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C.M.A.No.2760 of 2019 and
Cross Objection No.100 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Civil Miscellaneous Appeal No.2760 of 2019
&
Cross Objection No.100 of 2021
and
CMP No.14052 of 2019

CMA No.2760 of 2019

United India Insurance Co. Ltd.,
No.134, Greams Road
Chennai-6.

... Appellant

Versus

1.Ramachandran
2.Minor Divya Dharshin
3.Minor Arul Prasath
(Minors 2 and 3 rep. by their
father, NG and NF Ramachandran)
4.V.Gomathi

... Respondents

Cross Objection No.100 of 2021

1. Ramachandran
2. Minor Divya Dharshin
3. Minor Arul Prasath
(Minors 2 & 3 rep. by their father,
natural guardian and next friend
Ramachandran)

...Cross Appellants



C.M.A.No.2760 of 2019 and
Cross Objection No.100 of 2021

.. Versus ..

1.United India Insurance Company Ltd.,
No.134, Greams Road
Chennai-600 006.

2.V.Gomathi

.. Respondents

Civil Miscellaneous Appeal and Cross Objection were filed against the award and decree in MCOP No.1053 of 2016, dated 17.09.2018 on the file of the Motor Accident Claims Tribunal / III Judge, Court of Small Causes, Chennai.

For Appellant/Insurance Company : Mr. S. Arun Kumar
in CMA

For Cross Objectors/claimants : Ms. A. Subadra
for Mr.V. Velu

COMMON JUDGMENT

The appellant/Insurance Company has preferred the present appeal in CMA. No. 2760 of 2019. The Claimants have filed Cross Objection No.100 of 2021. Both the cases are filed against the award and decree, dated 17.09.2018, passed by the Motor Accident Claims Tribunal / III Judge, Court of Small Causes, Chennai in MCOP No.1053 of 2016.



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2. As could be seen from the Claim Petition, the accident had occurred on 29.09.2015 at 15.30 hours, at Sadras to Kothimangalam Road. The E-3 Sadras Police Station registered a case in Crime No.427 of 2015 in connection with the accident. As per the first information report, the deceased Sathyavathi was travelling as a pillion rider in a Motor Cycle bearing Registration No.TN-19-R-3803. Due to the accident, she sustained fatal injuries all over the body and died in the hospital. For her death, the claim petition was filed by the husband and two minor children of the deceased.

3. The Tribunal, on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the motor cycle, belonging to the 4th respondent herein, who is the owner of the vehicle and hence, directed the appellant/Insurance company to pay a sum of Rs.20,72,000/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimants, viz., the husband and children of the deceased.



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4. Aggrieved over the quantum of award, the appellant/Insurance Company has come forward with CMA.No.2760 of 2019.

5. Being not satisfied with the quantum of the award, the claimants have filed Cross Objection No.100 of 2021.

6. The learned counsel appearing for the appellant/Insurance Company mainly contended that the quantum of compensation awarded by the Tribunal is exorbitant and the principles settled in the case of **National Insurance Company Ltd., v. Pranay Sethi & others** reported in **2017(2) TN MAC 609 (SC)** by the Apex Court has not been followed by the Tribunal. The compensation towards loss of love and affection is on the higher side. In the absence of any material evidence, the monthly income fixed by the Tribunal is on the higher side. The Tribunal has erroneously granted future prospects without any basis. For the aforesaid reasons, the award is liable to be set aside.



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7. On the other hand, the learned counsel for the cross objectors/ claimants contended that the deceased was working as a vegetable vendor and was earning about Rs.20,000/- per month at the time of accident. While so, the monthly income fixed by the Tribunal at Rs.10,000/- is very meager. The Tribunal has awarded only 40% of the income of the deceased as future prospects without considering her age and it is liable to be enhanced. The compensation awarded under the heads of spouse consortium, parental consortium, loss of love and affection, medical expenses and funeral expenses are on the lower side. The Tribunal has failed to award any compensation under the heads of transport expenses, mental agony, loss of estate, damages and loss of expectation of life, hence, he sought for enhancement of compensation.

8. Heard Mr. S. Arunkumar, learned counsel for the Insurance Company and Ms. A. Subadra appearing for Mr. V. Velu, the learned counsel appearing for the claimants/cross objectors.



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9. As far as the future prospects is concerned, after considering the age of the deceased as 33 years, the Tribunal has rightly awarded 40% future prospects of the monthly income and it is in accordance with the decision of the Honourable Supreme Court in *Sarla Verma* case and therefore, it does not call for any interference by this Court.

10. On a perusal of the award, it is seen that the deceased was a vegetable vendor and was earning Rs.20,000/- per month. But, there is no proof of document filed and there was no contra evidence let in on the side of the Insurance Company. In the absence of any material evidence, the monthly income fixed by the Tribunal at Rs.10,000/- per month is reasonable.

11. However, it must be noted that the compensation awarded under the head loss of love and affection is not in consonance with the principles laid down by the principal Apex Court of India in the case of *Pranay Sethi* and it is excessive. The compensation under this head has to be modified to Rs.80,000/- at the rate of Rs.40,000/- each as against the sum of



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Rs.2,00,000/- awarded by the Tribunal.

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12. The other heads under which compensation was awarded by the Tribunal appears to be just and fair and they deserve no interference by this Court.

13. The Tribunal has erroneously failed to award any compensation towards loss of estate, which the claimants are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the claimants towards loss of estate.

14. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified from Rs.20,72,000/- to Rs.19,67,000 /- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency 10000 +40% x 12 x16 (-) 1/3 rd	17,92,000/-	17,92,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of consortium	40,000/-	40,000/-
Loss of Love and affection	2,00,000/-	80,000/-
Medical Expenses	25,000/-	25,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of Estate	Nil	15,000/-
Total	20,72,000/-	19,67,000/-

15. The total amount of compensation shall be shared by the claimants 1 to 3 herein, in the following manner:-

i) The husband of the deceased, who is the first claimant herein shall receive a sum of Rs.5,67,000/- .

ii) The minor daughter of the deceased who is the second claimant shall receive a sum of Rs.7,00,000/-.

iii) The minor son of the deceased who is the third claimant shall receive a sum of Rs.7,00,000/-.



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16. (i) The Appellant/ Insurance Company is directed to deposit the modified award amount i.e, Rs.19,67,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.1053 of 2016 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the respective share of award amount of Rs.5,67,000/- as per the ratio apportioned by this Court to the bank account of the 1st claimant along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) Insofar as the minor claimants 2 & 3 are concerned, the Tribunal is directed to deposit the share of their award amount of Rs.7,00,000/- each bearing fixed deposit in any one of the Nationalised Bank till they attain majority and the first claimant/father of the minors is permitted to withdraw the interest accrued once in six months for the welfare of the minors.

17. Accordingly, CMA.No.2760 of 2019 filed by the Insurance



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Company is allowed by reducing the amount awarded by the Tribunal from Rs.20,72,000/- to Rs.19,67,000 /-. Consequently, Cross Obj. No.100 of 2021 filed by the claimants is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

18.04.2023

Index:Yes/No
Speaking/Non-speaking Order

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To

- 1.The III Judge, Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.
- 2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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