

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	11.02.2021
Date of Judgment	12.05.2021

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.1082 of 2016
and
Cross Objection (MD) No.3 of 2017
and
CMP (MD) no.9750 of 2016

(1) CMA (MD) No.1082 of 2016:-

United India Insurance Company Ltd,
The Branch Manager,
Assisi Buildings,
P.W.D Road, Veepamoodu Junction,
Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

: Appellant/3rd Respondent

Vs.

1.N.Kolammal
2.G.Krishnan
3.G.Harini
4.Tmt.Valliammal
5.S.Kumar (Driver)

: R1 to R4/Petitioners

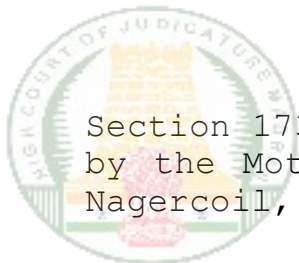
6.M.Shanmughavelu (Bus Owner)

: R5 and R6/R1 and R2

(R2 and R3 are declared as major
and discharged from the guardianship
of their mother, vide court order,
dated 24.09.2020 made in CMP (MD)
No4344 and 4345 of 2020 in
CMA (MD) No.1082 of 2016)

For Appellant : Mr.N.Dilipkumar
For R1 to R4 : Mr.G.Venugopal
For R5 and R6 : Dismissed, vide order,
Dated 29.01.2019

PRAYER:- Civil Miscellaneous Appeal has been filed under<https://hcservices.ecourts.gov.in/hcservices/>



Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil, made in MCOP No.47 of 2013, dated 11.12.2013.

(2) Cross Objection (MD) No.3 of 2017:-

- 1.N.Kolammal
2.G.Krishnan
3.G.Harini
4.Tmt.Valliammal

: Cross Objectors/R1 to R4

(Cross Objectors 2 and 3 are declared as major and discharged from guardianship of their mother, vide order, dated 24.09.2020 made in CMP (MD) Nos.4348 & 4350 of 2020 in Cross Objection (MD) No.3 of 2017)

Vs.

- 1.United India Insurance Company Ltd,
The Branch Manager,
Assisi Buildings,
P.W.D Road, Veepamoodu Junction,
Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

: 1st Respondent/Appellant

- 2.S.Kumar
3.M.Shanmugahvelu

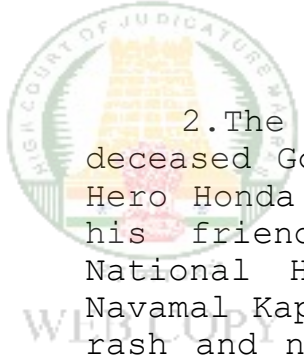
: R2 and R3/R2 and R3

PRAYER:- Cross Objection has been filed under Order 41 Rule 22 of the Civil Procedure Code, against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil, made in MCOP No.47 of 2013, dated 11.12.2013.

For Cross Objectors	: Mr.G.Venugopal
For 1 st Respondent	: Mr.N.Dilip Kumar
For R2 and 3	: Dismissed, vide court order, Dated 29.01.2019

COMMON JUDGMENT

Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil, made in MCOP No.47 of 2013, dated 11.12.2013, whereas the Cross Objection is filed by the claimants seeking enhancement of compensation.



2.The short facts of the case is that on 04.05.2010, the deceased Gopal was travelling as a pillion rider in the motor Bike Hero Honda Splender PY-01-AV-7156, while driving the motor cycle by his friend one K.Ravi, on east-west Pondichery to Villupuram National Highways Main road an when they were proceeding near Navamal Kapper Thamaraikulam, the private bus TN-38-D-1881 came in a rash and negligent manner and dashed against the motor cycle. In the accident, the both the rider and pillion rider were sustained grievous injuries all over the body and they were immediately taken to the Pondichery Government Hospital and after taking treatment the deceased Gopal died. The legal heirs of the deceased Gopal filed a claim petition claiming compensation of Rs.35,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 44 years at the time of accident and he was working in the private company namely Safetab Life Science as Computer Operator-cum-Accountant, thereby he was earning Rs.15,780/- per month. It is alleged that the said Gopal died only due to the negligence of the driver of the offending vehicle.

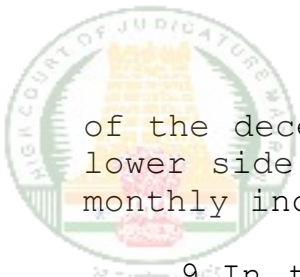
4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 3 witness was examined and marked 29 documents. On the side of the Appellant Insurance Company, no witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.22,26,350/- together with interest @ 7.5% p.a directing the appellant Insurance Company to pay the compensation amount to the claimants. Aggrieved over the same, the both the Insurance Company as well as the claimants are before this court.

7.Heard the learned counsel appearing for the appellant and perused the materials available on record.

8.The dispute is in respect of the quantum. The learned counsel appearing for the appellant/3rd respondent argued that the income arrived by the tribunal is on the higher side and hence, the claimants are not entitled to the compensation and prays that the Civil Miscellaneous Appeal has to be allowed. On the other hand, the learned counsel appearing for the Cross Objectors/Claimants submitted that the monthly income of the deceased is Rs.15,780/-, but the tribunal fixed the monthly income of the deceased as Rs.11,560/- without any basis and hence, for arriving loss of income



of the deceased, the monthly income fixed by the tribunal is on the lower side and prays for enhancement of compensation, by fixing the monthly income of the deceased at Rs.15,780/- .

9. In this case it is stated that at the time of accident, the deceased was working in a private concern as a permanent employee. The claimants filed Ex.P10 to prove the monthly salary of the deceased. On perusal of Ex.P10 it is stated that the monthly income of the deceased is shown as Rs.15,780/-. Further, to prove the monthly salary of the deceased, the claimants filed Exs.P23 to P29. Ex.P24 is the monthly salary of the deceased from January 2010 to May 2010. The date of accident is 17.05.2010. Hence, as per the monthly salary of the deceased for the month of April is shown as Rs.13,970/-. Hence, the loss of income of the deceased can be arrived on the basis of the monthly salary for month of April 2010. Hence, the monthly salary of the deceased is fixed at Rs.13,970/- per month.

10. In this case at the time of accident, the age of the deceased is 44 years and had permanent job. It is settled law that in case the deceased had a permanent job and was below the age of 40 years, 30% should be added towards future prospects. while determining the income. In the instant case, the tribunal has added 50% towards future prospects. Hence, this court is of the considered view that 30% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.18,161/- (Rs.13,970/- + Rs.4,191/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.13,621/- (Rs.18,161/- x 1/4). By applying proper multiplier 14, this court awards **Rs.22,88,328/-** (Rs.13,621/- x 12 x 14) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.1,20,000/- towards loss of consortium to the claimants 2 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.24,78,328/-** together with interest @ 7.5% p.a.

11. In the result, both the Civil Miscellaneous Appeal and the Cross Objection are disposed of. The award is enhanced to **Rs.24,78,328/-**. The appellant Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, all the claimants are entitled to withdraw the modified amount together with



interest and cost, as per the apportionment of the tribunal. The claimants shall pay the additional court fee for the enhanced amount. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

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.

To,

1.The Motor Accident Claims Tribunal/
Sub Court, Nagercoil.

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

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-18536[F] dated 13/05/2021)

CMA (MD) No.1082 of 2016
and

Cross Objection (MD) No.3 of 2017
12.05.2021

KG (CO)

KB(16.09.2021) 5P 5C