IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.762 of 2021
and C.M.P.No.4571 of 2021
and C.M.A.No.1468 of 2022

C.M.A.No.762 of 2021

M/s.The New India Assurance Co. Ltd.,
No.66-C, North Car Street,
Tiruchengode. .. Appellant

Vs.

1.Sudha
2.Minor Kirthivasan
(rep. By his mother and next friend, Sudha)
3.Shanmugam
4.Deivasigamani
5.Sumathy .. Respondents

C.M.A.No.1468 of 2022

1.Sudha

2.Minor Kirthivasan
(rep. By his mother and next friend, Sudha)

3.Shanmugam .. Appellants

Vs.

1.Deivasigamani

2.Sumathy

3.M/s.The New India Assurance Co. Ltd.,
No.66-C, North Car Street,
Tiruchengode. .. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.06.2017, made in M.C.O.P. No.897 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

(In C.M.A.No.762/2021)

For Appellant : Mr.J.Michael Visuvasam

For RR1 to 3 : Mr.T.S.Arthanareeswaran

(In C.M.A.No.1468/2022)

For Appellants : Mr.T.S.Arthanareeswaran

For R3 : Mr.J.Michael Visuvasam

COMMON JUDGMENT

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

C.M.A.No.762 of 2021 has been filed by the appellant-Insurance Company against the judgment and decree dated 08.06.2017, made in M.C.O.P. No.897 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

C.M.A.No.1468 of 2022 has been filed by the appellants-claimants seeking enhancement of the compensation granted by the Tribunal in the said award.

2.Both the appeals arise out of the same accident and same award and hence, disposed of by this common judgment.

3.For the sake of convenience, the parties are referred to as per their rank in the claim petition.

4.The claimants filed M.C.O.P. No.897 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari, claiming a sum of Rs.10,00,000/- as compensation for the death of one Mahalingam, who died in the accident that took place on 03.11.2009.

5.According to the claimants, on the date of accident, at about 2.45 p.m., while the deceased Mahalingam was riding a Motorcycle bearing Registration No.TN-33-F-3979 from Tiruchengode to Erode, near Central Silk House Powerloom, Thokkavadi at the extreme left side of Tiruchengode to Erode Main road, the driver of the Bus bearing Registration No.TN-30-AE-3377 owned by the 2nd respondent drove the same in a rash and negligent manner and hit against the Motorcycle driven by said Mahalingam and caused the accident. In the accident, the said Mahalingam sustained severe injuries on the head, nose and all over the body and was admitted in the Hospital. Inspite of treatment, the said Mahalingam died on 20.12.2009 in the Hospital. The accident occurred only due to rash and negligent driving by driver of the Bus owned by the 2nd respondent and hence, the claimants filed the said claim petition claiming compensation for the death of said Mahalingam, against the respondents as owner of the Motorcycle, owner of the Bus and insurer of the Bus respectively.

6.The respondents 1 and 2, owners of the Motorcycle and Bus, remained exparte before the Tribunal.

7.The 3rd respondent-Insurance Company filed counter statement and denied all the averments made by the claimants and also denied the manner of the accident, age, avocation and income of the deceased as alleged by the claimants. According to the 3rd respondent, the accident occurred when the deceased Mahalingam who tried to overtake a Lorry, came on the wrong side, dashed against the Bus and invited the accident. Hence, the deceased

Mahalingam is the tort-feasor. FIR registered against the deceased Mahalingam was closed as charges abated since said Mahalingam died. There is no mistake on the part of the driver of the Bus. Hence, the 3rd respondent is not liable to indemnify the 2nd respondent/owner of the Bus. The claimants have to produce the Post Mortem Certificate to prove that the death of said Mahalingam is only due to the injuries sustained in the accident. The claim petition is bad for non-joinder of insurer of the Motorcycle. The rider of the Motorcycle did not possess valid driving license to ply the vehicle at the time of accident. The said Motorcycle was not at all insured. The claimants also have to prove their dependency on the deceased Mahalingam to claim compensation. In any event, the total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st claimant examined herself as P.W.1, examined one Seetha, eye-witness to the accident as P.W.2 and one Selvakumar as P.W.3 and marked 6 documents as Exs.P1 to P6. The 3rd respondent-Insurance Company examined one Vincent as R.W.1 and marked 2 documents as Exs.R1 & R2.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Bus owned by the 2nd respondent and directed the 3rd respondent-Insurance Company to pay a sum of Rs.19,30,000/- as compensation to the claimants.

