WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **26.02.2021**

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.103 of 2018
and
C.M.P(MD)No.1574 of 2018

HDFC ERGO General Insurance Company Limited,
First Floor, 165-166, Bank Bay Reclamation,
H.T.Parekh Marg,
Church Gate,
Mumbai – 400 020. : Appellant /Respondent No.2

Vs.

1.B.Bommi

2.B.Ilakkiya

(Amended as per order in I.A.No.59/17,
dated 27.02.2017)

3.P.Priyadarshini

(Amended as per order in I.A.No.61 of 2017,
dated 27.02.2017)

4.Minor P.Bhavani Suruthi

5.Subbiah

6.S.Seeniyammal :Respondents 1 to 6/Petitioners 1 to 6

7.Jubi Issac : 7th Respondent/ Respondent No.I

(4th respondent being minor, representedby her mother
and natural guardian, the first respondent herein.)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order made in M.C.O.P.No.114 of 2014, dated 26.10.2017,on the file of the Motor Accident Claims Tribunal(Sub-Court), Uthamapalayam.

For Appellant : Mr.S.Srinivasa Raghavan

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

WEB COPY

For Respondents 1 to 6 : Mr.G.Vanjinathan

For Respondent-7 : No appearance

JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.)

Being aggrieved by the Award and Decree, dated 26.10.2017 passed by the Motor Accidents Claims Tribunal/Sub-Court, Uthamapalayam in M.C.O.P.No.114 of 2014 in respect of the quantum of compensation awarded to the claimants for the death of the deceased Bodhiraj in a road traffic accident occurred on 10.09.2014, Appellant – The HDFC ERGO Insurance Company Limited, Mumbai-20 has preferred this appeal.

2.Brief facts are that on 10.09.2014 at about 7.00 p.m., while the deceased Bodhirajan along with one Ambeth, both belonging to the same village, were driving their Bajaj two-wheeler vehicle bearing Registration No. TN 60 H 0375 in south to north direction, near Veeriah Chettiar thottam at Kottur Road, the Santro Car bearing Registration No. KL 5 Y 8136, belonging to the 7th respondent herein/Ist respondent in M.C.O.P, insured with the 2nd respondent in M.C.O.P/appellant herein, was driven by its driver towards south to north direction in a rash and negligent manner dashed against their vehicle and in the impact, the said Bodhirajan died on spot and the said Ambeth died during treatment. In this regard a case in Crime No.486 of 2014 under Sections 279, 337 and 304 of IPC and it is pending at the stage of trial before the learned Judicial Magistrate, Uthamapalayam. For the death of the said Bodhirajan, the claimants/respondents 1 to 6 herein have filed the claim petition claiming a compensation of Rs.30 lakhs along with 9% interest and costs.

3.Resisting the Claim Petition, Appellant – Insurance Company has filed a counter affidavit contending that the accident had not occurred due to the negligence on the part of the 7th respondent herein and the quantum of compensation claimed by Claimants is highly excessive and the same is claimed without any basis.

4.Before the Tribunal, On the side of the claimants, the wife of the deceased, the first respondent herein was examined as P.W.1 and one Anandan was examined as P.W.2 and Ex.P1 to Ex.P11 were marked. On the side of the appellant, one Ashok, driver of the offending vehicle, was examined as R.W.1 and Ex.R1 was marked.

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

5.Upon consideration of both oral and documentary evidence adduced on either side and on appreciation of the same, the Tribunal has fastened the liability on the sixth respondent/vehicle, which was insured with the appellant/Insurance Company and directed the appellant to pay compensation to the claimants and awarded a total compensation of Rs.25,00,000/-(Rupees twenty five lakhs only), under various heads.

6.Heard the learned counsels appearing on either side and perused the materials available on record.

7.The learned counsel for the appellant has filed this appeal mainly disputing the quantum of compensation awarded by the Tribunal stating that the Tribunal had erred in fixing a sum of Rs.15,000/- as notional income of the deceased and that there was no proof for the avocation and income of the deceased and that the Tribunal has awarded a sum of Rs.2 lakhs for loss of consortium and another sum of Rs.2 lakhs for loss of love and affection which is on higher side and hence the same is liable to be reduced considerably.

