IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.Nos.1604 and 1605 of 2017
and Cross Obj.Nos.20 and 21 of 2018

C.M.A.No.1604 of 2017

The Branch Manager,
The Oriental Insurance Company, Salem ...appellant

Vs.

1. Anuradaha
2. Abinaya
3. Minor Balaji
[Minor 3rd respondent rep. by his mother
and next friend Anuradha]
4. A.Sarasu ...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.08.2014 made in MCOP.No.2207 of 2006 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

For Appellant	:	Mr.K.Vinod
For Respondents		
for RR1 to 3	:	Mr.D.Baskar
for R4	:	given up

Cross Obj. No.21 of 2018
in CMA.No.1604 of 2017

1. Anuradaha
2. Abinaya
3. Minor Balaji ...Cross appellants

[Minor Balaji rep. by his mother 1st appellant Anuradha]

Vs.

1. The Branch Manager,
   The Oriental Insurance Company, Salem
2. Sarasu ...respondents

Prayer: Cross Appeal filed under Section 104 of the Code of Civil Procedure to allow this cross appeal and direct enhanced compensation of Rs.45,88,000/- to be paid in additional to Rs.29,12,000/- fixed by the Principal District Judge, Cuddalore in MCOP.No.2207 of 2006 by order dated 19.08.2014.

For Appellant : Mr.D.Baskar

For Respondents

for R1 : Mr.K.Vinod

C.M.A.No.1605 of 2017

The Branch Manager,
The Oriental Insurance Company, Salem ...appellant

Vs.

1. Anuradaha
2. A.Sarasu ...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.08.2014 made in MCOP.No.2208 of 2006 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

For Appellant : Mr.K.Vinod

For Respondents

for R1 : Mr.D.Baskar

Cross Appeal No.20 of 2018
in CMA.No.1605 of 2017

Anuradaha ...appellant

Vs.

1. The Branch Manager,
   The Oriental Insurance Company, Salem

2. Sarasu ...respondents

Prayer: Cross Appeal filed under Section 104 of the Code of Civil Procedure to allow this cross appeal and direct enhanced compensation of Rs.21,36,685/- lakhs to be paid in additional to the compensation of Rs.3,73,515/- fixed by the Principal District Judge, Cuddalore in MCOP.No.2208 of 2006 by order dated 19.08.2014.

For Appellant : Mr.D.Baskar

For Respondents
for R1 : Mr.K.Vinod

COMMON JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J]

C.M.A.No.1604 of 2017 is filed by the Insurance Company as against the order dated 19.08.2014 made in MCOP.No.2207 of 2006 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore. Being not satisfied with the quantum of compensation awarded in the said judgment, the claimants have filed Cross Obj.No.21 of 2018 seeking enhancement of compensation.

2. C.M.A.No.1605 of 2017 is filed by the Insurance Company as against the order 19.08.2014 made in MCOP.No.2208 of 2006 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore. Being not satisfied with the quantum of compensation awarded in the said judgment, the claimants have filed Cross Obj.No.20 of 2018 seeking enhancement of compensation.

3. For the sake of convenience, the parties are referred to as per their litigating status before the Tribunal.

4. The first claimant in MCOP.No.2207 of 2006 is the wife and the claimants 2 and 3 are the minor children of the deceased by name Baskar. While the deceased Baskar was driving his Qualis Car from Cuddalore to Periyakulam, the vehicle met with an accident. It is the case of the claimants that a Lorry belonged to the first respondent in MCOPs came in a rash and negligent manner in the opposite direction and dashed against the Qualis Car driven by the deceased. Due to the impact, the deceased Baskar died on the spot and the first claimant suffered serious head injuries. The legal heirs of the deceased Baskar viz., his wife and children filed MCOP.No.2207 of 2006 seeking compensation of Rs.75,00,000/- for the death of the deceased. For the injuries sustained by the wife of the deceased, she filed MCOP.No.2208 of 2006 seeking compensation of Rs.25,00,000/-.

5. After analysing the entire evidence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the vehicle of first respondent in the two MCOP's. In MCOP.No.2207 of 2006, the Tribunal awarded a compensation of Rs.29,62,000/- with 9% interest per annum, out of which, the first claimant

is held entitled for a compensation of Rs.13,62,000/- and the respondents 2 and 3 are held entitled to Rs.8,00,000/- each. In MCOP.No.2208 of 2006, the Tribunal awarded a compensation of Rs.3,73,315/- with 6% interest per annum.

