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C.M.A. No.296 of 2021
& Cross Obj. No.100 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

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

C.M.A.No.296 of 2021
and C.M.P.Nos.2025 of 2021, 13584 & 19330 of 2022
and Cross Obj. No.100 of 2022

C.M.A.No.296 of 2021

1.The Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.

2.The Superintendent of Police,
Tiruvallur,
Tiruvallur District.

.. Appellants

Vs.

1.P.Srinivasan

2.Mohana

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor



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Vehicles Act, 1988, against the judgment and decree dated 22.11.2019, made in M.C.O.P. No.5187 of 2016, on the file of the Special Sub Court - II, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Ms.P.Vijaya Devi
Government Advocate (CS)

For Respondents : Mr.R.Ramesh

Cross Objection No.100 of 2022

1.P.Srinivasan

2.Mohana

.. Cross Objectors

Vs.

1.The Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.

2.The Superintendent of Police,
Thiruvallur,
Thiruvallur District.

.. Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., to



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enhance the award amount in the judgment and decree dated 22.11.2019, made in M.C.O.P. No.5187 of 2016, on the file of the Special Sub Court - II, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Cross Objectors : Mr.R.Ramesh
For Respondents : Ms.P.Vijaya Devi
Government Advocate (CS)

COMMON JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

C.M.A.No.296 of 2021 has been filed by the appellants against the judgment and decree dated 22.11.2019, made in M.C.O.P. No.5187 of 2016, on the file of the Special Sub Court - II, Small Causes Court, (Motor Accident Claims Tribunal), Chennai. Cross Objection No.100 of 2022 has been filed by the appellants-claimants seeking enhancement of the compensation granted by the Tribunal in the said award.

2.The respondents filed M.C.O.P. No.5187 of 2016, on the file of the Special Sub Court - II, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.50,00,000/- as compensation for the



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death of one S.Manikandan, who died in the accident that took place on 26.05.2016.

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3.According to the respondents, on the date of accident, at about 10.00 a.m., when their son viz., S.Manikandan was riding a Motorcycle from Palavakkam to Uthukottai, while nearing Julia Hospital, the driver of the Tata Sumo Car bearing Registration No.TN-20-G-0294 owned by the 1st appellant drove the same in a rash and negligent manner and dashed on the Motorcycle driven by the said S.Manikandan and caused the accident. In the accident, the said S.Manikandan fell down, sustained multiple fractures and grievous injuries all over the body and was admitted in the Ramachandra Hospital, Porur, Chennai. Inspite of treatment, the said S.Manikandan died on 25.06.2016 at Government Hospital, Thiruvallur. The accident occurred only due to rash and negligent driving by the driver of the Tata Sumo Car owned by the 1st appellant and hence, the respondents filed the said claim petition claiming compensation for the death of their son S.Manikandan against the appellants as owner of the Police Car.



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4.The 2nd appellant filed counter statement and denied all the averments made by the respondents. The 1st appellant adopted the counter statement filed by the 2nd appellant. According to the appellants, on the date of accident, when the driver of their Tata Sumo Car was driving the vehicle slowly, the deceased S.Manikandan, rider of Motorcycle rode the same in a rash and negligent manner and dashed on the Tata Sumo Car and invited the accident. The accident occurred only due to rash and negligent riding of Motorcycle by the deceased S.Manikandan. Due to the injuries sustained in the accident, the deceased S.Manikandan who was taking treatment at the Hospital was discharged on 04.06.2016 itself and again he took treatment as out-patient on 10.06.2016 and 17.06.2016. On 25.06.2016, due to sudden breathlessness, the said S.Manikandan died on the way to Government Hospital, Tiruvallur. The respondents have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined himself as P.W.1,



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examined one S.Sarathkumar, eyewitness to the accident as P.W.2 and marked 12 documents as Exs.P1 to P12. The appellants examined one Aegaraj, driver of the Tata Sumo Car as R.W.1 and marked one document as Ex.R1.

6.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 Tata Sumo Car owned by the 1st appellant and directed the appellants to pay a sum of Rs.20,75,600/- as compensation to the respondents.

7.Against the said award dated 22.11.2019, made in M.C.O.P. No.5187 of 2016, the appellants have come out with C.M.A.No.296 of 2021.

