

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4748 of 2019

and

Cross Objection No.18 of 2020

C.M.A.No.4748 of 2019

HDFC ERGO General Insurance Company Ltd.,
Old No.90, New No.199, “MBC Tower”,
6th Floor, Luz Church Road,
Mylapore, Chennai – 600004. ... Appellant

Vs

1.P.Thavamani
W/o.Late Prabhu

2.Minor P.Kaleeswari
D/o.Late Prabhu
represented by his mother and natural
guardian P.Thavamani

3.C.Alagammal
W/o.Chellaiah

4.Chellaiah
S/o.Late Karupaiah

5.M.Chellamuthu

S/o.Manickam

... Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.08.2019 passed in M.C.O.P.No.7698 of 2016 on the file of Motor Accident Claims Tribunal, II Special Sub-ordinate Judge, Small Causes Court, Chennai.

For Appellant : Mr.N.Somasundar

For Respondents : Ms.J.Jayapriya [R1 to R4]

Mr.G.Balaji [R5]

Cross Objection No.18 of 2020

1.P.Thavamani

W/o.Late Prabhu

2.Minor P.Kaleeswari

D/o.Late Prabhu

represented by his mother and natural
guardian P.Thavamani

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... Cross Objectors

Vs

1.HDFC ERGO General Insurance Company Ltd.,
Old No.90, New No.199, "MBC Tower",

6th Floor, Luz Church Road,
Mylapore, Chennai – 600004.

2.M.Chellamuthu

S/o.Manickam

... Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code against the judgment and decree dated 26.08.2019 passed in M.C.O.P.No.7698 of 2016 on the file of Motor Accident Claims Tribunal, II Special Sub-ordinate Judge, Small Causes Court, Chennai.

For Cross Objectors : Ms.J.Jayapriya
For Respondents : Mr.N.Somasundar [R1]
Mr.G.Balaji [R2]

COMMON JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J**]

[Heard through Video Conference]

Questioning the quantum of compensation awarded by MACT, II Special Sub-ordinate Judge, Chennai, in and by its judgment dated 26.08.2019 in M.C.O.P.No.7698 of 2016, appellant insurance company has filed the present appeal.

2. Claimants have filed a cross objection stating that the compensation awarded by the Tribunal is not an adequate one and hence, the same has to be enhanced.

3. For the purpose of convenience, parties are referred to as per the ranking

in the Civil Miscellaneous Appeal.

4. Respondents 1 to 4/claimants are wife, minor daughter and parents of the deceased Prabhu. On 15.11.2016 at about 11.30 a.m. while the deceased was proceeding in his two-wheeler towards Naagudi – Aranthangi road, a Tractor bearing Registration No.TN-49-BX-3202 came in a rash and negligent manner and dashed against the two wheeler, owing to which the deceased sustained grievous injuries and died. Fifth respondent is the owner of the Tractor and appellant is the insurer thereof. Respondents 1 to 4/claimants filed M.C.O.P.No.7698 of 2016 seeking compensation in a sum of Rs.50,00,000/-.

5. Before Tribunal, to prove their case, respondents 1 to 4/claimants examined first respondent/wife of deceased as PW-1 and one Vellaichamy, an eye witness, as PW-2 and marked 17 exhibits. On the side of fifth respondent, the driver of the tractor was examined as RW-1 and his driving license was marked as Ex.R1. On the side of appellant insurance company, one V.Karthikeyan, official of the appellant insurance company, was examined as RW-2 and 7 exhibits were marked. On appreciation of materials, the Tribunal, under judgment dated

26.08.2019, has rendered a finding that the accident had occurred only due to the rash and negligent driving of the Tractor and awarded compensation as follows:

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency [(12,600+40%-1/4)*12*17	26,98,920/-
2.	Parental consortium and Filial consortium	1,20,000/-
3.	Loss of love and affection	1,00,000/-
4.	Loss of consortium	40,000/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
	Total	29,88,920/-

The said amount was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit. Against such award, appellant insurance company has filed the present appeal.

6. Heard learned counsel appearing for appellant insurance company and learned counsel appearing for respondents. Perused the materials on record.

