

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.3537 of 2021 and Cross Objection No.19 of 2022
and
C.M.P.No.20519 of 2021

C.M.A.Nos.3537 of 2021

The Manager,
M/s Reliance General Insurance Co. Ltd.,
Policy Serving Branch, Sakthi Supermarket,
3rd Floor, 408, Perundurai Road,
Erode - 638 011.

... Appellant/
R1 in cross objection

Vs.

1.Shanthi
2.S.Geetha
3.Sakthidhasan
4.Raghu
5.Kapana
6.Minor Archana
7.Minor Anandhi
8.Minor Monisha
9.Minor Ishwarya
(Minor 6 to 9 are rep.by their NF / Mother Kalpana)

10.Manjula
11.Minor Aasha
12.Minor Janani
13.R.Thangaraj
(Minor 11 to 12 rep.by their NF / Mother Manjula)

RR1 to 12/in cross objection
R13/R2/in cross objection

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 05.01.2021 made in MCOP No.592 of 2019 on the file of the Motor Accidents Claims Tribunal, District Judge, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.S.P.Yuvaraj
(for R1 to R5 & R.10)
No appearance for R13

Cross Objection No.19 of 2022

1.Shanthi
2.S.Geetha
3.Sakthidhasan
4.Raghu
5.Kapana
6.Minor Archana
7.Minor Anandhi
8.Minor Monisha
9.Minor Ishwarya
10.Manjula
11.Minor Aasha
12.Minor Janani

... cross objector RR1 to 12

Vs.

1. The Manager,
M/s Reliance General Insurance Company Limited,
Policy Serving Branch, Sakthi Supermarket,
Erode - 638 011.

R1 cross objection/Appellant in CMA

2. R.Thangaraj

R2 cross objection/R13 in CMA
Respondents

PRAYER: Cross Objection is filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the compensation amount awarded in the Judgment and Decree dated 05.01.2021 made in MCOP No.592 of 2019 on the file of the Motor Accident Claims Tribunal, District Judge, Krishnagiri.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mr.S.Arunkumar (for R1)

COMMON JUDGMENT

[Common Judgment of the Court was delivered by
K.KALYANASUNDARAM, J.]

Challenge in C.M.A.No.3537 of 2021 filed by the Insurance Company is to the award passed by the Motor Accidents Claims Tribunal, District Judge, Krishnagiri in MCOP No.592 of 2019. Dissatisfied with the quantum, the claimants have come up with

the Cross Objection No.19 of 2022 for enhancement of compensation. For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

2.This is the case of fatal. The case of the claimants is that on 29.10.2017 at about 20.00 hours, the deceased Shanmugam was walking on the left side of the road. At that time, a Pulsar Motorcycle bearing Reg.No.TN-24-AH-0841 belonging to the first respondent and insured with the second respondent, driven by its rider in a rash and negligent manner, dashed the deceased. In the impact, the deceased sustained grievous injuries on his head and other vital organs. Immediately, he was taken to the Government Head Quarters Hospital, Krishnagiri, where he was declared dead. Alleging that the accident had taken place due to the rash and negligent riding of the rider of the two wheeler, the legal heirs of the deceased laid a claim petition claiming compensation of Rs.70,00,000/- from the owner as well as the insurer of the offending vehicle.

3. The Insurance Company filed their counter disputing the age, income and occupation of the deceased and the manner of accident and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to Ex.P.33 were marked. On the side of the Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, upon consideration the oral and documentary evidence, held that the rider of the two wheeler was responsible for the accident and awarded compensation of Rs.53,23,496/- under the following heads:-

Heads	Rs.
Loss of dependency	49,73 ,496/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-
Loss of Consortium 40000 x 4 (P1 to P4)	1, 60,000/-
Loss of Consortium 20000 x 8 (P5 to P12)	1 ,60,000/-
Total	53,2 3,496/-

6. As aforementioned, both the claimants and the Insurance Company have come up with these appeals.

7. We have heard the learned counsels appearing for the parties and perused the available materials.

8. Ex.P.2-Postmortem Certificate shows that the deceased died at the age of 54. There is no dispute that the claimants are legal heirs of the deceased, who was working as Head Constable and earned Rs.31,919/- per month. Ex.P.5 is the Salary Slip. After implementation of the 7th Pay Commission, his salary was revised as Rs.45,505/-. So, the Tribunal fixed his salary as Rs.45,505/- and applied multiplier '11' to assess loss of income as Rs.49,73,496/-. Before doing so, 15% addition is made for future prospects and 10% deducted towards income tax. Following the decisions of the Hon'ble Apex Court, the Tribunal awarded amounts under the other heads. We are of the view that the amount awarded by the Tribunal is fair and reasonable.

9. For the foregoing reasons, both the Civil Miscellaneous Appeal and Cross Objection fail and the same are dismissed. The Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the major claimants are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any. The share of the minor claimants shall be deposited in any one of the nationalized banks in a fixed deposit till they attain majority. The interest on the minors deposit is permitted to be withdrawn by the respective mother of the minor claimants once in six months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

skn

To

1. The Motor Accident Claims Tribunal,
District Judge, Krishnagiri.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.12231

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.12613

C.M.A.Nos.3537 of 2021 and
Cross Objection No.19 of 2022 and
C.M.P.No.20519 of 2021

KV(CO)
CT 01/06/2022