8.Not being satisfied with the amounts awarded by the Tribunal, the respondents have filed Cross Objection No.100 of 2022, seeking enhancement of compensation.



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9.The learned Government Advocate (CS) appearing for the appellants reiterated the averments made in the counter statement filed by them. She further contended that in the accident, the deceased sustained injuries only at his right thigh, femur and got discharged from the Hospital on 04.06.2016, after complete healing of his injuries. On 26.06.2016, he suddenly died. Ex.P3 – Autopsy report of the Doctor clearly states that the death is due to post operation complication. The cause of death of said S.Manikandan is not due to the injuries sustained in the accident. The Tribunal without considering the materials available on record, erroneously relying on Ex.P3 / Postmortem Report and FIR marked as Ex.P1, held that the accident occurred only due to the rash and negligent driving by the driver of the Tata Sumo Car owned by the appellants and the deceased died due to the injuries sustained in the accident. It is well settled that the contents of the FIR is not a conclusive proof for the manner in which the accident occurred or for negligence. The Tribunal erred in relying on the contents of FIR to fix negligence on the part of the driver of the Tata Sumo Car. In the absence of any documentary evidence to prove the age of the deceased, the Tribunal erred in relying on Ex.P3 and



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fixed the age of the deceased as 25 years. The Tribunal ought not to have relied on the judgment of the Hon'ble Apex Court reported in **2019 (1) TNMAC 54 (DB) [Andal and others Vs. Avinav Kannan and others]**, to fix the notional income of the deceased as Rs.13,000/- per month, in the absence of any oral and documentary evidence to prove the avocation and income of the deceased. When according to Ex.P3 – Postmortem report, the age of the deceased is more than 25 years, the Tribunal ought not to have applied the multiplier '18' and awarded compensation towards loss of dependency. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissal of Cross Objection No.100 of 2022, filed by the respondents.

10.The learned counsel appearing for the respondents/Cross Objectors made submissions in support of the award of the Tribunal with regard to fixing negligence on the driver of the Tata Sumo Car owned by the 1st appellant. He further submitted that at the time of accident, the deceased S.Manikandan was working as an Executive Manager and was earning a sum



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of Rs.25,000/- per month. The Tribunal without considering Ex.P8 – salary slip, fixed the notional income of the deceased. The Tribunal ought not to have deducted 50% towards personal expenses of the deceased. The Tribunal failed to award any amount towards medical expenses incurred by the respondents considering Ex.P7 – xerox copies of medical bills. He further submitted that the respondents have filed C.M.P.No.19330 of 2022 to receive original medical bills and pharmacy receipts and prayed for enhancement of the compensation and dismissal of C.M.A.No.296 of 2021, filed by the appellants.

11.Heard the learned Government Advocate (CS) appearing for the appellants as well as the learned counsel appearing for respondents and perused the entire materials available on record.

12.From the materials on record, it is seen that it is the case of the respondents that on the date of accident, when their son the deceased S.Manikandan was riding the Motorcycle from Palavakkam to Uthukottai,



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near Ambedhkar Nagar Julia Hospital, the driver of the Tata Sumo Car owned by the 1st appellant drove the same in a rash and negligent manner and dashed on the Motorcycle driven by the said S.Manikandan and caused the accident. In the accident, the said S.Manikandan fell down from the Motorcycle, sustained injuries and died on 25.06.2016. To substantiate their claim, the 1st respondent examined himself as P.W.1 and examined one S.Sarathkumar, eye-witness to the accident as P.W.2 and marked FIR which was registered against the driver of the Tata Sumo Car as Ex.P1. On the other hand, it is the case of the appellants that on the date of accident, since the tyre of their Tata Sumo Car burst, the vehicle dashed on the Motorcycle driven by the deceased S.Manikandan and thus, the accident occurred. To prove the said contention, the appellants did not examine any eye-witness to the accident or mark the Motor Vehicle Inspector's report. The appellants admitted that FIR was registered against the driver of the Tata Sumo Car. They have not given any objection to the FIR registered against the driver of the Tata Sumo Car or gave a complaint against the rider of the Motorcycle/deceased S.Manikandan. From the materials on record, it is seen that the respondents examined P.W.2,



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an eye-witness to the accident, who deposed as that of their case and marked FIR and proved their case. In view of the same, the finding of the Tribunal that accident occurred only due to rash and negligent driving by the driver of the Tata Sumo Car does not warrant any interference by this Court.

