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C.M.A.No.1717 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.No.1717 of 2018

and

C.M.P.No.13306 of 2018

The Manager,
HDFC ERGO General Insurance Company Ltd.,
Motor Third Party Claims, New No.579 (Old No.528),
2nd Floor, Anna Salai,
Teynampet, Chennai – 600 002.

... Appellant

Vs.

1.S.Syamala
2.S.Gayathri
3.S.Mahalakshmi
4.S.Hariharan
5.S.Abhiraman
6.S.Sulochana
7.M/s.Rajarajan Transport Services, No.1484,
G.N.T. Road, Padiyanallur, Red Hills,
Chennai – 600 042.

... Respondents

*[Respondents 4 & 5 declared as Major and her
mother and Natural Guardian S.Syamala discharged]*



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*from Guardianship vide Court order, dated 10.02.2022,
made in C.M.P.Nos.20127, 20129, 20130 & 20131
of 2021 in C.M.A.No.1717 of 2018]*

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment, dated 14.02.2018, in M.C.O.P.No.258 of 2015 on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruvallur.

For Appellant : Mr.K.Vinod

For R1 to R6 : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

As against the award of compensation by the Motor Accident Claims Tribunal-I (Special District Court), Tiruvallur (“the Tribunal” for brevity), dated 14.02.2018, in M.C.O.P.No.258 of 2015, the above appeal is preferred by the Insurance Company.

2.The respondents 1 to 6 are the wife, children and mother of the deceased, by name, Subramani Iyyer. It is admitted before this Court that



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the deceased Subramani Iyyer was riding his two-wheeler from Thandalam to Uthukkottai and near Ellampettai Bus Stop, a TATA Multi Axle Goods Vehicle, belongs to the 7th respondent, hit the two-wheeler driven by the deceased. As a result of the accident, the said Subramani Iyyer died on the spot.

3.The respondents 1 to 6 (hereinafter referred to as “claimants”) filed M.C.O.P.No.258 of 2015 before the Motor Accident Claims Tribunal-I (Special District Court), Tiruvallur, claiming a sum of Rs.26,50,000/- by way of compensation. It is to be noted that, in the claim petition, the income of the deceased was specifically stated as Rs.12,000/- per month. The appellant denied the liability on the ground that the accident was not caused due to the rash and negligent driving of the driver of the 7th respondent's vehicle, but due to the negligence of the deceased.

4.The Tribunal specifically rendered a finding that the accident was due to the rash and negligent driving of the driver of the 7th respondent's vehicle. The Tribunal, however, found that the monthly income of the



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deceased was Rs.20,000/-. Adding a sum of Rs.5,000/- towards future prospects, the income arrived at by the Tribunal was Rs.25,000/-. Adopting 13 as multiplier, the total compensation towards pecuniary loss was calculated at Rs.29,25,000/-. The compensation awarded by the Tribunal under other heads are as follows :

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Loss of consortium	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Transport Expenses	Rs.10,000/-
Loss of Estate	Rs.15,000/-
Love and affection	Rs.2,25,000/-

Thus, a sum of Rs.32,30,000/- was fixed by the Tribunal by way of compensation, in all. The apportionment was also as indicated in Para No.10 of the award of the Tribunal.

5.Challenging the award of the Tribunal, the Insurance Company has preferred the above appeal.

6.Learned counsel appearing for the appellant/Insurance Company, though strenuously argued on several issues, has focussed much on the



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quantum of compensation towards loss of income. The learned counsel submitted that the claimants have admitted the income of the deceased even in the claim petition as Rs.12,000/- per month. It is his grievance that the Tribunal, on the basis of evidence of P.W.2, P.W.3 and P.W.4, who claim to be the Dharmakartas of different Temples, has fixed the monthly income erroneously at Rs.20,000/-. The evidence of P.W.2 to P.W.4 were relied upon by the Tribunal to fix the monthly income of the deceased at Rs.20,000/-.

