



C.M.A.(MD)No.530 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.530 of 2018 and C.M.P(MD)No.6243 of 2018

and

Cross Objection (MD)No.27 of 2021

C.M.A.(MD)No.530 of 2018:

The New India Assurance Co., Ltd.,
through its Divisional Manager,
Sharon Building,
No.161A, East Veli Street,
Madurai.

.. Appellant/2nd Respondent

Vs.

1.Sitalakshmi

.. 1st Respondent/ Petitioner

2.Gomathi

.. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 30.11.2017 made in M.C.O.P.No.1519 of 2016, on the file of the Motor Accidents



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Claims Tribunal/V-Additional District Judge, Madurai.

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For Appellant : Mr.N.Dilip Kumar
For Respondent No.1 : Mr.S.M.Mohan Gandhi
For Respondent No.2 : No appearance

Cross Objection (MD)No.27 of 2021:

Sitalakshmi

.. Cross Objector/1st Respondent/
Claimant

Vs.

1.Gomathi

.. 1st Respondent/ 2nd Respondent/
1st Respondent

2.The New India Assurance Co., Ltd.,
through its Divisional Manager,
Sharon Building,
No.161A, East Veli Street,
Madurai.

.. 2nd Respondent/ Appellant/
2nd Respondent

PRAYER: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code r/w Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 30.11.2017 made in M.C.O.P.No.1519 of 2016, on the file of the Motor Accidents Claims Tribunal/V-Additional District Judge, Madurai.



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For Appellant : Mr.S.M.Mohan Gandhi
For Respondent No.1 : No appearance
For Respondent No.2 : Mr.N.Dilip Kumar

COMMON JUDGMENT

J.NISHA BANU, J.
and
N.ANAND VENKATESH, J.

The New India Assurance Company Limited has filed the appeal challenging the award passed by the Motor Accidents Claims Tribunal (hereinafter referred to as 'MACT'), Madurai, in M.C.O.P.No.1519/2016, dated 30.11.2017, wherein the Tribunal had directed the Insurance Company to pay a total compensation of Rs.27,03,500/- along with interest at the rate of 7.5% from the date of petition till the date of payment.

2. The claimant has filed the cross objection seeking for enhancement of compensation.



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3. The husband of the claimant was driving a four wheeler on 29.01.2015 at about 14.30 hours on Virudhunagar – Erichanatham main road and was proceeding from east to west. While so, the lorry belonging to the second respondent was driven in a rash and negligent manner and there was a head on collision with the vehicle driven by the deceased. The deceased sustained grievous injuries and he succumbed to his injuries on 22.09.2015.

4. The first respondent/claimant filed a claim petition and sought for compensation from the Insurance Company in which the lorry belonging to the second respondent was insured.

5. The MACT, after considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident took place due to rash and negligent driving of the driver of the lorry. Accordingly, the compensation was fixed under various heads and a sum of Rs.27,03,500/- was awarded in favour of the claimant along with interest. Aggrieved by the same, the appeal has been

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filed by the Insurance Company mainly questioning the quantum of compensation and cross objection has been filed by the claimant seeking for enhancement of compensation.

6. Heard Mr.N.Dilip Kumar appearing for the appellant/New India Assurance Company and Mr.S.M.Mohan Gandhi appearing for the first respondent/claimant/cross objector.

7.Insofar as the quantum of compensation is concerned, the Tribunal took into consideration the fact that the deceased was an ex-serviceman and he was doing various businesses like mineral water dealership and travels. The Tribunal fixed the monthly income of the deceased at Rs.30,000/-, on approximation after considering the various documents that were marked on the side of the claimant.

8. This Court, on considering the materials available on record and the finding of the Tribunal, deems it fit to modify the award amount by fixing the monthly income at Rs.27,500/-. In view of the above, the total



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compensation is calculated as follows:

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Sl.No.	Heads	Amount Rs.
1.	Loss of Income ➤ Rs.27,500/- being monthly income, 1/3 rd deducted towards personal expenses works out to ➤ [27,500- (27,500x1/3) ➤ 27500-9167=18,333/-] ➤ for 12 months ➤ [18,333x12=2,19,996/-] ➤ adding multiplier 11 ➤ [2,19,996x11=24,19,956/]	24,19,956/-
2.	Transport Charges	2,500/-
3.	For damage of clothing and other articles	1,000/-
4.	Funeral Expenses	10,000/-
5.	Loss of consortium	25,000/-
6.	Loss of love and affection	25,000/-
	Total	24,83,456/-

9.The award amount fixed by the Tribunal is modified and this Court fixes the total compensation at Rs.24,83,456/- along with interest at the rate of 7.5% from the date of petition till the date of realisation with cost.



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10. This Court, while entertaining the appeal had directed the Insurance Company to pay the entire award amount with accrued interest and also permitted the claimant to withdraw 35% of the amount so deposited. In view of the modification of the total compensation, the Insurance Company is entitled to withdraw the excess amount deposited along with accrued interest. The claimant is also permitted to withdraw the remaining award amount along with accrued interest.

11. Both the civil miscellaneous appeal and the cross-objection are disposed off accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [N.A.V., J.]
07.09.2022

Index : Yes/No
Internet : Yes
PJJ

To
The V-Additional District Judge/Motor Accidents Claims Tribunal,
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