IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2022

CORAM:

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

C.M.A.No.2330 of 2019
and C.M.P.No.10576 of 2019
and Cross Obj. No.72 of 2022

C.M.A.No.2330 of 2019

National Insurance Company Limited,
Issuing Office at 930,
Sathiyamangalam Road,
Gandhipuram, Coimbatore – 641 012. .. Appellant

Vs.

1.R.Hemamalini
2.R.Adithiyan
3.R.Dharini
4.M.Sathyabama
5.K.V.Gopalan
6.Pushpa Gopalan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 17.10.2016, made in

M.C.O.P. No.37 of 2012, on the file of the Motor Accident Claims Tribunal, V Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.S.Arunkumar

For Respondents : Ms.Shobana
for Mr.K.M.D.Muhilan
for R1 to R4

Cross Objection No.72 of 2022

1.R.Hemamalini
2.R.Adithiyan
3.R.Dharini
4.M.Sathyabama .. Cross Objectioners

Vs.

1. National Insurance Company Limited,
Issuing Office at 930,
Sathiyamangalam Road,
Gandhipuram, Coimbatore – 641 012.

2.K.V.Gopalan
3.Pushpa Gopalan .. Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., against the fair and decreetal order dated 17.10.2016 passed by Motor Accidents Claim Tribunal Authority and Vth Additional District Judge, Coimbatore in M.C.O.P.No.37 of 2012 and whereas the Cross Objectors came to know about the present proceeding during the month of April 2019 and whereas the Cross Objector is filing this memo of Grounds of Cross Objection under Order XLI Rule 22 of the C.P.C .

For Cross Objectors : Mr.K.M.D.Muhilan

For R1 : Mr.S.Arunkumar

COMMON JUDGMENT

(Judgment of the Court was delivered by S.SOUNTHAR,J.)

Aggrieved by the award passed by the Motor Accident Claims Tribunal, (V Additional District and Sessions Judge, Coimbatore), in M.C.O.P.No.37 of 2012, dated 17.10.2016, the insurer of the vehicle owned by the 6^{th} respondent has come up with this appeal.

2. The respondents 1 to 4, who were claimants before the Tribunal not satisfied with the quantum of compensation awarded by the Tribunal has preferred the Cross Objection.

3. The respondents 1 to 4/claimants, the husband of first respondent, father of second and third respondent and son of fourth respondent namely Ravichandran was riding a motorcycle bearing registration No.TN-38BD-6879 on 22.04.2011 in West to East direction near Saibaba Colony, Coimbatore. Whileso, the 5th respondent who was riding a motorcycle bearing registration No.TN-38Q-9882 owned by the 6th respondent and insured with the appellant came in the opposite direction and dashed against the vehicle driven by the said Ravichandran. Due to the accident, Ravichandran was thrown out of his vehicle, as a result of which, he sustained severe head injury and subsequently succumbed to injuries on 28.05.2011.

4. According to the respondents 1 to 4, the deceased was aged about 52 years at the time of accident and he was working as a Manager at Jewellery Production (Setting) in M/s.Vispark Jewellery Manufacturers (P) Ltd., Coimbatore and was drawing a salary of Rs.6,91,200/- per annum.

5. The appellant/Insurance Company, which was arrayed as 3rd

respondent before the Tribunal filed a counter and seriously disputed the manner of accident, negligence and also the age, occupation and income of the deceased.

6. The Tribunal after consideration of oral and documentary evidence, came to a conclusion that the accident had taken place due to the rash and negligent driving of the 5th respondent and hence, the insurer of the offending vehicle namely, the appellant, is liable to pay the compensation. The Tribunal fixed the compensation payable to the respondents 1 to 4 at Rs.59,11,300/-. Aggrieved by the finding of the Tribunal that the Inurance Company is liable to pay compensation to the respondents 1 to 4 and also quantum of compensation, the Insurance Company has come up with this appeal. Not satisfied with the quantum of compensation, the respondents 1 to 4 have filed Cross Objection in Cross Obj. No.72 of 2022.

7. The learned counsel for the appellant/Insurance Company

submitted that there is a delay in filing of FIR and hence the manner of accident as pleaded by the respondents 1 to 4 is doubtful and having regard to the fact that the 5th respondent was acquitted in the criminal case, the Tribunal ought not to have fixed negligence on the part of the 5th respondent and thereby erroneously fixed the liability to pay compensation on the appellant/Insurance Company. On the question of quantum, the learned counsel submitted that the Tribunal erred in taking into consideration, the conveyance allowance payable to the deceased, which is personal in nature. The learned counsel submitted that the Tribunal ought not to have taken into consideration the bonus amount of Rs.1,00,000/- said to be payable to the deceased, while taking into consideration the loss of dependency.

