



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.4754 of 2019 & C.M.P.No.27241 of 2019
and Cross Objection No.3 of 2021

C.M.A.No.4754 of 2019

Bajaj Allianz Insurance Co. Ltd.,
No.11, 3rd Floor,
People's Park Road,
Government Arts College Road,
Coimbatore.

... Appellant/2nd Respondent

vs

1.Vimalarani
W/o.Xavier Amulraj

2.Minor Jeni
D/o.Xavier Amulraj

3.Minor Jerina
D/o.Xavier Amulraj
(minors represented by their
guardian Vimalarani)

4.Alphonse
S/o.Vedhanayagam

5.Thangammal
W/o.Alphonse

... Respondents 1 to 5/Claimants

6.Madanambekai ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2019 passed in M.C.O.P.No.1993 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.Ma.P.Thangavel [R1 to R5]
Ex parte [R6]

Cross Objection No.3 of 2021:

<https://hcservices.ecourts.gov.in/hcservices/>

1.Vimalarani
W/o.Xavier Amulraj



2.Minor Jeni
D/o.Xavier Amulraj

3.Minor Jerina
D/o.Xavier Amulraj
(minors represented by their guardian Vimalarani)

4.Alphonse
S/o.Vedhanayagam

5.Thangammal
W/o.Alphonse

... Cross Objectors

vs

1.Bajaj Alliance Insurance Co. Ltd.,
No.11, 3rd Floor, Peoples Park Road,
Government Arts College Road,
Coimbatore.

2.B.Madanambekai ... Respondents
(R2 remained ex parte before the Tribunal.
Hence, notice may be dispensed with)

Prayer: Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code praying to enhance the award amount in the judgment and decree dated 27.02.2019 passed in M.C.O.P.No.1993 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur.

For Cross-Objectors : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar [R1]
Ex parte [R2]

COMMON JUDGMENT

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

This matter is heard through Video-Conferencing.

2. For the sake of convenience, appellant, in the appeal, is referred to as 'Insurance Company' and respondents 1 to 5, in the appeal, are referred to as 'Claimants'.

3. Questioning the finding rendered by the Tribunal in fixing the negligence on the part of the vehicle insured with the Insurance Company as well as the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 27.02.2019 passed in M.C.O.P.No.1993 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur, the Insurance Company has filed the present appeal.

4. Seeking enhancement of compensation awarded in the aforesaid judgment, claimants have filed the Cross Objection.



5. The brief facts of the case are as follows:

Claimants are wife, minor children and parents of the deceased Xavier Amulraj. On 06.12.2014 at about 1.40 p.m., while the deceased was riding a two-wheeler bearing Registration No.TN-39-BX-1630 on the Avinashi to Covai Main Road towards west, a Nissan Sunny Car bearing Registration No.TN-38-BQ-3515, which was proceeding from east to west, came in a rash and negligent manner and dashed against the two-wheeler of the deceased. In the impact, the deceased sustained grievous injuries. Immediately, the deceased was taken to Government Hospital, Avinashi, KMCH, Coimbatore and thereafter to CMCH, Coimbatore. Despite treatment, the deceased succumbed to the injuries. It is the case of claimants that the deceased was running a Mess viz., Kalamani Mess at Thekkalur and was earning a sum of Rs.15,000/- p.m. Hence, they filed a petition seeking compensation in a sum of Rs.25,00,000/- for the death of the deceased.

6. Resisting the claim made by claimants, Insurance Company has filed a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by claimants. They have also denied the age, occupation and income of the deceased. It was further stated that though a case was registered against the driver of the Car, the same was closed as 'mistake of fact'. It was the deceased, who rode the two-wheeler in a rash and negligent manner in a drunken state and dashed against the Car. Hence, the deceased, being the tort-feasor, was solely responsible for the accident. Thus, they prayed for dismissal of the claim petition.

7. To prove their claim, on the side of claimants, 3 witnesses were examined as PWs.1 to 3 and 6 documents were marked as Exs.P1 to P6. On the side of Insurance Company, 3 witnesses were examined and 2 exhibits were marked.

8. On appreciation of materials and the evidence on record, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the Nissan Sunny Car bearing Registration No.TN-38-BQ-3515. Consequently, the Tribunal directed the Insurance Company, as insurer of the offending vehicle, to pay compensation. The Tribunal awarded a sum of Rs.24,78,000/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	20,16,000/-
2.	Loss of love and affection (40000 * 5)	2,00,000/-
3.	Loss of love and affection (25000 * 5)	1,25,000/-
4.	Medical Bills	1,12,000/-
5.	Funeral expenses	15,000/-



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
6.	Transport expenses	10,000/-
	Total	24,78,000/-

Though the Tribunal had arrived at compensation in a sum of Rs.24,78,000/-, it had restricted the compensation payable only to Rs.23,00,000/- without assigning any reason. The said sum of Rs.23,00,000/- was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realisation.

9. Learned counsel for Insurance Company submits that the accident had occurred due to the rash and negligent driving of the deceased. In the claim petition, claimants have stated that while the deceased was riding the two-wheeler towards west, the Nissan Sunny Car bearing Registration No.TN-38-BQ-3515, which was coming from east to west, in a rash and negligent manner dashed against the two-wheeler. A perusal of Ex.R1 - Rough Sketch and Ex.R2 - final report would show that the Car was proceeding from east to west and the deceased, who was proceeding from north to south, dashed on the rear side of the Car and thus, caused the accident. But, the Tribunal, without taking into consideration the rough sketch and the final report, by merely placing reliance on the First Information Report, arrived at a finding that the accident had occurred due to the rash and negligent driving of the Nissan Sunny Car bearing Registration No.TN-38-BQ-3515. Hence, learned counsel prays this Court to set aside the award passed by the Tribunal.