13.As far as the quantum of compensation is concerned, it is the case of the respondents that the deceased S.Manikandan was aged 25 years, working as a Executive Manager in Mahendra Finance Company and was earning a sum of Rs.13,200/- per month and the Tribunal without considering Ex.P8, erroneously fixed meagre amount of Rs.13,000/- per month as notional income. From the materials on record, it is seen that the respondents have marked only the xerox copy of salary slip of the deceased as Ex.P8 to prove his income. A perusal of Ex.P8 – wage slip, it is seen that the monthly income of the deceased for the period from 01.02.2016 to 29.02.2016 is Rs.13,087/-. The respondents failed to examine the author of the said document or employer of the deceased S.Manikandan. Further, as per the evidence of P.W.1 – father of the deceased in his cross examination that his son was



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receiving salary through his Bank account, the respondents failed to produce the Bank statement of the deceased. In view of the same, the Tribunal rightly did not accept Ex.P8 and fixed the notional income of the deceased at Rs.13,000/- per month. The accident is of the year 2016. The notional income fixed by the Tribunal is excessive. Taking into consideration the nature of work done by the deceased and date of accident, the notional income fixed by the Tribunal is reduced to Rs.12,500/- per month.

14.The Tribunal after fixing the age of the deceased as 25 years considering Ex.P3 – post mortem report and 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 Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]***, rightly granted 40% enhancement towards future prospects, deducted 50% towards personal expenses of the deceased and applied multiplier '18', in awarding compensation towards loss of dependency. Hence, fixing the monthly income at Rs.12,500/-, applying the multiplier '18',



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granting 40% enhancement towards future prospects and deducting 50% towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.18,90,000/- $\{[Rs.12,500/- + Rs.5,000/- (40\% \text{ of } Rs.12,500/-)] \times 12 \times 18 \times 1/2\}$.

15.As far as the contention of the learned counsel appearing for the respondents that the Tribunal failed to consider Ex.P7 – xerox copies of medical bills and did not award any amount towards medical expenses is concerned, the respondents have produced only the xerox copies of the medical bills before the Tribunal. The respondents have filed C.M.P.No.19330 of 2022 in Cross Objection No.100 of 2022 before this Court to receive the additional documents such as medical bills and pharmacy receipts to prove the medical expenses incurred by them for the deceased. On perusal of the said petition, it is seen that the respondents have spent a sum of Rs.4,12,724/- towards medical expenses of the deceased. Considering the reasons stated in the affidavit filed in support of the said petition and the medical bills produced by the respondents, C.M.P.No.19330 of 2022 is ordered. Original Medical



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Bills are marked as Ex.P13. The respondents are entitled to a sum of Rs.4,12,724/- towards medical expenses as per Ex.P13.

16.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
1.	Loss of dependency	19,65,600/-	18,90,000/-	Reduced
2.	Loss of filial consortium	80,000/-	80,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Medical expenses	-	4,12,724/-	Granted
	Total	20,75,600/-	24,12,724/-	Enhanced by Rs.3,37,124/-

17.In the result, C.M.A.No.296 of 2021 is partly allowed with regard to compensation towards loss of dependency and Cross Objection No.100 of 2022 is partly allowed by granting compensation towards medical expenses. The compensation awarded by the Tribunal at Rs.20,75,600/- is enhanced to Rs.24,12,724/- together with interest at the rate of 7.5% per annum from the



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date of petition till the date of deposit. The appellants are directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.5187 of 2016 (excluding the default period if any). On such deposit, the respondents are permitted to withdraw their share of the award amount now determined by this Court, along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. C.M.P.No.19330 of 2022 is ordered. C.M.P.Nos.2025 of 2021 & 13584 of 2022 are closed. No costs.

(V.M.V., J) (S.M., J)
16.11.2022

($\frac{1}{2}$)

gsa / krk

Index : Yes / No

Internet : Yes / No

Exhibits marked in respondents / claimants side:

Ex.P13: Original Medical Bills and Pharmacy receipts.

V.M.VELUMANI,J.
and

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SUNDER MOHAN, J.

gsa / krk

To

- 1.The Special Subordinate Judge – II,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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16.11.2022
($\frac{1}{2}$)