8. Per contra, the learned counsel for the respondents 1 to 4 submitted that the Tribunal, based on the evidence of uninterested eye witness PW.2 and FIR, came to the conclusion that the negligence is on the part of the 5th respondent and hence as the insurer of offending vehicle, the appellant is liable to pay compensation. He further submitted that the Tribunal erred in not taking into consideration, the Provident Fund contribution made by the

deceased which is to the tune of Rs.35,050/- per annum while calculating the loss of dependency. Supporting the Tribunal conclusion that bonus amount payable to the deceased can also be taken into consideration while calculating the loss of dependency, the learned counsel for the respondents 1 to 4 relied on the judgment ***reported in 2012 SCC online Mad 151 (2012) 1 TTNMAC 171 (DB)*** *in United India Insurance Company Ltd., Vs. K.Anusuya, 2.Ammani Ammal (died), 3.Palanisamy, 4.Minor K.Ranjit Minor rep. By 1st respondent, 5.M.Sivaraj, 6.Thirumalai Cottons (P) Ltd., Sakthi Road, 7.Saravampatty, Coimbatore -35.*

9. In support of his contention that the claimants are entitled to 10% towards future prospects, he also relied on the judgment reported in *(2011) 4 Supreme Court Cases 689 in [K.R.Madhusudhan and others Vs. Administrative Officer and another]*.

10. We have considered the rival submissions of the parties and evidence available on record. In order to prove the manner of the accident and also the negligence on the part of the driver of the offending vehicle namely the

5th respondent, the first respondent / wife of the deceased was examined as PW1 and one independent witness namely Mohanraj was examined as PW.2. He categorically deposed that the 5th respondent while driving the vehicle owned by the 6th respondent, rashly and negligently came in the opposite direction and hit against the vehicle driven by the deceased, he also withstood the cross examination. Though it was contended by the appellant/Insurance company that the deceased was under the influence of Alcohol, at the time of accident, there is no evidence available on record to substantiate the contention of the appellant. As far as the delay in filing the FIR is concerned, there is no dispute with regard to the fact of accident. The appellant even in their pleading claimed that the accident had taken place only due to the negligence of the deceased. Therefore, the fact of accident is accepted, the dispute is only with regard to the manner of accident and negligence. The evidence of PW.2, with regard to the negligence aspect is unimpeached. He is also the informant in FIR and from the evidence available on record, the deceased was admitted in hospital. The Tribunal opined that being a medical case it is for the concerned hospital authority to intimate the same to the police merely because there is a delay in the hospital authorities intimating the same to the police, it cannot be presumed that the accident had not taken place. The Tribunal based on the unimpeached evidence of PW.2 which was also corroborated by the FIR, came to the conclusion that the accident was occurred only due to the negligence on the part of the 5th respondent. The said finding is correct and no interference by this Court is necessary.

11. As far as the quantum is concerned, the contention of the learned counsel for the appellant is that the Tribunal ought not to have taken into consideration the conveyance allowance of Rs.800/- mentioned in the salary slip Ex.P.20 while calculating the loss of dependency. The conveyance allowance is personal to the deceased and the same cannot be treated as a contribution to the family. As far as the bonus is concerned, as per the salary slip Ex.P20-performance linked incentive of Rs.84,000/- was paid to the deceased as per his last drawn salary slip. By taking into consideration the evidence of HR Manager of the employer of the deceased, the Tribunal added up Rs.1,00,000/- per annum towards bonus, while calculating the loss of dependency. The same is not correct and as per the documentary evidence

Ex.P20 - the performance linked bonus was mentioned as Rs.84,000/-. We cannot presume that every year the deceased would be getting the very same amount. Fixation of bonus every year is subject to fluctuation, performance of the deceased and the profit earned by the employer of the deceased etc., Therefore, we deem it appropriate to take 50% of the bonus amount, while calculating the loss of dependency. As rightly pointed out by the learned counsel for the respondents 1 to 4, the Tribunal failed to take into consideration, the provident fund amount paid by the deceased, while calculating the loss of dependency. As per the last drawn pay slip Ex.P20, the provident fund contribution is mentioned as Rs.35,050/-. Since the provident fund contribution amount includes the contribution of the employer, we take into consideration 50% of the said amount. Therefore, the annual income of the deceased can be fixed as follows:

(i) salary as per the pay slip of
[Rs.47,679 – Rs.800] *12 =Rs.5,62,548/-

(ii) 50% Bonus amount
(Rs.84,000/-*50%) =Rs.42,000/-

(iii) 50% Provident Fund =Rs.17,525/-
(contribution of the employee alone)

(Rs.35,050/- *50%)

Total annual income	= Rs.6,22,073/-
10% future prospects	+Rs. 62,207/-

Annual Income	=Rs.6,84,280/-
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12. Income Tax Slab for Assessment year 2012-2013:

Upto Rs.1,80,000/-	-	Nil
From Rs.1,80,001 – to Rs.5,00,000/- (10%)		
[Rs.3,20,000/- x 10%]	-	Rs.32,000.00/-
From Rs.5,00,001/- to Rs.8,00,000/- (20%)		
[Rs.1,84,280/- x 20%]	-	Rs.36,856/-

Income Tax	-	Rs.68,856/-

Annual income after deducting income tax

(Rs.6,84,280- 68,856/-) - Rs.6,15,424/-

After deduction of applicable income tax for the assessment year 2012-2013, the annual income of the deceased comes to Rs.6,15,424/-. At the time of accident, the age of the deceased was fixed as 52 years by Tribunal and hence the applicable multiplier is 11.