7.On a perusal of the evidence of P.W.2, who claims to be the Dharmakarta of Arulmigu Mahalakshmi Temple, Kakkavakkam Village, Uthukkottai Taluk, it is seen that he has deposed to the effect that he is the Dharmakarta of Arulmigu Mahalakshmi Temple as well as another Temple, namely, Arulmigu Varasakthi Pillaiyar Temple. It is his evidence that he was paying a sum of Rs.10,000/- to the deceased for rendering services in two temples. Similarly, P.W.3 has deposed to the effect that he was paying a sum of Rs.5,000/- per month to the deceased for his service in Arulmigu Mukkandeeswarar Temple. However, he admits that there is no written



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document for appointing the deceased. The salary certificate issued by P.W.3 shows that P.W.3 was paying a sum of Rs.5,000/- as salary to the deceased. Similarly, P.W.4 has also given evidence, apart from issuing a salary certificate that, P.W.4 was paying a sum of Rs.5,000/- to the deceased for rendering services in Arulmigu Lakshmi Amman Temple.

8.Though the three witnesses (P.W.2 to P.W.4), in chief-examination, state that they are the Dharmakartas of different Temples, in the cross-examination, all the three witnesses admit that there is no record to show that they are either the Hereditary Trustees or Dharmakartas of the Temples. All the three witnesses refer to different Temples, in which, they are acting as Hereditary Trustees or Trustees of the Temples. However, the relevant document to show their status either as Hereditary Trustee or Dharmakarta or Trustee of the Temple, is not produced. Except the salary certificates in which the witnesses have signed, no other document is produced before the Court to show that the witnesses were the Hereditary Trustees or Dharmakartas of the Temples. No Temple record is produced to corroborate the evidence of P.W.2 to P.W.4.



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9. In the said circumstances, this Court is unable to sustain the finding of the Tribunal that the deceased was drawing a salary of Rs.20,000/- per month. The fact that the deceased was performing pooja in few temples is spoken by P.W.1 and the respondents have no independent witness to contravene the evidence of P.W.1. Even in the course of evidence, it is revealed that the deceased used to do prohidham and perform other religious services like homam, pooja, etc. Having regard to the specific case of the claimants that the deceased was drawing a salary of Rs.12,000/- per month, in the claim petition itself, this Court is of the view that the salary of the deceased can be taken as Rs.12,000/- per month. Adding 25% of the monthly income towards future prospects, the salary of the deceased should be Rs.15,000/- per month. The deceased left behind his wife, children and mother and the number of dependants are 6. This Court is of the view that the deduction towards personal expenses should be $\frac{1}{4}$ th. Deducting $\frac{1}{4}$ th from Rs.15,000/-, the monthly salary of the deceased is fixed at Rs.11,250/-. Therefore, the claimants are entitled to a sum of Rs.17,55,000/- (Rs.11,250/- x 13 x 12).



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10.This Court is unable to countenance the submissions of the learned counsel for the appellant in relation to the quantum that was fixed by the Tribunal under other heads. Therefore, except reducing the quantum towards loss of income from Rs.29,25,000/- to Rs.17,55,000/-, the award of the Tribunal is confirmed in other respects, including the interest @ 7.5% p.a. as ordered by the Tribunal.

11.This Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified to the extent indicated above. In fine, the claimants are entitled to a sum of Rs.20,60,000/- (Rupees Twenty Lakhs and Sixty thousand only), in total. The apportionment as per the award of the Tribunal is also confirmed. No costs. Consequently, connected miscellaneous petition is closed.

12.It is submitted by the learned counsel for the appellant that the appellant has already deposited the entire amount awarded by the Tribunal, with interest. The appellant/Insurance Company is permitted to withdraw



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the excess amount from the Tribunal. The claimants/respondents 1 to 6 are also permitted to withdraw the modified award amount, proportionate to their share as per the order of the Tribunal, less the amount already withdrawn by them, if any.

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(S.S.S.R., J.) (N.M., J.)
13.10.2022

Internet : Yes

Index : Yes / No

To

The Special District Judge,
(Motor Accident Claims Tribunal),
Tiruvallur.



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and
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