



C.M.A.No.1579 of 2022
and C.M.P.No.11689 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

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

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and C.M.P.No.11689 of 2022

M/s.United India Insurance Co.Ltd
Motor III Party Claims Office,
No.134, Greams Road,
Chennai – 600 006.

...Appellant

Vs.

1.Amaravathi
2.Munusami
3.K.Balaji

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 02.03.2020 made in M.C.O.P.No.5866 of 2016 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

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For R1, R2 : Mr.K.Varadhakamaraj
For R3 : Notice Served

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award and decree dated 02.03.2020 made in M.C.O.P.No.5866 of 2016 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.5866 of 2016 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

3.The respondents 1 and 2 are the mother and father of the deceased Mr.Jagadesan.M. It is the case of the respondents 1 and 2 that on 18.08.2016 at about 04.10 hrs., when the deceased Mr.M.Jagadesan was riding his two wheeler bearing Reg.No.TN 25 AS 1471 at Vandavasi to Chetpet road near Mahzaiyur EB Office, a TATA Sumo bearing Reg.No.TN 04 Q 3351 driven by its driver in a rash



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and negligent manner came in the opposite direction and collided with the two wheeler of the deceased and caused accident. In the said accident, the said Jagadesan sustained grievous injuries and died on the spot. The respondents 1 and 2 therefore made a claim of Rs.1,00,00,000/- (Rupees One Crore only) towards compensation under various heads against the 3rd respondent, owner of the TATA Sumo and the appellant/insurer of the vehicle.

4.The first respondent in M.C.O.P.No.5866 of 2016 remained Ex-parte.

5.The appellant filed a counter stating that the respondents 1 and 2 have not established the monthly income of the deceased. Further, they have stated that the claim made by the respondents 1 and 2 under various heads are highly excessive and has no basis. The quantum awarded by the Tribunal is enormous and prayed for dismissal of the claim petition.



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6.Before the Tribunal, the respondents examined three witnesses as P.W.1, P.W.2 and P.W.3 on their side and marked twenty one exhibits as Ex.P.1 to Ex.P.21. The appellant did not let in any oral and documentary evidence.

7.The Tribunal after considering the pleadings, evidence and documents on record held that the accident occurred due to the negligence of driver of the TATA Sumo vehicle and the respondents 1 and 2 are entitled to a total compensation of Rs.52,05,800/- (Rupees Fifty Two Lakhs Five Thousand Eight Hundred only). The Tribunal further held that the appellant as the insurer of the offending vehicle belonging to the third respondent is liable to pay compensation.

8.Aggrieved by the said award, the appellant had preferred the above appeal challenging the quantum of compensation awarded by the Tribunal.

9.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is excessive. He further stated that compensation



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awarded by the Tribunal under the head of Loss of Love and Affection is not justified and compensation awarded under the head Filial Consortium is excessive. The deceased was aged 24 years at the time of accident, the Tribunal erred in granting the future prospects at 50%. The respondents 1 and 2 are entitled to only 40% enhancement in future prospects as per the Judgment of the Hon'ble Apex Court in **2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs.Pranay Sethi and others]** and prayed for setting aside the award of the Tribunal.

10.The learned counsel for the respondents 1 and 2 submitted that the award passed by the Tribunal is in accordance with law and the appellant has not made out any ground to interfere with the same and prayed for dismissing the appeal.

11. We considered the submissions made by the learned counsels on either side and perused the pleadings, evidence and documents on record.

12.From the materials on record, it is seen that the deceased was aged 24 years at the time of occurrence. The Tribunal had considered the future prospects



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at 50 %. Since, the deceased was not in permanent employment, the future prospects should be taken as 40% 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]**. The monthly income of the deceased is wrongly taken as Rs.30,900/- .As per Ex.P.8, from the gross monthly income the payments under the following heads has to be deducted (a) Conveyance - Rs.1600/- (ii) Telephone Rs.750/- (c) Heat allowance - Rs.100/- (d) Washing allowance - 100 and (f) Night Shift Allowance – 270/-. If the said amounts have been deducted from Rs.30,822/-, the income comes to Rs.28,002/- and monthly income of the deceased is fixed at Rs.28,002/-. The deceased was a bachelor and hence half of his salary has to be deducted towards personal expenses.

Hence, by fixing monthly income as Rs.28,002/-, granting 40% enhancement towards future prospects, applying multiplier 18 and deducting 50% towards personal expenses of the deceased, the amounts granted for the loss of dependency is modified and reduced to Rs.42,33,924/- [28,002/- + 11,201 (40% of 28,002) X 12 X 18 X 50%.

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13.The Tribunal has awarded a sum of Rs.1,00,000/- each towards loss of love and affection and loss of filial consortium and the same are excessive. The respondents 1 and 2 being the father and mother of the deceased are entitled to only Rs.80,000/- (Rs.40,000/- each) towards Filial Consortium. Hence, the compensation awarded towards Loss of Love and affection is set aside. The compensation awarded towards Filial Consortium is reduced from Rs.1,00,000/- to Rs.80,000/-. The Tribunal had not given any compensation towards Loss of Estate. Hence a sum of Rs.15,000/- is granted towards Loss of Estate. The amount awarded under all other heads are just and reasonable 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	50,05,800/-	42,33,924/-	Reduced
2.	Loss of Love and affection	1,00,000/-	---	Set aside
3.	Loss of filial consortium	1,00,000/-	80,000/-	Reduced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed



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5	Loss of estate	----	15000/-	Granted
	Total	Rs.52,20,800/-	43,43,924/-	Reduced by Rs.8,76,876/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.52,20,800/- is hereby reduced to Rs.43,43,924/- 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 Appellant/Insurance Company is directed to deposit 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 respondents 1 and 2 are permitted to withdraw the award amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. No costs.

(V.M.V., J)

(S.M., J)

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Index : Yes / No

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To

1.Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.



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