10.Against the said judgment and decree dated 08.06.2017, made in M.C.O.P. No.897 of 2010, the 3rd respondent-Insurance Company has come out with C.M.A.No.762 of 2021.

11.Not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A.No.1468 of 2022, seeking enhancement of compensation.

12.The learned counsel appearing for the 3rd respondent-Insurance

Company contended that the accident occurred when the deceased Mahalingam who drove the Motorcycle in a rash and negligent manner and while trying to overtake a Lorry proceeding in front of him, went to the right hand side by crossing the white line and dashed against the Bus. FIR marked as Ex.P1 also substantiates the same. The Tribunal, overlooking Ex.R2 – Final Report filed by the Police authorities after due investigation and case was closed as charge abated as the said Mahalingam died due to the injuries, holding that the truth of information in Ex.P1 - FIR was not ascertained by way of proper investigation by the Police, came to the conclusion that the driver of the Bus was negligent in causing the alleged accident. The Tribunal erred in relying only on the evidence of P.W.2 – eye-witness to the accident, who had given wrong version of the alleged accident contrary to Exs.P1 & P3 viz., FIR and Rough Sketch. The Tribunal held that driver of the Bus is negligent on the ground that he had not kept extreme left side of the road. At the time of accident, the deceased Mahalingam was not possessing valid driving license to ply the vehicle. The Tribunal erred in awarding compensation to the claimants as if the death of Mahalingam is due to the alleged road accident, when opinion as to cause of death has not been mentioned pending chemical analysis as per Ex.P3 – Postmortem Certificate. In the absence of any proof with regard to avocation and income of the deceased, the Tribunal erred in fixing the monthly income of the deceased at Rs.7,000/- per month and granting 50% enhancement towards future prospects. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.1468 of 2022, filed by the claimants.

13.The learned counsel appearing for the claimants made submissions in support of the award of the Tribunal with regard to negligence fixed on the driver of the Bus owned by the 2nd respondent. The learned counsel further contended that at the time of accident, the deceased Mahalingam was an Agriculturist and was earning a sum of Rs.10,000/- per month. They have examined one Selvakumar, P.W.3 who had deposed that the deceased Mahalingam was doing agricultural work along with him and was earning not less than Rs.300/- per day. The Tribunal without considering the evidence on record, awarded only a meagre sum of Rs.7,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal towards loss of love and affection to the claimants and loss of consortium to the 1st claimant who is the wife of the deceased Mahalingam are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation and dismissal of C.M.A.No.762 of 2021 filed by the 3rd respondent-Insurance Company.

14.Heard the learned counsel appearing for the 3rd respondent-Insurance Company as well as the claimants and perused the entire materials available on record.

15.From the materials on record, it is seen that it is the case of the claimants that while the deceased Mahalingam, husband of the 1st claimant, father of the 2nd claimant and son of the 3rd claimant was riding the Motorcycle bearing Registration No.TN-33-F-3979 at the extreme left side of the Tiruchengode to Erode Main road, the driver of the Bus bearing Registration No.TN-30-AE-3377 owned by the 2nd respondent drove the same in a rash and negligent manner, hit against the Motorcycle driven by the deceased Mahalingam and caused the accident. In the accident, he sustained injuries on the head, nose and all over the body and admitted in KMCH Hospital, Erode on 03.11.2009. Inspite of treatment, he died on 20.12.2009 in the Hospital. To substantiate their case, the 1st claimant examined herself as P.W.1, one Seetha, eye-witness to the accident was examined as P.W.2 and marked FIR as Ex.P1 and Rough Sketch as Ex.P3, along with other documents. P.W.2, eye-witness to the accident has deposed that accident occurred only due to the negligence of the driver of the Bus and he dashed against the Motorcycle when he tried to overtake the Lorry going in front of the Bus. On the other hand, it is the case of the 3rd respondent-Insurance Company that accident occurred only due to the rash and negligent driving by the deceased Mahalingam, when he tried to overtake the Lorry which was proceeding in front of him, came on the wrong side and invited the accident. In support of their contention, they relied on the FIR. They have not examined the driver of the Bus, who gave the complaint based on which FIR was registered or any other eye-witness to the accident. P.W.2 denied suggestion that accident occurred when the rider of the Motorcycle tried to overtake the Lorry going in front of him. It is well settled that contents of FIR cannot be the basis for fixing negligence. The claimants have marked the Rough Sketch as Ex.P3. The Tribunal considered Ex.P3 and found that Bus went to the right side and accepting the evidence of P.W.2 that driver of the Bus while overtaking the Lorry going in front of him, dashed on the Motorcycle driven by the deceased Mahalingam, held that had the driver of the Bus driven the Bus on the left hand side of the road, the accident would not have occurred. Considering the above materials, the Tribunal held that accident occurred only due to rash and negligent driving by driver of the Bus. There is no error in the said finding of the Tribunal warranting interference by this Court.

