



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A(MD)No.498 of 2020

and

C.M.P(MD)No.1291 of 2021

and

CROS.OBJ.(MD)No.6 of 2021

C.M.A(MD)No.498 of 2020

United India Insurance Company Limited

Thiruchirappalli,

Represented by its Kumbakonam

Divisional Manager

... Appellant / 2nd Respondent

Vs.

1.Kavitha,

2.Thangam

3.Thilagam

4.Prema

5.Jeevitha

... Respondents 1 to 5 /
Petitioners

6.Selvamary

7.Rajaraman

8.United India Insurance Company Limited,

Kumbakonam represented by its

Divisional Manager

... Respondents 6 to 8 /
1st, 3rd and 4th Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the learned Additional Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court), Kumbakonam in M.C.O.P.No.320 of 2017, dated 31.01.2020, as against the appellant and allow the appeal.

CROS.OBJ.(MD)No.6 of 2021

1.Kavitha,

2.Thangam

3.Thilagam

4.Prema

5.Jeevitha

... Cross-Objectors



Vs.

1.United India Insurance Company Limited,
Thiruchirappalli,
Represented by its Kumbakonam
Divisional Manager

... 1st Respondent / Appellant

2.Selvamary

3.Rajaraman

4.United India Insurance Company Limited,
Kumbakonam represented by its
Divisional Manager

... 2 to 4 Respondents /
Respondents 6 to 8

PRAYER: Cross Objection is filed under Order 41, Rule 22 of C.P.C., against the Fair and Decreetal order passed in M.C.O.P.No.320 of 2017, on the file of the learned Additional Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court), Kumbakonam, dated 31.01.2020, for enhancement of compensation insofar as the disallowed portion.

For Appellant in : Mr.N.Dilip Kumar
CMA.498/2020 &
For R.1 in
Cros.Obj.6/2021

For R1 to R5 in : Mr.M.Karunanidhi
CMA.498/2020 &
For Appellant in
Cros.Obj.6/2021

For R6 to R8 in : No Appearance
CMA.498/2020 &
For R.2 to R4 in
Cros.Obj.6/2021

COMMON JUDGMENT

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

The appeal is directed against the Award passed by the Additional Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court) Kumbakonam in M.C.O.P.No.320 of 2017. The appeal is filed by the Insurance Company, aggrieved by the compensation awarded to the claimants, whereas, the



claimants have also filed the Cross Appeal, seeking enhancement of compensation.

2. The brief facts of the case is that on 10.09.2017, while one Deivasigamani riding his two wheeler, viz., Bajaj Discover, bearing Reg.No.TN-68-H-2308 in Kumbakonam to Chennai main road, at Pandanallur Junction, was hit by a lorry, bearing Reg.No.TN-28-J-6109. Due to the impact, the said Deivasigamani succumbed to the injuries.

3.The claimants are the married sisters of the deceased Deivasigamani. At the time of death, Deivasigamani was a bachelor, working as 'Turner Operator' in 'KEF Infrastructure India Private Ltd'., Krishnagiri Taluk, earning a sum of Rs.27,000/- per month. Claiming as dependants of the deceased Deivasigamani, claim petition was filed, claiming a sum of Rs.75,00,000/-, as compensation.

4. The claim was contested by the Insurance Company on the ground that the deceased was cause for the accident and only due to his negligence, accident had occurred and it was a head on collision, but for his contribution, the accident could not have occurred. The Insurance Company also disputed the alleged earning capacity of the deceased person and the dependency of the claimants upon the deceased.

5. Before the Tribunal, the claimants have examined 3 witnesses and marked 56 exhibits.

6. Regarding accident, there is no dispute. As far as negligence is concerned, the Tribunal held that the negligence was on the part of the lorry driver against whom the FIR was registered and held that the Insurance Company, which has insured the lorry, is liable to pay compensation. Accepting the salary certificate and employment certificate furnished on behalf of the claimants, fixed the monthly income of the deceased person as Rs.27,000/-, by adding 50% towards future prospects and deducting 50% for his personal expenses, being a bachelor, a total sum of Rs.41,31,000/- was awarded towards the loss of income and on the other heads, a sum of Rs.1,75,000/- in addition, was awarded.

7.The Insurance Company, being aggrieved by the quantum, has preferred the appeal on the following grounds;-

i. The Tribunal erred in not appreciating the negligence on the part of the deceased. The accident victim violated the Motor Vehicle Rules by not wearing helmet and so voluntarily invited death.



WEB COPY

(ii) The salary certificate furnished by the claimants are not genuine, since the Company, 'KEF Infrastructure India Private Ltd', in which, the deceased alleged to have been employed was admittedly taken over by another Company and the certificate furnished are not from that company.; and

(iii) Furthermore, the claimants are not real dependants of the deceased person and they are all married and settled. Neither physical or financial dependency proved by them.

8. It is to be noted that the claimants, on receipt of notice in the appeal, had chosen to file cross-appeal stating that the award passed by the Tribunal is inadequate. For loss of consortium, as per the principle laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Pranay Sethi and Others** reported in **(2017 MACD 137)**, each of the claimants ought to have been awarded Rs.40,000/-, whereas, the Tribunal has awarded only Rs.25,000/- each.

