



C.M.A.No.931 of 2012

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Judgment Reserved on : 10.12.2020

Judgment Delivered on : 13.08.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.931 of 2012 and Cros.Obj.No.21 of 2021

and

M.P.No.1 of 2013

G.Arumugam

S/o. Govindasamy

... Appellant in CMA.No.931 of 2012

and Respondent in Cros. Obj.No.21 of 2021

Vs.

1. Muniyammal

W/o. Selvaraj

2. Ajantha

D/o. Selvaraj

3. Nirmala

D/o. Selvaraj

4. Vinoth Kumar

S/o. Selvaraj

5. Velmurugan

S/o. Selvaraj

6. Vijayakumar (Minor)



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S/o. Selvaraj
(Rep. By the first respondent as his
next friend and Guardian) ...Respondents in CMA.No.931 of 2012
and Cross Objectors in Cros. Obj.No.21 of 2021

7. The Divisional Manager
Oriental Insurance Company Ltd.,
Tiruvannamalai. ...Respondent in CMA.No.931 of 2012
and Cros.Obj.No.21 of 2021

Common Prayer: Civil Miscellaneous Appeal filed under Section
173 of the Motor Vehicles Act, 1988 and Cross Objection filed under
Section 41 Rule 22 of CPC, against the judgment and decree in
M.C.O.P.No.464 of 2006 dated 28.06.2007 on the file of the Motor
Accidents Claims Tribunal, District Court, Tiruvannamalai.

For Appellant in CMA &
Cross Objector : Mr.S.Kumaradevan
For Respondents in CMA &
appellant in Cross Objection : Mr.S.Vediappan for R1 to R6.
For Respondent in Both cases : Mr.M.Krishnamoorthy for R7

COMMON JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed challenging the fair
and decretal order dated 28.06.2007 passed in MCOP.No.464 of 2006 by
the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai.



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2. The first respondent in MCOP.No.464 of 2006 before the Motor Accident Claims Tribunal, Tiruvannamalai is the appellant herein. The appeal has been filed by the appellant who is the respondent before the Tribunal to set aside the award and dismiss the claim petition.

3. As per the claim petition on 25.01.2006 at about 10.00 a.m., when the husband of the first claimant Viz., Selvaraj was riding his two wheeler at Kadambai towards Tiruvannamalai road on the left side along with the first claimant, while he was nearing the TBN Petrol Pump at Tiruvannamalai main Road, a two wheeler belonging to the first respondent driven in a rash and negligent manner, dashed against the TVS 50 bearing Registration No.TN 25 F 2535. The registration number of the two wheeler driven by the first respondent was TN 25 E 6703. Due to the impact, the rider of the TVS 50 bearing Registration No.TN 25 F 2435 suffered injuries all over the body. He was taken to hospital at Tiruvannamalai and later shifted to Pondicherry JIPMER Hospital for further treatment. He died in the JIPMER Hospital. The claimants are



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WEB COPY wife and daughters of the deceased/Selvaraj. The deceased was working as a Mason and was earning Rs.6,000/- per month.

4. Since the Tribunal failed to appreciate the facts from the evidence available before the Tribunal, the first respondent/injured has come by way of appeal to set aside the award.

5. The claimants before the Tribunal have filed a Cross Objection in Cross Objection No.21 of 2021. The submission of the learned counsel for the respondent Nos.1 to 6 in CMA.No.931 of 2012 and the petitioners in cross objection is that the award passed by the Tribunal is meagre. Aggrieved by the same, they have preferred this cross objection for enhancement of the award passed by the Tribunal.

6. Points for consideration:

(i) Whether the appeal preferred by the first respondent before the Tribunal/ owner of the vehicle has to be allowed?



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WEB COPY(ii)Whether the cross objection has to be allowed enhancing the award passed by the Tribunal?

7. Perused the claim petition filed by the claimants before the Motor Accident Claims Tribunal/District Court, Tiruvannamalai, in MCOP No.464/2006, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

8. It is found that on the date of the accident the two wheeler bearing Registration No.25 E 6703 was not insured. Subsequent to the accident on the same day, by evening the owner of the vehicle/first respondent before the Tribunal had paid subscription and renewed the licence. Only at that time he had paid subscription for the Insurance Company. Therefore, the Tribunal had perused the records and passed an award as per the Motor Vehicles Act directing the first respondent to pay the compensation. As against the same the present appeal had been filed.



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WEB COPY 9. It is the contention of the learned counsel for the cross objectors that the award passed by the Tribunal is on the lower side. Therefore, seeking enhancement, this cross objection has been filed.

