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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.49 of 2017 and
Cross Obj. No.20 of 2020 and
CMP No.484 of 2017

M/s.Cholamandalam MS General Insurance Co. Ltd.,
Dare House, 2nd Floor,
N.S.C. Bose Road,
Chennai 600 001.

...Appellant in CMA 49/2017
/R1 in Cross Obj.20/2020

Vs

1.Lakshmi
2.M.Poovarasan (Minor)
3.Poongodi (Minor)
4.Kasi

(Respondents 2 and 3 minors represented
by mother and NF 1st respondent)

5.Kumar

...Respondents in CMA 49/2017
/R1 to R4 Cross objectors in

Cross Obj.20/2020 R5 as R2 in Cross Obj.20/2020

Common PRAYER: Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 and Cross Objection under Order 41 Rule 22 of CPC filed against the judgment and decree dated 30.10.2015 made in M.C.O.P.No.123 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : M/s.Harini
/Insurance Company for M/s.M.B.Gopalan Associates
(Appellant in CMA.49/2017 and
R1 in Cross Objection 20/2020)

For Respondents : Mr.S.P.Yuvaraj
/Claimants (R1 to 4 in CMA.49/2017 and
Appellants in Cross Objections
20/2020)

For R5 in CMA 49/2017 and
R2 in Cross Obj.20/2020 -steps not taken

C O M M O N J U D G M E N T

(The cases have been heard through Video Conferencing)

Heard the learned counsel for the appellant Insurance Company and the learned counsel for the claimants, who have filed their Cross Objection.



2. It is the case of fatal accident of 33 years old man, who died leaving behind his wife, two minor children and father. On 18.06.2013 at about 09.00 p.m. near Parasuramankottai Pirivoo in Uthangarai-Tirupattur Road, while the deceased was returning home in his two wheeler bearing Registration No. TN 24-P-2829 followed by his brother in another two wheeler, an Auto bearing Registration No. TN 23-BX-4842 owned by the fifth respondent Kumar insured with the appellant herein, the Cholamandalam General Insurance Company Limited was coming from the opposite direction dashed against the two wheeler. The same was witnessed by his brother, who was following him in another two wheeler. The injured was taken to the Government Hospital, Uthangarai where he was reported dead. The claim petition was filed by his wife, two children and father seeking compensation of Rs.20,00,000/- on the premises that the deceased was 31 years old at the time of accident earning around Rs.20,000/- per month as Carpenter and due to his sudden death, they have lost the income and dependency.

3. Before the Tribunal, the Insurance Company filed counter stating that the deceased had no valid driving license and the accident occurred due to the negligence of the deceased, who has driven a high powered engine two wheeler without license. The Tribunal on considering the rival pleadings and the evidence placed before it, awarded a sum of Rs.16,95,000/- as compensation along with 7.5% interest from the date of petition till the date of deposit. The Tribunal directed the Insurance Company to deposit the amount within 60 days and permitted the Insurance Company to recover the same from the Auto owner, since the driver of the Auto had no valid driving license.

4. Aggrieved by the said award, the Insurance Company has filed CMA No.49 of 2017 stating that the computation of the loss of income of the deceased has been erroneously arrived by the Tribunal assuming that the deceased was earning Rs.10,000/- per month. In the absence of evidence, the Tribunal ought not to have fixed such a high amount as notional income of the deceased. It is also submitted that the Tribunal has awarded excessive compensation under the other heads like loss of love and affection and loss of consortium.

5. In the Cross Objection, the claimants put forth their contention on the ground that the Tribunal had failed to pay just and fair compensation particularly after fixing the income of the deceased at Rs.10,000/- per month, no future prospects had been added.