7. Learned counsel appearing for appellant insurance company submits that

compensation awarded under the head 'loss of dependency' is extremely on the higher side. Though it was the claim of respondents 1 to 4/claimants before the Tribunal that the deceased was a plumber and earning a sum of Rs.1,500/- per day, except the oral evidence of PW-1/wife of deceased, no other independent witness was examined nor any document was marked to prove the same. However, the Tribunal, relying upon the judgment dated 04.06.2018 passed in C.M.A.No.1082/2018 [Andhra Pradesh State Road Transport Corporation Ltd. vs Chandralekha and others], has fixed the monthly income of the deceased at Rs.9,000/- for the year 2012 and added 10% for each year till 2016 and arrived at a sum of Rs.12,600/- as the monthly income of the deceased at the time of his death. Learned counsel submits that the method adopted by Tribunal for fixing a sum of Rs.12,600/- is not correct and the same is not in accordance with the principles laid down by the Honourable Supreme Court as well as by various High Courts, that too, in the absence of any proof to establish the income of the deceased. Learned counsel further submits that the amount awarded under the other heads is also on the higher side. Submitting as above, learned counsel prays for allowing the appeal.

8. *Per contra*, learned counsel for respondents 1 to 4/claimants submits that

the deceased was a plumber by avocation and was earning a sum of Rs.1,500 per day. Hence, the Tribunal ought to have fixed Rs.15,000/- as the monthly income of the deceased. Submitting as above, learned counsel for respondents 1 to 4/claimants prays for allowing the cross-objection by enhancing the compensation.

9. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the aspect of 'rash and negligence'.

10. On a careful analysis of the materials and the judgment under challenge, this Court finds that absolutely there is no evidence to prove that the deceased was earning a sum of Rs.1,500/- per day. Though it was the claim of respondents 1 to 4/claimants that they were not in a position to produce any documentary evidence to prove the income of the deceased, we are of the opinion that atleast they would have examined any one of the co-employee to prove the income of the deceased. This, they have not done. As rightly contended by learned counsel appearing for insurance company, fixing of Rs.12,600/- as the monthly income of the deceased, in the absence of any proof, is not correct. However, considering the present day

cost of living and taking into account that the deceased was a plumber, this Court considers that it would be appropriate to fix a sum of Rs.11,000/- as the monthly income of the deceased to arrive at a just and proper compensation. Accordingly, the compensation payable under the head loss of dependency would be Rs.23,56,200/- $[(11000+40\%-\frac{1}{4}) \times 12 \times 17]$. Further, the compensation awarded under the head 'Parental consortium and Filial consortium' is deleted and the compensation awarded under the head 'Loss of love and affection' is enhanced from Rs.1,00,000/- to Rs.1,20,000/- (Rs.40,000/- each for respondents 2 to 4). The compensation awarded under the heads 'loss of estate' and 'funeral expenses' in a sum of Rs.15,000/- each is reduced to Rs.10,000/- each. Accordingly, the modified compensation payable would be:

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency $[(11,000+40\%-\frac{1}{4}) \times 12 \times 17]$	23,56,200/-
2.	Loss of love and affection [Rs.40,000/- each to R2 to R4]	1,20,000/-
3.	Loss of consortium [R1]	40,000/-
4.	Loss of estate	10,000/-
5.	Funeral expenses	10,000/-
	Total	25,36,200/-

In the result,

- (i) C.M.A.No.4748 of 2019 is partly allowed. The compensation of Rs.29,88,920/- awarded by Tribunal is hereby reduced to Rs.25,36,200/-. Appellant insurance company is directed to deposit the reduced compensation, less that already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On such deposit being made, respondents 1, 3 and 4 are entitled to receive their respective shares, as apportioned by Tribunal, together with interest, on due application. The share of second respondent/minor shall be deposited in any nationalized bank in fixed deposit till she attains majority. First respondent/mother of minor is entitled to receive accrued interest once in three months.
- (ii) Cross Objection No.18/2020 is dismissed.

No costs.

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[R.P.S., J]

[C.S.N., J]

24.07.2020

Index: Yes/No

Internet: Yes

gm

R.SUBBIAH, J
and
C.SARAVANAN, J

gm

To

The Motor Accident Claims Tribunal,
II Special Sub-ordinate Judge,
Small Causes Court,
Chennai.



C.M.A.No.4748 of 2019
and
Cross Objection No.18 of 2020

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24.07.2020

C.M.A.No.4748 of 2019 and Cross Objection No.18 of 2020

R.SUBBIAH, J

and

C.SARAVANAN, J

(The Order of the Court was made by R.Subbiah,J)

This Civil Miscellaneous Appeal and Cross Objection are listed today (29.09.2020) under the caption "for being mentioned" at the instance of the learned counsel appearing for the appellant/Insurance Company.

