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C.M.A.No.1048 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.M.A. No.1048 of 2022
and C.M.P.No.7742 of 2022

Reliance General Ins. Co. Ltd.,
Reliance House, 6th Floor, No.6 Haddows Road,
Nungambakkam, Chennai 34.

.. Appellant

Vs.

1.Jayalakshmi

2.Annamalai

3.K.Selvi

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2021, made in M.C.O.P. No.6992 of 2016, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.



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For Appellant : Mr.C.Bhuvanasundari

For R1 : Mr.Amar Dineshbhai Pandiya

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 04.09.2021, made in M.C.O.P. No.6992 of 2016, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.6992 of 2016, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The respondents 1 and 2/claimants filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Suresh who died in the accident that took place on 06.09.2016.

3.According to the respondents 1 and 2, on the date of accident, at about 20.15 hours, when the deceased Suresh was riding a Motorcycle



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bearing Registration No.TN-20-U-3016 from Kumpinipet to his residence in Arakkonam to Sholinghur Road, near OJR Complex at Nethaji Nagar, the driver of a Mini Lorry bearing Registration No.TN-73-A-0003 owned by the 3rd respondent drove the same from Arakkonam towards Kumpinipet, in a rash and negligent manner endangering public safety and dashed on the Motorcycle driven by the deceased Suresh and caused the accident. In the accident, the said Suresh sustained grievous head injuries and died in the Hospital. The accident occurred only due to rash and negligent driving by the driver of the Mini Lorry owned by the 3rd respondent and hence, the respondents 1 and 2 filed the said claim petition claiming compensation against the 3rd respondent and appellant-Insurance Company as owner and insurer of the Mini Lorry respectively.

4.The 3rd respondent, owner of the Mini Lorry, remained exparte before the Tribunal.

5.The appellant, insurer of the Mini Lorry, filed counter statement and



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denied all the averments made by the respondents 1 and 2. According to the appellant-Insurance Company, the accident occurred only due to the rash and negligent riding of Motorcycle by the deceased Suresh. Hence, the appellant as insurer of the Mini Lorry is not liable to indemnify the 3rd respondent/owner of the Mini Lorry. In any event, the respondents 1 and 2 have to prove the age, avocation and income of the deceased Suresh to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one N.Karthick, eye-witness to the accident was examined as P.W.2 and 19 documents were marked as Exs.P1 to P19. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Mini Lorry and directed the appellant as insurer of the said vehicle to pay a sum of Rs.20,39,000/- as compensation to the



respondents 1 and 2.

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8. Against the said award of the Tribunal dated 04.09.2021, made in M.C.O.P. No.6992 of 2016, the appellant - Insurance Company has come out with the present appeal.

9. Though the appellant-Insurance Company raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the appellant restricted her arguments only with regard to quantum of compensation awarded by the Tribunal. According to the appellant-Insurance Company, at the time of accident, the deceased Suresh was a Bachelor. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]**, erroneously deducted 1/3rd towards personal expenses of the deceased. As confirmed in 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]**, 50% has to be



deducted towards personal expenses of the bachelor. The amounts awarded by the Tribunal towards loss of love and affection and other non-conventional heads are also excessive and prayed for reducing the compensation granted to the respondents 1 and 2.

10.Per contra, the learned counsel appearing for the 1st respondent submitted that at the time of accident, the deceased Suresh was aged 28 years, working as a Mason and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed only a meagre sum of Rs.10,000/- per month as notional income of the deceased and awarded compensation towards loss of dependency. In view of the meagre amount fixed as monthly income, deduction of 1/3rd need not be interfered with. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the entire materials



available on record.

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12.From the materials on record, it is seen that it is the case of the respondents 1 and 2 that on the date of accident, the deceased Suresh was a bachelor aged 28 years, working as a Mason and was earning a sum of Rs.20,000/- per month. The respondents 1 and 2 did not file any documents to prove the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal considering the accident of the year 2016 and nature of work done by the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased. The notional income fixed by the Tribunal is not excessive. The Tribunal, on perusal of Ex.P7 - Driving License, fixed the age of the deceased Suresh as 29 years. Following the judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]**, the Tribunal though rightly granted 40% enhancement towards future prospects, erroneously deducted 1/3rd towards



personal expenses of the deceased without considering the fact that the deceased was a bachelor at the time of accident. As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court** (cited supra), 50% has to be deducted towards personal expenses of a bachelor. Hence, fixing the monthly income at Rs.10,000/-, granting 40% enhancement towards future prospects, deducting 50% towards personal expenses of the deceased and applying the multiplier '17', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.14,28,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 17 x 50%}. The Tribunal has excessively granted a sum of Rs.1,00,000/- towards loss of love and affection to the respondents 1 and 2. The respondents 1 and 2, who are the parents of the deceased Suresh are entitled to only Rs.40,000/- each towards loss of filial consortium. Hence, the amount of Rs.1,00,000/- granted by the Tribunal towards loss of love and affection is modified and a sum of Rs.80,000/- is granted towards loss of filial consortium. The sum of Rs.5,000/- granted by the Tribunal towards transportation charges is meagre and hence, the same is enhanced to Rs.10,000/-. The amounts awarded by the



Tribunal under other heads are just and reasonable and hence, 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
1.	Loss of dependency	19,04,000/-	14,28,000/-	Reduced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of filial consortium	1,00,000/-	80,000/-	Reduced
5.	Transportation charges	5,000/-	10,000/-	Enhanced
	Total	20,39,000/-	15,48,000/-	Reduced by Rs.4,91,000/-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,39,000/- is modified and reduced to Rs.15,48,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of eight weeks from the



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date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.6992 of 2016. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.6992 of 2016, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 and 2 have already withdrawn the entire award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 and 2. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S, J)
22.09.2022

Index : Yes/No
Speaking Order : Yes/No
gsa

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To
1.The IV Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.



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V.M.VELUMANI, J.
and
T.V.THAMILSELVI, J.

(gsa)

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