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C.M.A.No.243 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.243 of 2021

and

C.M.P.No.1547 of 2021

Shriram General Insurance Co. Ltd.,
E-8, EPIP RIICO, Sitapura,
Jaipur,
Rajasthan – 302 022.

.. Appellant

Vs.

1.Saritha

2.Minor. Livinashri

3.Minor. Haricharan

(Minor respondents 2 & 3 are
represented by their Mother / Next
Friend, Saritha 1st respondent
herein)

4.Mallika

5.Udayakumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and decree dated



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30.10.2017, made in M.C.O.P.No.957 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.S.Dhakshnamoorthy
For RR 1 to 3 : Mr.Ma.P.Thangavel
For R4 : No appearance

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 30.10.2017, made in M.C.O.P.No.957 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant is the 2nd respondent in M.C.O.P.No.957 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. The respondents 1 to 4 / claimants filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one S.Pandian @ Periyasamy, who died in the accident that took place on 28.04.2014.

3.According to the respondents 1 to 4, on 28.04.2014 at about 11.10 p.m., the deceased S.Pandian @ Periyasamy was driving the Mini Load



Van bearing Registration No.TN 28 AM 9327 from Namakkal to Chennai and while proceeding opposite to Indian Oil Petrol Bunk at Melrosapuram, GST Road, the back tyre of the Van got bursted. Hence, the deceased parked the Van on the side of the road and was replacing the tyre. At that time, the driver of the Ashok Leyland Lorry bearing Registration No.TN 31 AY 8205, drove the same in a rash and negligent manner without following the road traffic rules, came behind the Van and dashed on the backside of the Van as well as deceased and caused the accident. Due to the said impact, the said S.Pandian @ Periyasamy sustained multiple injuries all over the body and died on the spot itself. Hence, the respondents 1 to 4 filed the claim petition claiming compensation against the 5th respondent and appellant, the owner and insurer of the Lorry respectively.

4.The 5th respondent – owner of the Lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. The appellant denied the manner of accident as alleged by the



respondents 1 to 4. At the time of accident, the driver of the Lorry belonging to 5th respondent was not possessing valid driving license to drive the Lorry. Therefore, the 5th respondent violated the terms and conditions of the Motor Vehicle Rules as well as insurance policy by permitting the driver of the Lorry to drive the same, without driving license. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The respondents 1 to 4 failed to implead the owner and insurer of the Van driven by the deceased, who are necessary parties to the claim petition. Hence, the claim petition has to be dismissed for non-joinder of necessary parties. The respondents 1 to 4 have to prove that they are the only legal heirs and depending only on the income of the deceased. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 4 is highly excessive and prayed for dismissal of the claim petition as against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Naveen, eyewitness to the accident was examined as P.W.2, one Prabakaran, Assistant Branch Manager of the Kotak Mahindra Bank was examined as P.W.3 and one Dhanaraj, Assistant Manager of the HDFC



Bank was examined as P.W.4 and 11 documents were marked as Exs.P1 to P11. The appellant has not let in any oral and documentary evidence. Five witness documents were marked as Exs.W1 to W5.

7.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 5th respondent and directed the 5th respondent and appellant to jointly or severally pay a sum of Rs.46,95,000/- as compensation to the respondents 1 to 4.

8.To set aside the said award dated 30.10.2017, made in M.C.O.P.No.957 of 2015, the appellant has come out with the present appeal.

9.Though the appellant has raised a ground with regard to negligence, at the time of arguments, the learned counsel appearing for the appellant restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and submitted that the Tribunal ought not to have fixed a sum of Rs.20,000/- as monthly income of the deceased based on Exs.W2 & W3 marked by P.W.3, Assistant Branch



Manager of Kotak Mahindra Bank. The transactions in the Bank accounts will not prove the monthly income of the deceased. The Tribunal failed to consider the income tax returns of the deceased. The Tribunal granted 50% enhancement towards future prospects and the same is excessive. The amounts awarded by the Tribunal under conventional heads are excessive and prayed for reducing the compensation.