8.The deceased was found to be an agriculturist besides doing the job of Mechanic and other jobs and he was earning a sum of Rs.15,000/- as monthly income. Though it is admitted by the learned counsel for the appellant/Insurance company that there is no proof for the income, considering the fact that there are six claimants who are wife, children and parents of the deceased,we are inclined to retain the said Rs.15,000/- as monthly income, however, without adding any sum towards future prospects. Therefore the annual income of the deceased would come to Rs.15,000 x 12 = Rs.1,80,000/-, from which, 1/5th amount has to be deducted for personal expenses which comes to Rs.36,000/- and hence the annual income comes to Rs.1,44,000/-(Rs.1,80,000/- - Rs.36,000/- = Rs.1,44,000/-). Considering the age of the deceased the proper multiplier to be adopted is '14' which would make the total loss income at Rs.20,16,000/- (Rs.1,44,000 x 14 = Rs.20,16,000/-) Insofar as the loss of consortium and loss of love and affection to the first respondent/wife is concerned, as per the ***Magma General Insurance Co. Ltd., v. Nanu Ram & Others.,*** reported in ***2018 (1) TN MAC 452 (SC),*** it is only Rs.40,000/- permissible for each of the claimants which would come to Rs.40,000/- x 6 =Rs.2,40,000/-. In addition, this Court awards a sum of Rs.15,000/- towards loss of estate and Rs.25,000/- towards funeral expenses and another sum of Rs.10,000/- towards transport expenses(total Rs.50,000/-). In total, the claimants are entitled to a sum of Rs.23,06,000/-.

9.The Tribunal had granted a sum of Rs. 2 lakhs to the first respondent/wife towards loss of consortium and loss of love and affection , a sum of Rs.2 lakhs towards loss of love and affection to the respondents 2,3 and 4/children and another sum of Rs.1 lakhs to the respondents 5 and 6/parents towards loss of love and affection. The above said amounts are modified as indicated above

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

WEB COPY

as per the ***Magma Insurance case***. Therefore the award of Rs.25 lakhs as awarded by the Tribunal is reduced to Rs.23,06,000/-.The interest as awarded by the Tribunal at 7.5% stands confirmed.

10.Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	20,25,000/-	20,16,000/-	reduced
2.	Loss of Consortium to the 1st petitioner, wife of the deceased	2,00,000	40,000/-	reduced
3.	Loss of love affection to the two minor children (Respondents 2,3 and 4)	2,00,000/-	Rs.1,20,000/- (40,000 X 3)	reduced
4.	Funeral Expenses	15,000	25,000	enhanced
5.	Transport Charges	----	10,000	Newly awarded
6.	Loss of Estate	-----	15,000	Newly awarded
7.	For loss of love and affection to the respondents 5 and 6	1,00,000	80,000 (Rs.40,000/- x 2)	reduced
8.	Total	Rs.25,40,000/- rounded off to Rs.25,00,000/-	Rs.23,06,000/-	Reduced by Rs.1,94,000/-

11.In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i)The Award of the Tribunal is reduced from Rs.25,00,000/- to Rs.23,06,000/-.

(ii)The interest granted by the Tribunal at 7.5% per annum is confirmed.

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

WEB COPY

(iii)The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv)It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount has been deposited to the credit of Claim Petition and the claimants have also withdrawn 50% of the award amount.

(v)The respondents 1,2,3,5 and 6/claimants 1,2,3,5 and 6 are permitted to withdraw their remaining share in the modified award amount with proportionate accrued interest and costs by filing formal application before the Tribunal. The share of the minor claimant/ Respondent No.4 is permitted to be kept in interest bearing fixed deposit, in any of the Nationalized Bank till she attain majority and the guardian / first respondent/mother of the minor daughter is permitted to withdraw the interest amount once in three months and utilize the same for the welfare of the minor daughter.

(vi)The Tribunal is directed to refund the excess award amount, if any, to the appellant/Insurance Company, along with proportionate accrued interest.

No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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

WEB COPY

To
1.The Subordinate Judge,
(Motor Vehicles Accident Claims Tribunal)
Uthamapalayam.

2.The Section Officer,
VR Section,Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.G.VANJINATHAN, Advocate (SR-7714[F] dated 01/03/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-7967[F] dated 01/03/2021)

Judgment made in
C.M.A(MD)No.103 of 2018
26.02.2021

MJ(CO)
KK(30.03.2021) 6P 6C

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