



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No.1254 of 2018 and Cross Obj. No.59 of 2018
and CMP.No.10181 of 2018

C.M.A.No.1254 of 2018

M/s.Cholamandalam MS General Insurance
Company Ltd.,
Head Office, Dare House,
2nd Floor, No.2, NSC Bose Road,
Chennai 600 001, Branch Office, No.9, First Floor,
Rajaji Road, State Bank of Travancore,
Upstairs, Peramanur, Salem 636 007.

...appellant

Vs.

1. Kumudhavalli
2. Minor V. Dilip
3. Minor V. Devasri
[Minors rep. by their next friend and
mother Kumudhavalli]
4. S.Murugesan
5. Arulprakash

...respondents

For Appellant	: Mr.K.Vinod
For Respondents	
for RR1 to 4	: Mr.R.Navaneethakrishnam
for R5	: Mr.T.Arulmozivarman
	for Mrs.S.Agalya



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.10.2017 made in MCOP.No.2906 of 2015 on the file of the Motor Accident Claims Tribunal (I Additional Court), Salem.

Cross Obj.No.59 of 2018

Arulprakash

...Cross Objector

1. Kumudhavalli
2. Minor V. Dilip
3. Minor V. Devasri
4. S.Murugesan
5. M/s.Cholamandalam MS General
Insurance Company,
Head Office, Dare House,
2nd Floor, No.2, NSC Bose Road,
Chennai 600 001.
Branch Office, No.9, First Floor,
Rajaji Road, State Bank of Travancore,
Upstairs, Peramanur, Salem 636 007.

...respondents

Prayer: Cross Objection filed under Order 41, Rule 22 of CPC to enhance the share of the cross objector/3rd respondent in MCOP.No.2906 of 2015 on the file of the Motor Accidents Claims Tribunal / I Additional District Court, Salem.



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C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

For Appellant : Mr.T.Arulmozivarman
for Mrs.S.Agalya
For Respondents
for RR1 to 3 : Mr.R.Navaneethakrishnam
for R4 : ex-parte
for R5 : Mr.K.Vinod

COMMON JUDGMENT

[Judgment of the Court was delivered S.S.SUNDAR, J]

This Civil Miscellaneous Appeal is filed by the Insurance Company as against the judgment and decree dated 11.10.2017 made in MCOP.No.2906 of 2015 on the file of the Motor Accident Claims Tribunal (I Additional Court), Salem. As against the same judgment and decree, cross objection is filed by the third respondent in the claim petition, who is the son of the first wife of the deceased.

2. For the sake of convenience, the parties are referred to as per their litigating status before the Tribunal.

3. It is the case of the claimants that they are the wife, children and father of the deceased Vedichi and the third defendant is the son of the first



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

wife of the deceased. On 13.11.2015, when the deceased was riding his motorcycle on Sangakiri to Salem Main Road, he dashed against the vehicle viz., Tata Ace bearing Registration No.TN 33 BE 0610, which was owned by the first respondent and insured with the second respondent. It is the specific case of the claimants that Tata Ace was parked in a no parking area at night time without any signal indicating parking of the vehicle and following safety measures. In the said situation, the deceased hit the Tata Ace vehicle and lost control and fell on the road. Due to the impact, the deceased sustained grievous injuries and immediately, he was admitted in a Hospital, but unfortunately he died.

4. The age of the deceased was 47 years at the time of the accident and he was working as a Police Head Constable and earning Rs.40,000/- per month. Hence, they filed the claim petition seeking a compensation of Rs.1 Crore.

5. The appellant/Insurance Company filed a counter before the Tribunal stating that the accident was due to the rash and negligent driving of the two wheeler by the deceased. It was stated by the Insurance Company that by parking the Tata Ace on the left side of the road, the driver and



cleaner were replacing the punctured tyre. At that time, the indicator of the Tata Ace was switched on and in addition to that, the cleaner was holding torch light. However, the deceased came in his two wheeler in a rash and negligent manner and hit the driver and cleaner and fell on the road and died due to the head injury.

6. The Tribunal after considering the entire facts fixed 25% contributory negligence on the part of the deceased and 75% on the part of the Driver and cleaner and directed the Insurance Company to indemnify the liability against them. Admittedly, the deceased was working as a Police Head Constable in Kolathur Police Station. Though it is stated that the deceased was drawing a monthly salary of Rs.40,000/-, after standard deduction, the Tribunal by taking Rs.33,000/- as the monthly salary of the deceased, arrived Rs.52,63,380/- towards compensation. Since 25% negligence was fixed on the part of the deceased, the Tribunal awarded Rs.39,47,535/- [52,63,380 - 13,15,845] as compensation to the claimants.

7. It is the submission of the learned counsel for the appellant/Insurance Company that having regard to the fact that the



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

deceased did not wear helmet and also considering the place of accident, the Tribunal ought to have fixed 50% of negligence on the part of the deceased.

8. The next contention of the learned counsel for the appellant is that the Tribunal has added 50% of the income of the deceased towards future prospects, however, considering the age of the deceased, the Tribunal ought to have added only 30%.

9. In reply, the learned counsel appearing for the claimants submitted that the finding of the Trial Court in fixing 25% contributory negligence on the part of the deceased is justified in view of the fact that the vehicle Tata Ace was parked on the road, which is having only a width of 20 feet, without following any precaution and signal indicating the parking of the vehicle.