9. We have heard the counsels and perused the records.

10. The Judgments of the Hon'ble Supreme Court and other Courts were circulated in support of their respective claims. The first point to be addressed by this Court is that whether there was any contributory negligence on the part of the deceased. The evidence indicates that the accident took place, when the two wheeler driven by the deceased and the lorry owned by the 3rd respondent had an head on collision near Kumbakonam - Chennai main road, Pandanallur Junction. The Postmortem report / Ex.P4 indicates that the deceased sustained severe head injuries and it was the cause for his death. Undoubtedly, had the deceased followed the Motor Vehicle Rules scrupulously, by wearing a helmet, he could have avoided the head injury, which was fatal in this case. A violator of the Rule cannot be a beneficiary. This Court on several occasions has held that, if injuries sustained due to violation of Motor Vehicle Rules, like non-wearing of helmet, non-possession of driving licence, drunken drive etc., the violator cannot be awarded with compensation and even if any compensation awarded, the Award should be adequately reduced, subject to the contribution negligence and breach of Motor Vehicle Rules.

11. In this case, it is clear that the deceased died only due to head injuries and non-wearing of helmet has aggravated the cause of death. Therefore, this Court is of the view that 10% of the compensation to be deducted towards the contribution. As far

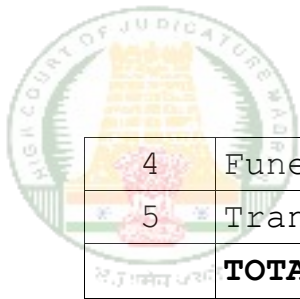


as the quantum of compensation on other heads are concerned, though doubt created over the salary certificate and the employment certificate, which are marked as Exs.P11 to P16, this Court is of the opinion that the evidence of P.W.3 / Kelvin Jerald, who was working as Human Rights Resources Department Officer of 'Kattara India Private Limited', which has taken over 'KEF Infrastructure India Private Limited', stands unimpeached. Therefore, the Tribunal's decision of fixing the monthly salary of the deceased as Rs.27,000/- is confirmed.

12. The victim, being age of 28 years and employed with monthly salary, the future prospects of the deceased has been fixed as 50% by the Tribunal. The learned counsel appearing for the Insurance company would submit that it is not a permanent job and therefore, applying the principles laid down in **Pranay Sethi's** case (cited supra), only 40% of the income to be added as future prospects and not 50%. The learned counsel for the claimants would submit that the deceased was employed on permanent basis, with basic pay of Rs.13,500/-, he was allotted Provident Fund number and Employment I.D. And therefore, he has to be considered as permanent employee under 'KEF Infrastructure India Private Limited', which was taken over subsequently by 'Kattara India Private Limited'. This Court is fully in agreement with the said submissions of the claimants' counsel.

13. As far as the Cross Objection for enhancement of compensation is concerned, this Court is of the view that the married sisters of the deceased person, due to sudden demise of their brother, has lost love and affection. The Tribunal awarded a sum of Rs.25,000/- each, as compensation, under the head, 'loss of love and affection', which is enhanced to Rs.40,000/- each. As far as the compensation awarded under other heads viz., loss of estate, funeral expenses and transport expenses are concerned, though there is minor deviation from the guidelines of the Supreme Court laid in **Pranay Sethi's** case (cited supra), being a very minimal amount, this Court is not inclined to interfere with the award under those heads and confirms the same. Thus, this Court, modifies the Award of the Tribunal, as follows:-

S.No.	Description	Amount Awarded by Tribunal	Amount Awarded by this Court	Award status
1	Loss of Income	41,31,000	37,17,900	Reduced
2	Loss of love and affection for the petitioners 1 to 5.	1,25,000	2,00,000	Enhanced
3	Loss of estate	15,000	15,000	Confirmed



4	Funeral Expenses	15,000	15,000	Confirmed
5	Transport Expenses	10,000	10,000	Confirmed
	TOTAL	42,96,000	39,57,900	

WEB COPY

14. In the result, both the Civil Miscellaneous Appeal and the Cross Objection are allowed in part. The amount awarded by the Tribunal is reduced to Rs.39,57,900/- from Rs.42,96,000/-. The appellant Insurance Company is directed to deposit the award amount, now fixed by this Court, less the amount already deposited, if any, with interest at 7.5% p.a., from the date of claim petition till the date of deposit, in M.C.O.P.No.320 of 2017, on the file of Additional Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court), Kumbakonam, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit is being made, the claimants are permitted to withdraw their share in the award amount together with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, by filing necessary application before the Tribunal. If the entire award amount is already deposited, the appellant Insurance Company is permitted to withdraw the excess award amount with accrued interest and costs. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

To

The Additional Motor Accident Claims Tribunal /
Additional District Judge
(Fast Track Court), Kumbakonam.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-34331[F] dated 12/11/2021)

**C.M.A(MD)No.498 of 2020
and CROS.OBJ. (MD)No.6 of 2021
11.11.2021**