10.The learned counsel appearing for the respondents 1 to 3 contended that at the time of accident, the deceased was aged 35 years, owner of Sri Venkateshwara Class Traders, Mudalaipatti, earning a sum of Rs.30,000/- per month. They proved the same by examining the Assistant Bank Managers as P.W.3 & P.W.4 and by marking Exs.P7 & W2 to W5. The Tribunal fixed only a sum of Rs.20,000/- per month as notional income of the deceased and the same is not excessive. The deceased was aged 35 years at the time of accident and the Tribunal has rightly granted 50% enhancement towards future prospects. The minor respondents 2 & 3, who are the children of the deceased have lost their father at young age. Hence, the compensation awarded by the Tribunal towards loss of love and affection to minor respondents 2 & 3 is not excessive. The Tribunal has not awarded any amount towards loss of estate. The total



compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 4th respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for respondents 1 to 3 and perused the entire materials on record.

13.From the materials on record, it is seen that it is the case of the respondents 1 to 4 that at the time of accident, the deceased was aged 35 years, owner of Sri Venkateshwara Class Traders, Mudalaipatti, earning a sum of Rs.30,000/- per month. To prove the said contention, the respondents 1 to 4 examined the Assistant Bank Managers as P.W.3 & P.W.4 and marked Exs.P7 & W2 to W5. The Tribunal having held that based on the evidence of P.W.3 & P.W.4 and Exs.P7 & W2 to W5, income of the deceased cannot be fixed, erroneously fixed a sum of Rs.20,000/- per month as notional income of the deceased taking into consideration the



age and nature of work done by the deceased. The accident is of the year 2014 and the notional income fixed by the Tribunal is excessive.

Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. From Ex.P6 / driving license of the deceased it is seen that the deceased was aged 35 years at the time of accident and not in any permanent job. The Tribunal has erroneously granted 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 respondents 1 to 4 are entitled to only 40% enhancement towards future prospects. The Tribunal 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]**, rightly applied multiplier '16'. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified and reduced to Rs.28,22,400/- {Rs.19,600/- [Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-) X 12 X 16 X 3/4]}.



13(i).The Tribunal has awarded excessive amount of Rs.1,00,000/- towards loss of consortium to 1st respondent, who is the wife of the deceased and hence, the same is reduced to Rs.40,000/-. A sum of Rs.2,50,000/- awarded by the Tribunal towards loss of love and affection to the respondents 2 to 4 is excessive and the same is reduced as the respondents 2 & 3, who are the children of the deceased are entitled to a sum of Rs.40,000/- each towards parental consortium and the 4th respondent, who is the mother of the deceased is entitled to a sum of Rs.40,000/- towards filial consortium. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive and hence, the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The respondents 1 to 4 are entitled to a sum of Rs.15,000/- towards loss of estate. 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	43,20,000/-	28,22,400/-	Reduced
2.	Loss of love & affection	2,50,000/-	-	Set aside
3.	Parental consortium to respondents 2 & 3	-	80,000/- (Rs.40,000/- each)	Granted
4.	Filial consortium to	-	40,000/-	Granted



	4 th respondent			
5.	Funeral expenses	25,000/-	15,000/-	Reduced
6.	Loss of consortium to 1 st respondent	1,00,000/-	40,000/-	Reduced
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.46,95,000/-	Rs.30,12,400/-	Reduced by Rs.16,82,600/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.46,95,000/- is hereby reduced to Rs.30,12,400/-. The appellant-Insurance Company and the 5th respondent are jointly or severally directed to deposit the award amount now determined by this Court along 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, less the amount already deposited, if any, 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.957 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. On such deposit, the respondents 1 & 4 are permitted to withdraw their respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 2 & 3



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are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attains majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare the minor respondents 2 & 3. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.957 of 2015, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

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

04.11.2022

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Index : Yes / No

Internet : Yes / No

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section,
High Court,
Madras.



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