IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

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

C.M.A.No.2874 of 2021
and C.M.P.No.16524 of 2021
and Cross Objection No.97 of 2022

C.M.A.No.2874 of 2021
The National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai – 600 002. ... Appellant

Vs.

1.Santhakumari

2.Minor. Ragul

(Minor 2nd respondent represented by
his Mother and Next Friend,
Santhakumari, 1st respondent herein)

3.K.Subramani

4.A.Thomas Ammal

5.Bajaj Allianz Insurance Co. Ltd.,
No.25/26, Prince Towers,
4th Floor, College Road,
Nungambakkam,
Chennai – 600 006.

6.Mahalakshmi ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.01.2021 made in M.C.O.P.No.606 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant	:	Mr.S.Arunkumar
For RR 1, 2 & 6	:	Ms.Y.Jayanthi Bhaskar
For R3	:	No appearance
For R5	:	Mr.J.Michael Visuvasam

Cros.Obj.No.97 of 2022

1.Santhakumari

2.Minor. Ragul ... Cross Objectors

(Minor 2nd cross objector represented
by his mother, next friend, Santhakumari,
1st cross objector herein)

Vs.

1.The National Ins.Co.Ltd.,
No.751, Anna Salai,
Chennai – 600 002.

2.K.Subramani

3.A.Thomas Ammal

4.Bajaj Allianz Ins.Co.Ltd.,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Chennai – 600 006.

5.Mahalakshmi ... Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., against the judgment and decree dated 08.01.2021 made in M.C.O.P.No.606 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Cross-objectors : Ms.Y.Jayanthi Bhaskar

For R1 : Mr.S.Arunkumar

For R4 : Mr.J.Michael Visuvasam

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

C.M.A.No.2874 of 2021 has been filed by the appellant/Insurance Company against the judgment and decree dated 08.01.2021 made in M.C.O.P.No.606 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. Cross Objection No.97

of 2022 has been filed by the claimants/respondents 1 & 2 herein seeking enhancement of compensation granted by the Tribunal in the said award.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.606 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. The respondents 1 & 2 filed the said claim petition claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Balamurugan, who died in the accident that took place on 25.12.2012.

3.According to the respondents 1 & 2, on the date of accident i.e., on 25.12.2012 at about 14.30 hours, while the deceased Balamurugan was travelling as a passenger in the car bearing Registration No.TN 05 AF 0712 from West to East direction on Periyakulam – Vathalagundu Main Road, near Devanampatti Koot Road, the front right side tyre of the car got punctured, the car dragged towards right side of the road and immediately the driver of the car stopped the car on the northern side of the road. At that time, the driver of the lorry bearing Registration No.TN-47-M-0578 belonging to the 3rd respondent, drove the same in a rash and negligent manner from the opposite direction on the wrong side of the road, dashed against the stationary car, crushed the occupants of the car by dragging the car for about 30 feet and caused the accident. Therefore, the respondents 1 & 2, filed the above claim petition claiming compensation for the death of the said Balamurugan against the respondents 3 to 5 and appellant, who are the owners of the lorry & car, insurer of the car and insurer of the lorry respectively.

4.The respondents 3, 4 and 6, who are the owner of the lorry, owner of the car and mother of the deceased respectively remained exparte before the Tribunal.

5.The appellant/National Insurance Company Limited, insurer of the lorry filed counter statement and denied all the averments made in the claim petition and manner of accident as alleged by the respondents 1 & 2. The appellant also denied the validity of vehicle records and insurance coverage of the lorry and driving license of the driver of lorry. Therefore, the appellant is not liable to pay any compensation to the respondents 1 & 2. The appellant also denied the age, occupation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 & 2 are highly excessive and prayed for dismissal of the claim petition as against the appellant.