10. The counsel appearing for the third respondent, who has filed cross objection, has submitted that the third respondent has no grievance for the addition of future prospects at the rate of 30% as stated by the Insurance Company. However, he pointed out that as the number of dependents are 4,



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of 1/3.

11. Considering the arguments advanced on either side this Court is of the view that the contributory negligence is supported by proper reasoning. First of all, the plan drawn by the Inspector of Police gives a clear picture that the the Tata Ace vehicle was parked on the left hand side of the road and the road is having a width of 20 feet. It is stated that the driver and the cleaner were changing the punctured tyre, as it would certainly occupy more than half of the road. Since there was no proper parking signal or other precautions as prescribed by the Rules while parking the vehicles in the highway at night time, it could be the main reason for the said accident. On the other hand, if the deceased had driven his two wheeler in a careful manner, he would not have hit the vehicle. Hence, this Court is of the view that the Tribunal has rightly fixed the contributory negligence on the part of the deceased at 25% and 75% on the part of the driver and cleaner and directed the Insurance Company to indemnify them.

12. As regard future prospects, it is rightly contended by the learned counsel for the Insurance Company that as per the decision of the Supreme



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

Court in *National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*, considering the age of the deceased was 47 years at the time of the accident, 30% of the income of the deceased should be added towards future prospects instead of 50%.

13. It is the submission of the learned counsel for the claimants that the Tribunal wrongly deducted 1/3 of the income of the deceased towards personal expenses. It is admitted that the deceased has left his wife and three children as his legal heirs. Since the dependents of the deceased are 4 in number, as per the decision of the Hon'ble Supreme Court 1/4th of the income should be deducted towards personal expenses of the deceased.

14. Further, the cross objector, is also a son of the deceased, who born to his first wife seeks equal share as other children. However third respondent himself had admitted in his evidence as RW3 that he is living independently all alone and he is not a dependent of his deceased father. In the said circumstances, this Court is inclined to hold that the cross objector/fifth respondent is entitled for compensation of half of the share as allotted to other children.



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

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15. As regards quantum, this Court finds that the income of the deceased taken by the Tribunal at Rs.33,000/- is just and proper and the Loss of Income of the deceased is arrived as follows:

Loss of Income

Monthly income of the deceased	: 33,000
Add: 30% towards Future Prospects	: <u>9,900</u> 42,900
Annual Income [42,900 x 12]	: 5,14,800
Less: 1/4 towards Personal Expenses	: <u>1,28,700</u> 3,86,100
Applying multiplier 13 [3,86,100 x 13]	: 50,19,300

16. Considering the young age of the first claimant, who is the wife of the deceased and the financial conditions, this Court enhances the amount of Rs.20,000/- awarded by the Tribunal to the first claimant towards Loss of Consortium to Rs.40,000/-. Similarly, the sum of Rs.20,000/- awarded to the third respondent under the head Loss of Love and Affection is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal under the other heads are just and fair and hence, they are confirmed. Thus, the total



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

compensation comes to Rs.51,72,180/-. Since 25% negligence is fixed on the part of the deceased, the actual compensation comes to Rs.38,79,135/- [51,72,180 - 12,93,045]. Thus, the claimants are entitled to **Rs.38,79,135/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Out of the said award amount, the first claimant is entitled to **Rs.15,04,135/-**, second and third claimants are entitled to **Rs.9,50,000/-** each and cross objector is entitled to **Rs.4,75,000/-**.

17. Thus, the total compensation is re-determined as mentioned below:

<i>S. No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal</i>	<i>Amounts awarded by this Court</i>
1	Transport Expenses	5,000	5,000
2	Medical Bills	12,380	12,380
3	Funeral Expenses	20,000	20,000
4	Loss of consortium to the wife/1st claimant	20,000	40,000
5	Loss of Love and Affection to Claimants 2 and 3	40,000	40,000
6	Loss of Love and Affection to third respondent	20,000	40,000
7	Loss of Income	51,48,000	50,19,300
	Total	52,63,380	51,72,180
	After Deducting 25% towards negligence of the deceased	39,47,535	38,79,135



WEB COPY



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

18. At this juncture, it is represented by the learned counsel appearing for the Insurance Company that the Insurance Company had already deposited the entire compensation amount as awarded by the Tribunal.

19. In fine, the total compensation of Rs.**39,47,535/-** awarded by the Tribunal is hereby reduced to **Rs.38,79,135/-**, which shall carry interest at 7.5% from the date of claim petition till the date of payment. Since the compensation is slightly reduced, it is upon the Insurance Company to withdraw the balance amount if any after satisfying the order of this Court. As apportioned by this Court as stated above, the first claimant and the cross objector are permitted to withdraw their share. Insofar as the minor claimants 2 and 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant / mother once in three months.



C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

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20. With the above observations and directions, both the Civil Miscellaneous Appeal and the Cross-Objection are partly allowed.
No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J.) (N.M.J.)
16.11.2022

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The I Additional Judge, Salem,
Motor Accident Claims Tribunal
2. The Section Officer,
VR Section High Court, Madras.



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C.M.A.No.1254 of 2018
and Cross Obj. No.59 of 2018

S.S.SUNDAR, J.
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C.M.A.No.1254 of 2018
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