10. The alternate submission of learned counsel is that in the event of this Court coming to the conclusion that there is negligence on the part of both the drivers of the vehicles, 50% contributory negligence may be fixed on the part of the deceased as well as the driver of the Car.

11. Per contra, learned counsel for claimants submits that though it is the claim of Insurance Company that the Car was proceeding from east to west on the Avinashi to Covai Main Road and the two-wheeler was proceeding from north to south and it was the two-wheeler that hit the rear side of the Car, there was no pleading in the counter to that effect. In the absence of any pleading, the submission made by Insurance Company, in this regard, cannot be accepted. Thus, learned counsel submits that absolutely there is no error in the finding rendered by the Tribunal in fixing the entire liability on the part of the driver of the Car. Hence, learned counsel prays for dismissal of the appeal.

12. Insofar as the quantum of compensation is concerned, learned counsel for claimants submits that the Tribunal had fixed the monthly income of the deceased at Rs.10,000/-, which is very much on the lower side. Hence, learned counsel prays this Court to fix at least a sum of 15,000/- as the monthly income of the deceased and accordingly, enhance the



compensation payable by Insurance Company.

13. This Court has considered the rival submissions. Perused the materials on record.

14. On a perusal of Ex.R2 - final report, this Court finds that though initially the case was registered against the driver of the Car, later, it was found that the accident had occurred due to the rash and negligent driving of the two-wheeler driven by the deceased and hence, the case was closed as 'mistake of fact'. However, the Tribunal, without considering the same, by merely placing reliance on the FIR, arrived at a finding that the accident was the result of rash and negligent driving of the Car. At the same time, it is also to be noted that the Insurance Company had not taken a specific defence that the Car was proceeding from east to west on the Avinashi to Covai Main Road and the two-wheeler was proceeding from north to south and it was the two-wheeler that hit the rear side of the Car. Under such circumstance, this Court is not inclined to exonerate the Insurance Company from liability. Considering the factual aspects of the case, this Court fixes 70% negligence on the part of the driver of the Car and 30% on the part of the deceased.

15. Insofar as the quantum of compensation is concerned, this Court, considering the fact that the accident took place in the year 2014 and the cost of living prevailed at that point of time, is of the view that it would be appropriate to fix a sum of Rs.14,000/- as the monthly income of the deceased. Accordingly, the monthly income of the deceased is fixed at Rs.14,000/- and the compensation payable under the head 'loss of dependency' is re-calculated as follows:

Monthly Income	:	Rs.	14,000/-
Add : Future Prospects			
40% of Rs.14,000/-	:	Rs.	5,600/-

		Rs.	19,600/-
Less : Personal expenses			
1/4 of Rs.19,600/-	:	Rs.	4,900/-

		Rs.	14,700/-
Annual income			
(Rs.14,700 *12)	:	Rs.	1,76,400/-
Multiplier	:		x 16

Loss of dependency	:	Rs.	28,22,400/-

16. Further, this Court finds that the Tribunal twice awarded compensation under the head 'loss of love and affection' in sums of Rs.1,25,000/- and Rs.2,00,000/-, which is unwarranted. Hence, the sum of Rs.1,25,000/- awarded towards loss of love and affection is set aside. Though the Tribunal awarded a sum of Rs.2,00,000/- (40000 * 5) towards loss of love



and affection, this Court is of the view that the first respondent/wife of the deceased is entitled to loss of consortium and respondents 2 to 5/children and parents of the deceased are entitled to loss of love and affection. Accordingly, a sum of Rs.40,000/- is awarded under the head of loss of consortium and consequently, the sum of Rs.2,00,000/- awarded towards loss of love and affection is reduced to Rs.1,60,000/- (40000 * 4). The amount awarded under the other heads is hereby confirmed.

17. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Award of the Tribunal (in Rs.)	Award of this Court (in Rs.)
1.	Loss of dependency	20,16,000/-	28,22,400/-
2.	Loss of love and affection	2,00,000/-	1,60,000/-
3.	Loss of love and affection	1,25,000/-	-
4.	Medical Bills	1,12,000/-	1,12,000/-
5.	Loss of consortium	-	40,000/-
6.	Funeral expenses	15,000/-	15,000/-
7.	Transport expenses	10,000/-	10,000/-
	Total	24,78,000/-	31,59,400/-
	Contributory negligence (30%)	-	9,47,820/-
	Compensation payable		22,11,580/-
	Rounded off to		22,00,000/-
	Restricted to	23,00,000/-	-

In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.23,00,000/- awarded by the Tribunal is reduced to Rs.22,00,000/- [Rupees Twenty Two Lakhs only]. The Insurance Company is directed to deposit the modified compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by Insurance Company, respondents 1, 4 and 5/wife and parents of the deceased are permitted to withdraw their respective shares, as apportioned by Tribunal, along with accrued/proportionate interest and costs, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. The share of respondents 2 and 3/minors shall be deposited in any nationalized bank in fixed deposit till they attain majority. First respondent/mother of minor is entitled to receive accrued interest once in three months towards taking care of the minors.



(ii) Cross Objection is disposed of.
No costs. Connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

gm

To

1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 10959

C.M.A.No.4754 of 2019 and
Cross Objection No.3 of 2021

PA (CO)
GN(27/09/2021)