6.The 5th respondent/Bajaj Allianz Insurance Company Limited, insurer of the car, filed counter statement and denied all the averments made in the claim petition and the manner of accident as alleged by the respondents 1 & 2. According to 5th respondent, the driver of the car belonging to 4th respondent was not possessing valid driving license to drive the car on the date of accident and hence, for violation of insurance policy, the 5th respondent is not liable to pay any compensation to the respondents 1 & 2. The accident has occurred only due to rash and negligent driving by driver of the lorry. FIR was lodged against the driver of the lorry. After investigation, the Police filed charge sheet against the driver of the lorry belonging to 3rd respondent and hence, the respondents 4 & 5, owner and insurer of the car are not liable to pay any compensation. The 5th respondent also denied the age, occupation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 & 2 is excessive and prayed for dismissal of the claim petition as against the 5th respondent.

7.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1, Master B.Ragul, 2nd respondent, son of the deceased, examined himself as P.W.2, one S.Nachiappan, Chief Manager from the Tamilnadu Mercantile Bank was examined as P.W.3, one R.Prathapkumar Nalin, Assistant Manager from ICICI Bank was examined as P.W.4 and one S.Premkumar, Manager from Indian Bank was examined as P.W.5 and 21 documents were marked as Exs.P1 to P21. The 5th respondent/ Bajaj Allianz Insurance Company Limited, examined one S.Balasubramanian, Constable from Devathanappatti Police Station, Theni as R.W.1 and marked two documents as Exs.R1 & R2. The appellant/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent and directed the appellant/Insurance Company, insurer of the lorry to pay a sum of Rs.28,38,000/- as compensation to the respondents 1, 2 & 6 and dismissed the claim petition as against the 5th respondent/Bajaj Allianz Insurance Company Limited.

9.Against the said award dated 08.01.2021 made in M.C.O.P.No.606 of 2015, the appellant/National Insurance Company has come out with C.M.A.No.2874 of 2021.

10.Not being satisfied with the amounts awarded by the Tribunal, the respondents 1 & 2 have filed Cross Objection No.97 of 2022, seeking enhancement of compensation.

11.The learned counsel appearing for the appellant/Insurance Company, insurer of the lorry, contended that the Tribunal erred in holding that the driver of lorry was solely responsible for the accident and fixing entire negligence on the driver of the lorry and directing the appellant to pay the entire compensation to the respondents 1, 2 & 6. The Tribunal did not consider the judgment of Division Bench of this Court dated 09.12.2019 made in C.M.A.No.990 of 2015 arising out of the same accident. The Tribunal failed to note that the right tyre of the car got punctured, dragged the car to the other side and hit against the lorry. The Tribunal ought to have fixed contributory negligence on the part of driver of car. The learned counsel further contended that the Tribunal having held that valid proof for income of the deceased was not filed, erred in fixing a sum of Rs.15,000/- per month as notional income of the deceased, which is excessive. The amounts granted by the Tribunal under different heads are excessive and prayed for allowing the appeal filed by the appellant and dismissing the Cross-Objection filed by the respondents 1 & 2.

12.The learned counsel appearing for the respondents 1 & 2/cross-objectors contended that the accident has occurred only due to rash and negligent driving by driver of lorry belonging to the 3rd respondent, insured with the appellant. The appellant/Insurance Company did not examine driver of the lorry to prove their case and therefore, they cannot claim contributory negligence. The learned counsel further submitted that the deceased

Balamurugan was a Proprietor of SB Cabs and was earning a sum of Rs.6,00,000/- per annum. They have marked visiting card of the cabs, quotation, invoices and Bank statements as Exs.P5 to P10, P17, P19 & P21 and examined the respective Bank Managers as P.W.3 to P.W.5. The Tribunal without considering the same, fixed a meagre sum of Rs.15,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the appeal filed by the appellant/Insurance Company.

13.Learned counsel appearing for the 5th respondent/Insurance Company, insurer of the car submitted that the accident has occurred only due to rash and negligent driving by driver of the lorry. The Tribunal considering all the materials placed before it, fixed entire negligence on the driver of lorry. The learned counsel further submitted that the owner and insurer of the car were not made as parties in the claim petition in M.C.O.P.No.2181 of 2013 and C.M.A.No.990 of 2015. In view of the same, the judgment dated 09.12.2019 made in C.M.A.No.990 of 2015 by the Division Bench of this

Court is not binding on the driver of car as well as insurer of the car. In the claim petition in M.C.O.P.No.258 of 2015 arising out of the same accident, the Tribunal has fixed 80 : 20 negligence on the drivers of car as well as lorry and fastened 80% liability on the 5th respondent/Insurance Company, insurer of the car. Challenging the same, the 5th respondent has filed an appeal in C.M.A.(MD)No.525 of 2020 and the same is pending before the Madurai Bench of this Court and prayed for dismissal of both the appeal and cross-objection.

