IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

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

C.M.A.No.1570 of 2022
and C.M.P.No.11614 of 2022

Magma HDI General Insurance
Company Limited
<u>Old Office address</u>
No.1, New Tank street
Valluvarkottam High Road
Nungambakkam
Chennai-600 004.
<u>New Office Address</u>
Navins Presiding, 3rd floor
New No.17/19, Old No.103
B Block, 3-A, Nelson Manickam Road
Aminjikarai
Chennai-600 029. ... Appellant

Vs.

1.S.Chitra

2.M.Deepa

3.M.Vennila

4.M.Kesavan (Minor)

(4th respondent/minor rep. by
her mother and next friend
1st respondent Chitra)

5.S.Krishnamani

6.R.Anbazhagan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2021 made in M.C.O.P.No.3225 of 2018 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant	:	Mr.B.Murugavel
For RR1 to 5	:	Mr.D.Ravichandran for Mr.K.Premkumar
For R6	:	Mr.A.Udhayachandiran

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 28.10.2021 made in M.C.O.P.No.3225 of 2018 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.3225 of 2018 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.1,00,00,000/- as compensation for the death of one S.Maniarasu, who died in the accident that took place on 18.04.2018.

3.According to the respondents 1 to 5, on the date of accident i.e., on 18.04.2018 at about 9.30 a.m., while the deceased Maniarasu was crossing the road opposite to Karanithangal bus stop on Wallajahbad to Padappai Road, 6th respondent, rider-cum-owner of the motorcycle bearing Registration No.TN-21-BA-7813 rode the same in a rash and negligent manner, hit the deceased and caused the accident. In the accident, the said Maniarasu sustained grievous injuries all over the body and died in the hospital on the same day. Therefore, the respondents 1 to 5 have filed the above claim petition claiming compensation for the death of said Maniarasu against the 6th respondent, rider-cum-owner of the motorcycle and appellant/Insurance Company, insurer of the said motorcycle.

4.Though the 6th respondent, rider-cum-owner of the motorcycle, entered appearance through counsel, he did not file any counter, called absent and hence, set exparte on 28.02.2020.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and manner of the accident. The appellant has also denied the validity of the vehicle records, driving license of the 6th respondent and insurance coverage at the time of accident. Therefore, the appellant is not liable to pay any compensation to the respondents 1 to 5. In any event, the compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased examined herself as P.W.1, one Kothandam, who lodged complaint, was examined as P.W.2, 3rd respondent, daughter of the deceased examined herself as P.W.3, one Sundarrajan, Executive Engineer, P.W.D, where the deceased was working at the time of accident, was examined as P.W.4 and 25 documents were marked as Exs.P1 to P25. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by 6th respondent, rider-cum-owner of the motorcycle and directed the appellant/Insurance Company, insurer of the said motorcycle to pay a sum of Rs.63,07,000/- as compensation to the respondents 1 to 5.

8.Questioning the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to deduct the Travelling Allowance and other allowances from gross salary in arriving at the monthly income of the deceased. The Tribunal while calculating the income tax for the assessment year 2018 – 2019, has not properly applied the Income Tax slab for arriving the annual income of the deceased. The Tribunal erred in calculating the standard deductions from the gross salary in arriving at the monthly net income of the deceased. The compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 to 5 made submissions in support of the award passed by the Tribunal and contended that the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 & learned counsel appearing for the 6th respondent and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the respondents 1 to 5 that at the time of accident, the deceased was working as an Assistant Engineer in Office of the Executive Engineer, PWD, WRD, Environmental Cell Division and was earning a sum of Rs.73,449/- per month. To substantiate the said contention, the respondents 1 to 5 examined one Mr.Sundarrajan, Executive Engineer, PWD, WRD, Environmental Cell Division, Taramani, Chennai, as P.W.4 and marked pay slip of the deceased for the month of March 2018 as Ex.P7. As per Ex.P7, gross salary of the deceased is Rs.73,449/- per month. The Tribunal considering the same, fixed a sum of Rs.73,449/- as monthly income of the deceased and the same is proper. It is the contention of the learned counsel for the appellant that the Tribunal failed to deduct City Compensatory Allowance, Medical Allowance and other allowances from the gross salary while taking into consideration the monthly income of the deceased. The accident occurred on 18.04.2018. As per Ex.P22/PAN card, the date of birth of the deceased is 01.10.1962. On the date of accident, the deceased had completed only 55 years. The Tribunal erroneously fixed the age of the deceased as '56' years and applied multiplier '9'. As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** the multiplier applicable is '11'. If correct multiplier '11' is applied, the respondents 1 to 5 will be entitled to more compensation than the compensation awarded by the Tribunal towards loss of dependancy. In view of applying wrong multiplier by the Tribunal, the amount granted by the Tribunal towards loss of dependancy, without deducting City Compensatory Allowance, Medical Allowance and other allowances and without properly applying Income Tax slab, is not interfered with. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.63,07,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal 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 to 3 & 5 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/4th 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, 4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
31.10.2022

Index : Yes / No
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To

1.The II Judge
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.

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