6. The present appeals have been filed questioning the quantum of compensation awarded by the Tribunal and hence, we are not dealing with the other aspects of the award.

C.M.A.No.1604 of 2017 (MCOP.No.2207 of 2006)
and Cross Obj. No.21 of 2018

7. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal failed to see that no documentary or oral evidence was produced by the claimants to prove the income of the deceased at the time of the accident. It is their case that though the accident had occurred in the year 2005, the documents relied upon by the claimants, viz., Income Tax Returns, were all prior to 2001 and the income of the deceased at the time of the accident is not proved by any material evidence

by the claimants. The learned counsel also submitted that the Tribunal has awarded the compensation by adding 30% of the income of the deceased towards future prospects, which is on the higher side. It is submitted that, as per the ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680],*** the Tribunal ought to have added only 25% towards future prospects.

8. The claimants had examined the mother of the first claimant, who is the mother-in-law of the deceased, as PW1. PW1 in her evidence had stated that her son-in-law, viz., the deceased was running a Rice Mill and a Jewellery Shop and also had agricultural income. Thus, it is claimed that the deceased was earning Rs.37,000/- per month at the time of the accident.

9. It is admitted that the Income Tax Returns of the deceased were filed as Exs.P18 and P19 and those documents show that the deceased was drawing a monthly income of around Rs.20,000/-. While cross-examining PW1, the Insurance Company had no dispute with regard to the income of the deceased through business as well as by running a shop.

10. This Court is unable to discard the evidence of PW1. The Income Tax Returns submitted by the deceased, which is 4 years prior to the date of the accident, cannot be discarded merely because it is not for the relevant year when the deceased died.

11. PW1 categorically stated that the deceased was earning more than Rs.37,000/- per month. The family of the deceased is having own house and luxurious Car at the time of the accident and they were living a decent life. The Tribunal by relying upon Exs.P18 and P19 viz., Income Tax Statement and Income Tax Return and also on the over all analysis of evidence, came to the conclusion that the income of the deceased should not be less than Rs.20,000/- per month. This Court is unable to interfere with the findings of the Trial Court as regards the monthly income of the deceased at the time of the accident.

12. Further, the Tribunal has added 30% of monthly income towards future prospects. As rightly pointed out by the learned counsel for the Insurance Company that the deceased being a business man and aged 43 years at the time of the accident, it is appropriate to add 25% towards future

prospects instead of 30%. Therefore, the Loss of Income is calculated as follows:

Loss of Income

Monthly income of the deceased	: 20,000
Add: 25% towards Future Prospects	: 5,000
	25,000
Annual Income **[25,000 x 12]**	: 3,00,000
Less: 1/3 towards Personal Expenses	: 1,00,000
	2,00,000
Applying multiplier 14 **[2,00,000 x 14]**	: 28,00,000

Thus, the Loss of Income of the deceased is arrived at **Rs.28,00,000/-**

13. It is seen that the Tribunal has awarded only a sum of Rs.50,000/- under the other heads. Considering the fact that the wife and children of the deceased are entitled to independent claim towards loss of Consortium, this Court is of the view that the claimants are entitled to a sum of **Rs.80,000/-** towards Loss of Consortium. Further, a sum of **Rs.10,000/-** each awarded by the Tribunal towards Funeral Expenses and Transport Expenses, are

confirmed. As decided by the Supreme Court in recent judgments, the claimants are entitled to interest only at the rate of 7.5% and not 9% as awarded by the Tribunal. In total, the claimant is entitled to **Rs.29,00,000/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

14. The total compensation is re-determined as mentioned below:

S. No.	*Heads under which the compensation is awarded*	*Amounts awarded by the Tribunal*	*Amounts awarded by this Court*
1	Loss of Income	29,12,000	28,00,000
2	Loss of Consortium	30,000	80,000
3	Funeral Expenses	10,000	10,000
4	Transport Expenses	10,000	10,000
	Total	**29,62,000**	**29,00,000**

15. This Court is unable to find any merit in the cross-objection filed by the claimants as the only ground raised was regarding future prospects and this Court has already held that the claimants are entitled to 25% of the monthly income towards future prospects.