14.Though notice has been served on the 3rd respondent-owner of the lorry and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

15.Heard the learned counsel appearing for the appellant/National Insurance Company Limited, learned counsel appearing for the respondents 1, 2 & 6 as well as the learned counsel appearing for the 5th respondent/Bajaj Allianz Insurance Company Limited and perused the entire materials on record.

16.From the materials on record, it is seen that it is the case of the respondents 1 & 2 that on 25.12.2012 at about 14.30 hours, while the deceased Balamurugan was travelling as a passenger in the car bearing Registration No.TN 05 AF 0712 along with others, the front right side tyre of the car got punctured and the car was dragged to right side of the road. At that time, the driver of the lorry bearing Registration No.TN-47-M-0578 belonging to the 3rd respondent, drove the same in a rash and negligent manner from the opposite direction, dashed on the car and caused the accident. Due to the injuries sustained in the accident, the said Balamurugan died. The respondents 1 & 2, who are the legal heirs of the deceased Balamurugan filed claim petition claiming compensation for his death. The appellant/National Insurance Company, who is the insurer of the lorry denied the negligence on the part of the driver of the lorry belonging to 3rd respondent and contended that the accident occurred only due to negligence of the driver of car belonging to 4th respondent. The 5th respondent/Bajaj Allianz Insurance Company, insurer of the car denied that accident occurred due to rash and negligent driving by the driver of the car and stated that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to 3rd respondent. The Tribunal considering the pleadings, oral and documentary evidence let in by the parties, held that accident occurred due to rash and negligent driving by the driver of the lorry belonging to 3rd respondent and insured with appellant, fastened the liability on the appellant/National Insurance Company Limited and directed the appellant to pay the compensation to the respondents 1, 2 & 6. Challenging the said award, the appellant has come out with the present appeal.

16(i).From the materials available on record, it is seen that front right side tyre of the car which was coming from West to East got punctured and due to the same, the car was dragged on the right side of the road i.e., on the southern side of the West to East road. This shows that the car went to wrong side of the road. Due to which, the car and the lorry which was coming from East to West direction at high speed, hit against each other on the southern side of the road. From the above materials, it is clear that car went to the wrong side of the road and accident occurred on the right hand side of the road. In view of the same, the award of the Tribunal fixing entire negligence on the driver of the lorry is not correct. It is seen that lorry which was coming in the opposite direction was also driven at a high speed. Had the driver of the lorry while noticing that the car was coming in the wrong direction, driven the lorry at moderate speed, applied sudden brake and stopped the lorry, he could have avoided the accident. In view of the same, we hold that accident occurred due to rash and negligent driving by both the drivers of car as well as lorry and both contributed to the accident.

16(ii).The learned counsel appearing for the appellant produced a copy of the judgment of Division Bench of this Court passed in C.M.A.No.990 of 2015 dated 09.12.2019 challenging the award of the Tribunal in respect of another claim petition in M.C.O.P.No.2181 of 2013 arising out of the same accident. In the said judgment, the Division Bench of this Court held that accident occurred due to composite negligence of the driver of the lorry as well as driver of the car. In the said claim petition and appeal, the owner and insurer of the car were not made as parties. In such circumstances, the Division Bench of this Court following the judgment of the Hon'ble Apex Court reported in ***2015 (1) TNMAC 801 (SC), [Khenyei Vs. New India Assurance Company Ltd., & Ors.]***, directed the appellant/insurer of the lorry to pay the entire compensation awarded by the Tribunal to the claimants therein and gave liberty to the appellant to workout their remedy to recover the amount from the owner and insurer of the car. The reasons given by the Division Bench of this Court for fixing the composite negligence on the part of both the driver of the lorry as well as on the driver of the car are squarely applicable to the facts of this appeal also, as facts are one and the same.