2. By judgment dated 24.07.2020, this Court observed as follows in the last paragraph:

"In the result,

(i) C.M.A.No.4748 of 2019 is partly allowed. The compensation of Rs.29,88,920/- awarded by Tribunal is hereby reduced to Rs.25,36,200/-. Appellant insurance company is directed to deposit the reduced compensation, less that already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On such deposit being made, respondents 1, 3 and 4 are entitled to receive their respective shares, as apportioned by Tribunal, together with interest, on due application. The share of second respondent/minor shall be deposited in any nationalised bank in fixed deposit till she attains majority. First respondent/mother of minor is entitled to receive accrued interest once in three months.

(ii) Cross Objection No.18/2020 is dismissed."

3. Heard both sides and perused the materials available on record.

4. This Court, by the above said judgment dated 24.07.2020, had inadvertently omitted to mention a clause relating to recovery of the compensation amount by the appellant/Insurance Company from the owner of the vehicle in question, i.e. the fifth respondent herein, after disbursing the amount of compensation as quantified by this Court, to the claimants.

5. Accordingly, the appellant/Insurance Company is directed to first deposit the compensation amount before the Tribunal as quantified by this Court to the claimants, in the above said judgment dated 24.07.2020, and thereafter, permitted to recover the same from the owner of the vehicle in question, i.e. the fifth respondent herein in accordance with law.

6. In other respects, the above said judgment dated 24.07.2020 shall remain unaltered.

सत्यमेव जयते

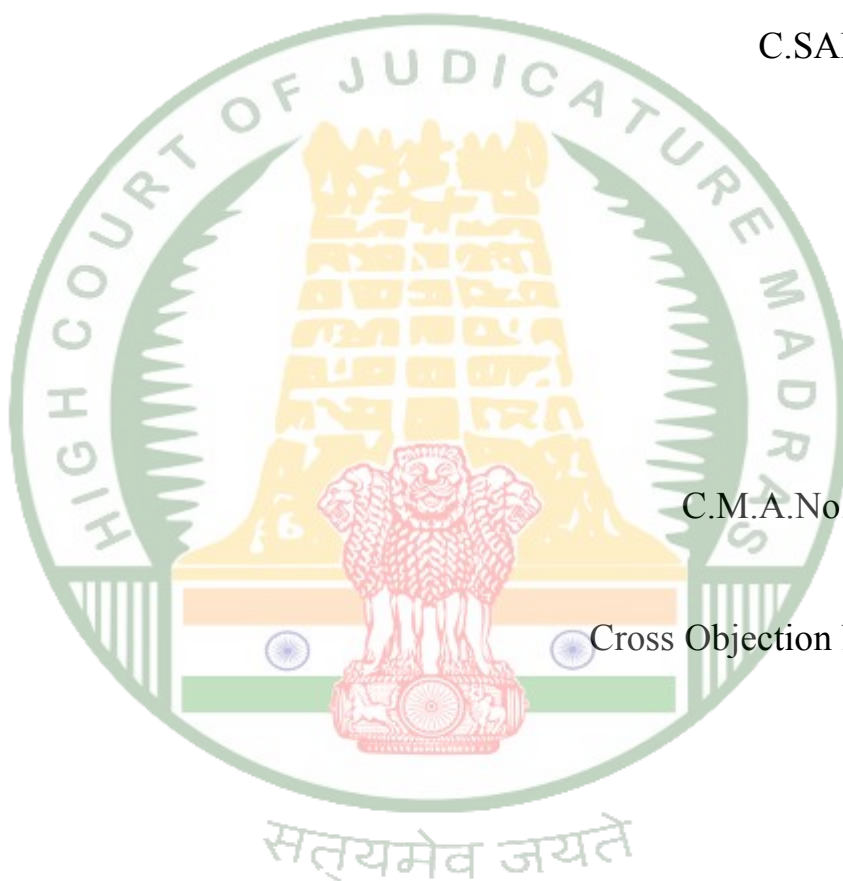
(R.P.S.J) (C.S.N.J)
29.09.2020

Internet: Yes
Speaking Order: Yes
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R.SUBBIAH, J
and
C.SARAVANAN, J

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C.M.A.No.4748 of 2019
and
Cross Objection No.18 of 2020

29.09.2020

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