16.The contention of the learned counsel appearing for the 3rd respondent-Insurance Company that in the Postmortem certificate, the cause of death is not mentioned and it is stated that report of chemical analysis is awaited and therefore, the death is not due to the injuries sustained in the accident is not acceptable. The respondents are not denying the accident and that said Mahalingam sustained injuries in the accident. The deceased Mahalingam was admitted in the Hospital for treatment on 03.11.2009 and he died on 20.12.2009 in the Hospital, inspite of treatment. Not mentioning the cause of death in the Postmortem certificate will not have adverse effect that Mahalingam did not die due to the injuries sustained by him in the accident, but for some other reason.

17.As far as the quantum of compensation is concerned, it is the case of the claimants that at the time of accident, the deceased Mahalingam was aged 30 years, an Agriculturist and was earning a sum of Rs.10,000/- per month. They have not filed any document to prove their contention. In the absence of any materials with regard to avocation and income, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2009. The Hon'ble Apex Court in the judgment reported in ***2014 (1)***

TNMAC 459 (SC) [Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd.,] fixed a sum of Rs.6,500/- per month as notional income for the accident of the year 2006. Considering the said judgment of the Hon'ble Apex Court and the date of accident in the present case, it would be just and proper to fix the notional income of the deceased at Rs.8,000/- per month. Having rightly fixed the age of the deceased as 30 years relying on Ex.P4 – Postmortem certificate and applying the multiplier '17' following the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another],*** the Tribunal erred in granting 50% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],*** the claimants are entitled to only 40% enhancement towards future prospects. Hence, fixing the notional income at Rs.8,000/- per month, applying multiplier '17', granting 40% enhancement towards future prospects and deducting 1/3rd towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.15,23,200/-

{[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 17 x 2/3}. The Tribunal has excessively awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st claimant. The 1st claimant who is the wife of the deceased Mahalingam is entitled to only Rs.40,000/- towards loss of consortium. Hence, the amount awarded towards loss of consortium to the 1st claimant is reduced to Rs.40,000/-. In addition to awarding compensation towards loss of consortium to the 1st claimant, the Tribunal has erroneously awarded a sum of Rs.1,00,000/- towards loss of love and affection to the 1st claimant. Hence, the same is set aside. The sum of Rs.1,50,000/- and Rs.50,000/- awarded to the claimants 2 and 3 respectively towards loss of love and affection are excessive and the same are reduced to Rs.40,000/- each. The Tribunal has erroneously awarded a sum of Rs.75,000/- towards pain and suffering. The same is set aside. The sum of Rs.25,000/- excessively awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The claimants are entitled to a sum of Rs.15,000/- towards loss of estate. 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	14,28,000/-	15,23,200/-	Enhanced
2.	Loss of consortium to 1st claimant	1,00,000/-	40,000/-	Reduced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Pain and sufferings	75,000/-	-	Set aside
5.	Loss of love and affection to: 1st claimant 2nd claimant and 3rd claimant	 1,50,000/- 1,00,000/- 50,000/-	 - 40,000/- 40,000/-	 Set aside Reduced Reduced
6.	Damage to clothes	2,000/-	2,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	**19,30,000/-**	**16,75,200/-**	**Reduced by Rs.2,54,800/-**

18.In the result, C.M.A.No.762 of 2021 is partly allowed and C.M.A.No.1468 of 2022 is partly allowed in respect of the heads, loss of estate and loss of dependency. The compensation awarded by the Tribunal at Rs.19,30,000/- is modified and reduced to Rs.16,75,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit 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, to the credit of M.C.O.P. No.897 of 2010. On such deposit, the claimants 1 and 3 are permitted to withdraw their respective share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st claimant, mother of the minor 2nd claimant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd claimant. The 3rd respondent-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.897 of 2017, if the entire award amount has already been deposited by them. It is made clear that if the claimants have already withdrawn the entire award amount, the 3rd respondent-Insurance Company is not entitled to recover the same from the claimants. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)
29.08.2022

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankari.

2.The Section Officer,
V.R Section,
High Court, Madras.

V.M.VELUMANI,J.
and
S.SOUNTHAR,J.

(gsa)

C.M.A.Nos.762 of 2021
and C.M.A.No.1468 of 2022

29.08.2022