16(iii).The contention of the learned counsel appearing for the 5th respondent/insurer of the car that the owner and insurer of the car were not made as parties in C.M.A.No.990 of 2015 and negligence cannot be fixed on the driver of the car, cannot be accepted. The learned counsel appearing for the appellant submitted that in the claim petition in M.C.O.P.No.258 of 2015 filed by one Chinnaiyasamy, claiming compensation for the injuries sustained by him in the very same accident, the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Madurai, has fixed 80% negligence on the driver of the car and appeal filed by the 5th respondent is pending before the Madurai Bench of this Court. The Division Bench while fixing the composite negligence and holding both drivers were negligent, did not apportion the percentage of negligence on the drivers and appeal filed by the 5th respondent is pending before the Madurai Bench of this Court.

16(iv).Considering the above materials, negligence is fixed on both the driver of the lorry as well as driver of the car equally. The award of the Tribunal is modified fixing 50% liability on the appellant, insurer of lorry and 50% liability on the 5th respondent/Bajaj Allianz Insurance Company, insurer of the car.

17.As far as quantum of compensation is concerned, it is the case of the respondents 1 & 2 that the deceased Balamurugan was a Proprietor of SB Cabs and was earning a sum of Rs.6,00,000/- per annum. They have marked visiting card of the cabs, quotation, invoices and Bank statements as Exs.P5 to P10 and examined the respective Bank Managers as P.W.3 to P.W.5. The respondents 1 & 2 have not filed any Income Tax returns of the deceased to prove his income. In the absence of any material with regard to income of the deceased, Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The accident is of the year 2012 and hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. The deceased was aged 35 years at the time of accident as per Ex.P3/Post-mortem certificate. The Tribunal, 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 (Sarla Verma and others vs. Delhi Transport Corporation and another),** has rightly granted 40% enhancement towards future prospects and applied multiplier '16'. There are three dependants of the deceased viz, respondents 1, 2 & 6. The Tribunal rightly deducted 1/3rd towards personal expenses. By fixing a sum of Rs.12,000/- per month as notional income of the deceased, the amount granted by the Tribunal towards loss of dependency is modified to Rs.21,50,400/- (Rs.12,000/- + 4800 [Rs.12,000/- X 40%] X 12 X 16 X 2/3). The compensation awarded by the Tribunal towards transportation and loss of love & affection are hereby enhanced from Rs.5,000/- to Rs.10,000/- and Rs.75,000/- to Rs.80,000/- (Rs.40,000/- each to the respondents 2 & 6) respectively as the amounts awarded by the Tribunal are meagre. 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 or reduced
1.	Loss of dependency	26,88,000	21,50,400	Reduced
2.	Loss of consortium to the 1st respondent	40,000	40,000	Confirmed
3.	Loss of love and affection to the respondents 2 and 6	75,000	80,000 (Rs.40,000/- each)	Enhanced
4.	Loss of estate	15,000	15,000	Confirmed
5.	Transportation	5,000	10,000	Enhanced
6.	Funeral expenses	15,000	15,000	Confirmed
	Total	**28,38,000**	**23,10,400**	**Reduced by Rs.5,27,600/-**

18.With the above modification, C.M.A.No.2874 of 2021 is partly allowed and Cros.Obj.No.97 of 2022 is dismissed. The compensation of Rs.28,38,000/- awarded by the Tribunal is hereby reduced to Rs.23,10,400/- 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, being the insurer of the lorry, is directed to deposit a sum of Rs.11,55,200/- being 50% of the award amount, less the amount already deposited if any and the 5th respondent/Insurance Company, insurer of the car, is directed to deposit a sum of Rs.11,55,200/- being 50% of the award amount now determined by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 6 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The share amount of the minor/2nd respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st respondent, mother of the minor, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.606 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected

Miscellaneous Petition is closed. No costs.

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

03.11.2022

kj / krk

Index : Yes / No

To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.

and

SUNDER MOHAN,J.

Kj / krk

C.M.A.No.2874 of 2021
and C.M.P.No.16524 of 2021
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