10. On perusal of the records, the contention of the learned counsel for the appellant cannot at all be accepted. As per the FIR, the appellant herein is the tort-feasor. In such circumstances, he cannot claim the compensation. The claimants before the Tribunal failed to implead the insurer of the TVS 50 driven by the deceased since, the insurer of the vehicle had no liability to pay the compensation amount as the vehicle was neither insured nor insurance renewed on the date of the accident. The two wheeler of the first respondent collided with the two wheeler of the deceased resulting in fatal accident to the rider of the two wheeler. On appreciation of evidence, the Tribunal had arrived at a just conclusion that the accident was only due to the negligent driving of the two wheeler bearing Registration No. TN 25 E 6703. Since the insurance was not in force, the Tribunal had ordered the first respondent owner of the vehicle to pay the compensation.



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11. The Appellant had not furnished any rulings of the Hon'ble Supreme Court in support of the claim of the appellant. Therefore, this appeal has no merit and it has to be dismissed.

12. The point for consideration is answered against the appellant and in favour of the claimants before the Tribunal.

13. The Cross objection filed by the claimants has to be allowed and award has to be enhanced. On perusal of the award passed by the Tribunal, it is found that on the date of accident, the deceased/Selvaraj was self employed as a Mason. The claimants had claimed that the deceased used to earn not less than Rs.6,000/- per month. But the Tribunal had fixed Rs.2,000/- only as monthly income. Therefore, the award passed by the Tribunal is meagre. The cross objectors themselves have provided the monthly income of a Mason as per the Minimum Wages Act. Therefore, Rs.4,000/- is taken as income per month. Towards personal expenses, the number of dependents have to be taken note of. Loss of dependency is arrived at as follows:



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Income fixed :: Rs.4,000/-

Less: 1/4th towards

Personal expenses :: Rs.4,000/- x 1/4

:: Rs.1000/-

Monthly Contribution to the

family :: (Rs.4,000 – Rs.1000/-)

:: Rs.3000/-

Annual Contribution :: 3000x12 = 36000

Taking the multiplier as 13 for the age group 45 to 50 years

Pecuniary Loss :: Rs.36000 x13

:: Rs.4,68,000/-

14. Considering the age of the deceased, the respondents 2 to 5 are entitled to claim compensation under the head Loss of love and affection. Therefore, this Court awards a sum of Rs.15,000/- each towards love and affection and Rs.20,000/- towards loss of consortium.



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WEB COPY 15. Considering the present cost of living and the date of accident, this Court awards a sum of Rs.15,000/- towards funeral expenses and Rs.5000/- towards transportation.

16. The break-up details of the amounts awarded under various heads are as follows:

<i>Sl. No</i>	<i>Head under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal</i>	<i>Amounts awarded by this Court</i>
1	Loss of Dependency	2,08,000	4,68,000
2	Loss of Consortium	5,000	20,000
3	Loss of Love and Affection	-	60,000
4	Funeral Expenses	2,000	15,000
5	Transportation	-	5,000
	Total	2,15,000	5,68,000

17. Even though the FIR was registered against the two wheeler bearing Registration No.TN 25 E 6703, the deceased/Selvaraj who was riding the two wheeler should have been cautious. He could have slowed down the vehicle and avoided the accident, the damage and injury caused by the action of the opposite party. 15% negligence is fixed on the



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deceased two wheeler rider for not wearing helmet at the time of accident, as per the reported ruling of this Court in ***R.Malika and Others Vs. A.Babu and others (CMA.Nos.3235 of 2014) decided on 08.06.2015*** and 15% is fixed on the negligence of the deceased. Totally, 30% contributory negligence fixed on the deceased.

Therefore, after deducting 30% towards for contributory negligence, the compensation payable would be

$$= \text{Rs.}5,68,000 \times 30\% = 1,70,400/-$$

$$= \text{Rs.}5,68,000 - \text{Rs.}1,70,400/-$$

$$= \text{Rs. } 3,97,600/-.$$

Accordingly, the Cross Objection filed by the claimants is partly allowed and the Civil Miscellaneous Appeal filed by the owner of the vehicle is dismissed. The appellant is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.464 of 2006 on the file of the Motor Accidents Claims Tribunal, District Judge, Tiruvannamalai, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this



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WEB COURT in *(The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others)* 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 to 5 shall be entitled to withdraw a sum of Rs.66,000/- each with accrued interest. The balance amount of Rs.67,600/- is directed to be deposited in a Nationalised Bank in the name of the minor daughter/the sixth appellant by the first Claimant. The interest thereof shall be withdrawn by the first Claimant once in three months and the same shall be utilised for the welfare of the minor daughter/sixth appellant. The award amount allotted to the minor daughter of the deceased shall be withdrawn by the minor/sixth appellant on attaining the age of majority. The cross objectors are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

13.08.2021

dh

Index: Yes/No

Speaking Order/Non Speaking order



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- To
1. The Motor Accidents Claims Tribunal /
IV Judge, Court of Small Causes, Chennai.
 2. The Section Officer,
V.R Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP.J.,

dh

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