accident, if multiplier 15 is adopted, the amount comes to Rs.76,47,750/-. Therefore, the sum of Rs.1,18,21,440/- awarded by the Tribunal under the head "Loss of Income" is hereby reduced to Rs.76,47,750/-.

33. Further, the sum of Rs.1,00,000/- awarded by the Tribunal under the head "Loss of Love and Affection" by awarding Rs.20,000/- to each of the claimants is hereby set aside, instead a sum of Rs.1,60,000/- is awarded to the claimants 2 to 5 under the head "Filial Consortium" by awarding Rs.40,000/- to each of the claimants 2 to 5.

34. Since the amount awarded by the Tribunal under all the other heads are just fair and reasonable, the same are confirmed.

35. In effect, the total compensation awarded in C.M.A.No.4000 of 2019 is tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	1,18,21,440	76,47,750
2	Loss of Love and Affection	1,00,000	-
2	Consortium to R1	40,000	40,000
3	Filial Consortium to R2 to R5	-	1,60,000
4	Funeral Expenses	15,000	15,000
5	Loss of Estate	15,000	15,000
	Total	Rs.1,19,91,440	78,77,750

36. Thus, the total sum of Rs.1,19,91,440/- awarded by the Tribunal in MCOP. No. 853 of 2016 towards compensation is hereby reduced to Rs.78,77,750/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. Out of the said amount, 40% of the amount has to be deposited by the insurer of the Lorry, viz., United India Insurance Co. Ltd./appellant herein. Since the deceased, who was driving the Car at the time of the accident has also contributed 60% negligence to the accident, legal heirs of the deceased are not entitled for the remaining 60% compensation. The appellant/Insurance Company shall deposit the amount determined in this appeal, i.e., 40% of Rs.78,77,750/- with interest after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw her share as apportioned by the Tribunal. Insofar as the minor claimants 2 & 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority. However, the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months. The claimants 4 and 5 shall withdraw their respective shares. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. If any amount is already deposited by the eighth respondent as directed by the Tribunal, the same shall be withdrawn by him.

37. With the above observations and directions, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

pvs/cs

To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge,
Special District Court (FAC), Salem

2. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.N.Somasundaar*, Advocate, S.R.No.34556, 34557
+1cc to Mr.S.Arun kumar, Advocate, S.R.No.34611

VBA(CO)
CB(10/08/2021)