IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.422 and 1533 of 2022
and C.M.P.No.2937 of 2022

C.M.A.No.422 of 2022

The Branch Manager
Reliance General Insurance Co. Ltd.
Reliance House, 6th floor
6, Haddows Road, Nungambakkam
Chennai-600 006. ... Appellant

Vs.

1.R.Mathiyalagan

2.M.Santhi

3.D.Natarajan ... Respondents

C.M.A.No.1533 of 2022

1.R.Mathialagan

2.M.Santhi ... Appellants

vs.

1.D.Natarajan

2.Reliance General Insurance Co. Ltd.
No.6, 6th floor, Reliance House
Haddows Road, Nungambakkam
Chennai-600 006. ... Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2020 made in M.C.O.P.No.2360 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

In C.M.A.No.422 of 2022

For Appellant : Mrs.C.Buvanasundari

For R1 & R2 : Mrs.Ramya V.Rao

In C.M.A.No.1533 of 2022

For Appellants : Mrs.Ramya V.Rao

For R2 : Mrs.C.Buvanasundari

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

C.M.A.No.422 of 2022 is filed by the Insurance Company against the judgment and decree dated 22.07.2020 made in M.C.O.P.No.2360 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

C.M.A.No.1533 of 2022 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 22.07.2020 made in M.C.O.P.No.2360 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the claim petition in M.C.O.P.No.2360 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore, claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., M.Gowthaman, who died in the accident that took place on 05.04.2016.

4.According to the claimants, on the date of accident, i.e., on 05.04.2016 at about 7.30 hours, while their son Gowthaman was riding the Bajaj Discover motorcycle bearing Registration No.TN-31-AP-5509 from Sri

City (Andhra Pradesh) to Avadi Back, on the extreme left side of Thatchur Cross Road, the driver of the lorry belonging to 1st respondent bearing Registration No.TN-28-2677, who was proceeding in front of the motorcycle, drove the same in a rash and negligent manner, without showing any signal or indicator, suddenly applied brake. Though the said Gowthaman tried to stop his motorcycle by applying brake, his motorcycle dragged on, hit behind the lorry and caused the accident. In the accident, the said Gowthaman died on the spot. Therefore, the claimants filed the above claim petition claiming compensation for the death of their son against the respondents being the owner and insurer of the lorry.

5.The 1st respondent, owner of the lorry remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that at the time of accident, the deceased Gowthaman did not wear helmet and did not possess driving license. The deceased alone rode the motorcycle at high speed and invited the accident. The owner and insurer of the motorcycle driven by the deceased were not made as parties and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the Insurance Company is not liable to pay any compensation to the claimants. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st claimant, father of the deceased examined himself as P.W.1, one Ravishankar, eye-witness to the accident, was examined as P.W.2, one Saravanan, Senior Executive of the Company where the deceased was working at the time of accident, was examined as P.W.3, one Tamil Nilavan, brother of the deceased, claimant in the connected MCOP No.2361 of 2016 examined himself as P.W.4 and 17 documents were marked as Exs.P1 to P17. The respondents did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.24,26,736/- as compensation to the claimants.

9.Against the said award dated 22.07.2020 made in M.C.O.P.No.2360 of 2016, the 2nd respondent/Insurance Company has come out with C.M.A.No.422 of 2022. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.1533 of 2022.

10.The learned counsel appearing for the claimants contended that at the time of accident, the deceased Gowthaman was working as a Technician in Rising Stars Mobile India Private Limited, Siddam Agraharam, Andhra Pradesh and was earning a sum of Rs.15,000/- per month. The claimants, who are parents of the deceased lost their son at his young age in the accident. The Tribunal without considering the same, awarded meagre amount towards loss of love and affection. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of compensation by allowing the appeal filed by the claimants and dismissing the appeal filed by the 2nd respondent/Insurance Company.

11.Though the 2nd respondent/Insurance Company raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the 2nd respondent/Insurance Company restricted her arguments only with regard to quantum of compensation awarded by the Tribunal and contended that the Tribunal erred in granting 50% enhancement towards future prospects instead of 40%. In any event, the total compensation granted by the Tribunal is excessive and prayed for allowing the appeal filed by the 2nd respondent/Insurance Company and dismissing the appeal filed by the claimants.

12.Heard the learned counsel appearing for the claimants as well as 2nd respondent and perused the entire materials on record.

13.From the materials on record, it is seen that it is the case of the claimants that at the time of accident, the deceased Gowthaman was working as Technician in the Ware house in Rising Stars Mobile India Private Limited, Siddam Agraharam, Andhra Pradesh and was earning a sum of Rs.15,000/- per month. To prove the same, they have examined one Saravanan, Senior

Executive of the said company, as P.W.3 and marked the salary certificate, job offer and appointment letters as Exs.P12, P16 and P17 respectively. The Tribunal considering the evidence of P.W.3 and the documents marked, rightly fixed a sum of Rs.14,628/- as monthly income of the deceased and the same is not interfered with. The deceased was aged 21 years at the time of accident as per Ex.P12. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** has rightly applied multiplier '18' and deducted 50% towards personal expenses as the deceased Gowthaman died as a bachelor. But the Tribunal erred in granting 50% enhancement towards future prospects. The claimants are entitled to only 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**. Thus, by granting 40% enhancement towards future prospects, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.22,11,732/- (14,628 + 5851 (Rs.14,628/- X 40%) X 12 X 18 X 50%). The amount granted by the Tribunal towards loss of love and affection is meagre. Considering the fact that the claimants lost their son at young age, the amount granted for loss of love and affection is enhanced from Rs.20,000/- to Rs.80,000/- (Rs.40,000/- each to the claimants) as the amount granted by the Tribunal is meagre. In addition to that, the Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses, Rs.7,000/- towards transportation and Rs.15,000/- towards loss of estate, which are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by 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 or reduced
1.	Loss of dependency	23,69,736	22,11,732	Reduced
2.	Loss of love and affection	20,000	80,000 (Rs.40,000/- each)	Enhanced
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Transportation	7,000	7,000	Confirmed
5.	Loss of estate	15,000	15,000	Confirmed
	Total	**24,26,736**	**23,28,732**	**Reduced by Rs.98,004/-**

14.In the result, C.M.A.No.422 of 2022 filed by the Insurance

Company is partly allowed in respect of the head "loss of dependency" and C.M.A.No.1533 of 2022 filed by the claimants is partly allowed in respect of the head "loss of love and affection". The compensation of Rs.24,26,736/- awarded by the Tribunal is hereby reduced to Rs.23,28,732/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit a sum of Rs.23,28,732/-, the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2360 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
29.11.2022

Index : Yes / No
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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal
Cuddalore.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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and C.M.P.No.2937 of 2022

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