6. The facts regarding the accident and negligence is not in dispute. The age of the deceased Murugesan has been fixed as 33 years old by the Tribunal based on the oral evidence of PW1

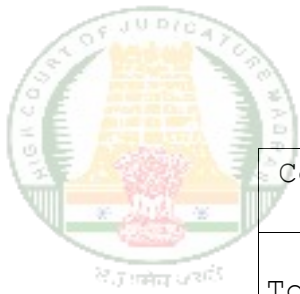


and the Death Certificate Ex.P7. The avocation of the deceased has been spoken by P.W.1 wife and P.W.2 the brother of the victim, who has witnessed the accident. The First Information Report as well as ocular evidence of P.W.2 indicates that the accident occurred when the deceased and his brother returning from their carpentry work. Though there is no documentary evidence to prove the income of the deceased, there is no contra evidence to the ocular evidence adduced by the claimant about the avocation of the deceased.

7. The accident has occurred during the year 2013 and this Court finds that fixation of Rs.10,000/- per month as notional income of the deceased person, who claims to be the Carpenter is not excessive. However, the Tribunal has not taken note of the future prospects of the deceased, which is now become mandatory in view of the Constitution Bench judgment of the Supreme Court. The deceased was aged below 40 years and non salaried person, hence 40% of notional income has to be taken as the future prospects. Since there are four dependents for the deceased, 1/4 of his income has to be deducted for his personal expenditure and the total loss of income shall be computed as Rs.20,16,000/-. $(10000+4000 \times 3/4 \times 16 \times 12)$. Regarding the compensation given under the other heads, the contention of the counsel for the Insurance company has to be accepted in the light of the Constitution Bench judgment rendered in Pranay Sethy's case.

8. Accordingly, Rs.25,000/- awarded by the Tribunal for funeral expenses is reduced to Rs.15,000/-. The loss of consortium for the first claimant/wife fixed as Rs.40,000/- and loss of love and affection for the other 3 claimants, who are minor son, minor daughter and father of the deceased is fixed as Rs.60,000/- (Rs.20,000/- each). The award of Rs.3,000/- for transport expenses and Rs.2000/- for damages to clothes are confirmed. Thus, the total compensation is enhanced to Rs.21,36,000/- as below:

Compensation under Various Heads	Award passed by this Court
Loss of Income	Rs.20,16,000/-
Loss of consortium to the first claimant/wife	Rs. 40,000/-
Funeral expenses	R. 15,000/-
Loss of love and affection to the claimants 2 to 4 (Rs.20,000 each)	Rs. 60,000/-
Transport Expenses	Rs. 3,000/-
Damages to Clothes	Rs. 2,000/-



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Compensation under Various Heads	Award passed by this Court
Total	Rs.21,36,000/-

9. Accordingly, the award is enhanced to Rs.21,36,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The said amount shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order. The said amount shall be apportioned among the claimants as below:

Claimants	Apportionment of compensation
1 st Claimant/Wife	Rs. 7,86,000/-
Claimants 2 and 3/Minors Rs.5,25,000/- each	Rs.10,50,000/-
Claimant 4/father	Rs.3,00,000/-

Till they attain majority, the compensation awarded to the minor claimants 2 and 3 along with accrued interest shall be deposited in the Post Office in a Scheme, which provides for payment of interest every six months and the said interest shall be utilised for the welfare of the minors. The first claimant is permitted to withdraw the interest and spend the same for the welfare of the minors until they attain majority. The claimants 1 and 4 are entitled to withdraw their respective share on appropriate application. The claim in Cross Objection is restricted to Rs.19,06,410/- and Court fee is paid advalorem to the claim. Since the Court finds the claimants are entitled for higher compensation than their claim, the claimants are directed to pay the deficit Court fees within three weeks from the date of receipt of the order copy.

10. Accordingly, the Civil Miscellaneous Appeal and Cross Objection are disposed of. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accidents Claims Tribunal
Special District Judge,
Krishnagiri.

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

+lcc to Mr.S.P.Yuvaraj, Advocate, S.R.No.210

CMA Nos.49 of 2017 and
Cross Objn.20 of 2020

GMR(CO)
GN(19/11/2021)