16. In fine, the total compensation of Rs.29,62,000/- awarded by the Tribunal is hereby reduced to **Rs.29,00,000/-**, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance

Company is directed to deposit the total compensation amount awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw her share. Insofar as the minor claimants 2 and 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant / mother once in three months. The apportionment of shares as fixed by the Tribunal is hereby confirmed.

17. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed and the Cross-Objection is dismissed. No costs.

CMA 1605 of 2017 (MCOP.No.2208 of 2006) and

Cross Obj. No.21 of 2018

18. As against the award in MCOP.No.2208 of 2006, the Insurance Company has preferred CMA.No.1605 of 2017. It is the submission of the learned counsel for the Insurance Company that the claimant has not

examined herself as witness to prove the nature of injury or disability suffered by her on account of the accident. However, the Tribunal by taking the monthly income of the deceased at Rs.10,000/- and the disability at 34% as per the Doctor's evidence, awarded a sum of Rs.3,26,400/- towards Permanent Disability.

19. This Court is unable to sustain the order of the Tribunal regarding the compensation for the injuries suffered by the claimant. On the side of the claimant, the Doctor, who had assessed the claimant, was examined as PW2 and marked the Wound Certificate/Ex.P12. From the Wound Certificate, this Court is unable to find any grievous injury sustained by the claimant. Further, PW2/Doctor, who examined the claimant, is not a neurosurgeon to give the disability certificate. Though Exs.P15 to P17 were filed to show that the claimant was running business and assessed to tax, this Court is unable to find that there was a definite loss of income to the claimant on account of the accident. Hence, the sum of Rs.3,26,400/- awarded towards Permanent Disability by applying multiplier method and Rs.5,000/- awarded towards Loss of income for one month, are set aside.

20. Even though this Court is unable to find any justification for awarding compensation on the basis of the disability certificate issued by the Doctor, this Court is of the view that the injured claimant is entitled to some compensation as she was unable to perform or carry out her business or take care of her personal affairs as she was able to do earlier before the accident. Therefore, this Court awards a lump sum amount of **Rs.1,00,000/-** towards partial disability.

21. The sum of **Rs.21,915/-** awarded by the Tribunal under the head "Medical Expenses" based on medical bills, which were marked as Exs.P22, 24 and 25, appears to be just and fair and hence, the same is confirmed. Further, the sum of **Rs.10,000/-, 5,000/-** and **5,000/-** awarded by the Tribunal under the heads viz., Loss of Income, Pain and Sufferings, Extra Nourishment and Transport appear to be reasonable and hence they are confirmed.

22. As decided the Supreme Court in recent judgments, the claimants are entitled to interest at the rate of 7.5% per annum and not 6% as awarded by the Tribunal. In total, the claimant is entitled to **Rs.1,41,915/-** along with

interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

23. As this Court has not even convinced with the reasons submitted by the Tribunal to award a sum of Rs.3,73,315/- as compensation for the injuries suffered by the claimant, this Court is unable to entertain the Cross Objection filed by the injured claimant.

24. The total compensation is re-determined as mentioned below:

S. No.	***Heads under which the compensation is awarded***	***Amounts awarded by the Tribunal***	***Amounts awarded by this Court***
1	Permanent Disability / Partial Disability	3,26,400	1,00,000
2	Loss of income for one month	5,000	-
3	Pain and Sufferings	10,000	10,000
4	Extra Nourishment	5,000	5,000
5	Transport	5,000	5,000
6	Medical Bills	21,915	21,915
	Total	**3,73,315**	**1,41,915**

25. In fine, the total sum of Rs.3,73,315/- awarded by the Tribunal towards compensation is hereby reduced to Rs.1,41,915/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation before the

Tribunal, after adjusting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal.

26. With the above modification in the award of the Tribunal and directions issued above, this Civil Miscellaneous Appeal is partly allowed and the Cross-Objection is dismissed. No costs.

(S.S.S.R.J.,) (N.M.J.,)
28.09.2022

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The Principal District Judge,
   Motor Accident Claims Tribunal, Cuddalore
2. The Section Officer, VR Section High Court, Madras.

S.S.SUNDAR, J.
and
N.MALA, J.

pvs

C.M.A.Nos.1604 and 1605 of 2017

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