13. In view of the fact that the total number of dependants are 4, ¼th of the amount has to be deducted towards personal expenses of the deceased. Therefore, the loss of dependency fixed by the Tribunal is reduced to (Rs.6,15,424x11x3/4)=Rs.50,77,248/-. Hence, the loss of dependency fixed by the Tribunal is reduced to Rs.50,77,248/- from Rs.52,38,178/-.

14. The Tribunal fixed the loss of consortium at Rs.1,00,000/-. The first respondent is the wife of the deceased and the respondents 2 and 3 are the children of the deceased and the 4th respondent is the mother of the deceased. The first respondent is entitled to Rs.40,000/- towards loss of consortium. Hence, the compensation under the head loss of consortium is reduced to Rs.40,000/- from Rs.1,00,000/-. The 4th respondent is entitled to Rs.40,000/- towards loss of filial consortium and the respondents 2 & 3 being the children of the deceased are entitled to Rs.40,000/- each towards parental consortium. Therefore, the compensation awarded by the Tribunal under the

head loss of love and affection is modified and a sum of Rs.40,000/- is granted as filial consortium to the 4th respondent and Rs.40,000/- each is granted as parental consortium to the respondents 2 & 3.

15. As per the judgment of the Hon'ble Apex Court in ***2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi),*** respondents 1 to 4 are entitled to only Rs.15,000/- towards funeral expenses. Hence, the funeral expenses granted by the Tribunal at Rs.25,000/- is reduced to Rs.15,000/-, the medical expenses granted by the Tribunal at Rs.4,98,130/- is confirmed. Apart from that, this Court grants Rs.15,000/- under the head 'loss of estate'.

16. Though this Court agree with the arguments of the learned counsel for the Cross Objector and taken into consideration the contribution made by the deceased towards provident fund while calculating the loss of dependency, in view of the fact that the reduction of the compensation under the head of loss of dependency and modification of the compensation amount under some of the various other heads, the total compensation fixed by the

Tribunal is ultimately got reduced. Therefore, the Cross Objection stands dismissed.

17. In fine, the total award amount granted 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 or reduced
1.	Loss of dependency	Rs.52,38,178/-	Rs.50,77,248	Reduced
2.	Loss of consortium to 1st respondent	Rs.1,00,000	Rs.40,000/-	Reduced
3.	Loss of parental consortium	Rs.50,000/-	Rs.80,000/- (Rs.40,000x2)	Enhanced
4.	Loss of filial consortium	-	40,000/-	Granted
5.	Funeral expenses	Rs.25,000/-	Rs.15,000/-	Reduced
5.	Medical Expenses	Rs.4,98,130/-	Rs.4,98,130	Confirmed
6.	Loss of Estate	-	Rs.15,000	Granted
	Total	59,11,308/-	57,65,378/-	Reduced by

		Rounded to Rs.59,11,300/-		1,45,922/-

This Court modifies the compensation awarded by the Tribunal from Rs.59,11,300/- to 57,65,378/- along with interest at the rate of 9% p.a., from the date of petition till the date of realization.

18. In the result,

- CMA.No.2330 of 2019 filed by the appellant/Insurance Company is partly allowed by modifying the compensation fixed by the Tribunal from Rs.59,11,300/- to Rs.57,65,378/-. Consequently connected Miscellaneous Petition is closed.
- Cross Obj. No.72 of 2022 filed by the claimants is hereby dismissed.
- The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 9% p.a. and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.
- On such deposit, the claimants/ respondents 1 to 4 are permitted to withdraw the said amount along with interest and costs, less the amount if any, already withdrawn as per the apportionment made by the tribunal.

- The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP No.37 of 2012 on the file of V Additional District & Sessions Judge, Motor Accident Claims Tribunal, Coimbatore, if the entire award amount has already been deposited by them. No costs.

(V.M.V., J)

(S.S., J)

21.07.2022

Internet : Yes / No
Index : Yes / No
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To

1.The Motor Accident Claims Tribunal,

V Additional District and Sessions Judge, Coimbatore.

2.The Section Officer
VR Section
High Court
Madras.

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

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C.M.A.No.2330 of 2019

and Cross Obj. No.72 of 2022

21.07.2022