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C.M.A.No.1118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1118 of 2023,
Cross Obj.No.42 of 2023
and
C.M.P.No.10826 of 2023

C.M.A.No.1118 of 2023:

M/s.Shriram General Insurance Co. Ltd.,
E8, RIICO Industrial Area, Sitapur,
Jaipur, Rajasthan – 302 022.
Branch Office D.No.5-F, Sachin Plasa,
Reddiyur, Block No.1, Sriram Nagar,
Alagapuram, Salem.

..Appellants

Vs.

1.Anjel Rubavathi

2.Minor C.Vibish

3.Minor C.Vikash

[Minors are represented by their mother
and natural guardian Anjel Rubavathi]

4.Sarasu

5.Vijay Anand

6.S.Arul



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7.National Insurance Company,
S.R.Kattidam, Rajamani Thottam,
Salem Bhavani Main Road,
Sankari, Salem District.

..Respondents

PRAYER in C.M.A.No.1118 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2022 passed in MCOP.No.1994 of 2019, on the file of the Special District Judge, MCOP Tribunal, Salem.

For Appellant : Ms.V.Pushpa

For Respondents : Mr.S.P.Yuvaraj for R1 to R3

Mrs.N.B.Surekha for R7

R4, R5 and R6 – Served – No appearance

Cross Obj.No.42 of 2023:

1.Anjel Rubavathi

2.Minor C.Vibish

3.Minor C.Vikash

[Minors are represented by their mother
and natural guardian Anjel Rubavathi]

4.Sarasu

... Cross Objectors

Vs.

1.M/s.Shriram General Insurance Co. Ltd.,
E8, RIICO Industrial Area, Sitapur,
Jaipur, Rajasthan – 302 022.



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Branch Office D.No.5-F, Sachin Plasa,
Reddiyur, Block No.1, Sriram Nagar,
Alagapuram, Salem.

2.Vijay Anand

3.S.Arul

4.National Insurance Company,
S.R.Kattidam, Rajamani Thottam,
Salem Bhavani Main Road,
Sankari, Salem District.

... Respondents

PRAYER in Cross Obj.No.42 of 2023: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, praying to enhance the compensation awarded in the judgment and decree dated 04.07.2022 made in MCOP.No.1994 of 2019, on the file of the Motor Accident Claims Tribunal/ Special District Judge, Salem.

For Appellants : Mr.S.P.Yuvaraj

For Respondents : Ms.V.Pushpa for R1

Mrs.N.B.Surekha for R4

COMMON JUDGMENT

The appellant has filed C.M.A.No.1118 of 2023 challenging the finding on negligence as well as quantum. The respondents have filed Cross Objection No.42 of 2023 challenging the quantum of compensation, awarded by the Tribunal in M.C.O.P. No. 1994 of 2019 dated 04.07.2022.



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2.The respondents 1 to 4 filed a claim petition before the Tribunal stating that on 13.08.2019 at about 3.15 hours, when the deceased Siva was riding the two-wheeler bearing Reg.No.TN-34-U-7669 in Tiruchengode – Sankari Main Road from South – North direction, near Pullikarar Mill, the Eicher lorry bearing Reg.No.TN-11-J-5717 was moved in the rear side without observing the above two-wheeler and hit against the same. The Tarus lorry bearing Reg.No.TN-28-BZ-5312 which was also driven in a rash and negligent manner behind the two-wheeler in the same direction hit against the two-wheeler, due to which the said Siva was dragged to some distance and he died on the spot. Claiming that the deceased was aged 37 years and was earning Rs.30,000/- per month working as an EDP Assistant, the respondents 1 to 4 filed claim petition against the appellant and respondents 5 to 7 claiming compensation.

3.The Appellant filed a counter denying all the averments made in the claim petition including the manner of accident stated; that in any event the compensation claimed by the respondents 1 to 4 was excessive and prayed for dismissal of the claim petition.



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4.The respondents 5 and 6 in C.M.A. No. 1118 of 2023 remained ex-parte before the Tribunal.

5.The respondents examined two witnesses on their side and marked Ex.P.1 to Ex.P.19 and the appellant examined one witness on their side and Ex.R1 was marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the 5th respondent herein and awarded a compensation of Rs.14,95,000/- to the respondents 1 to 4 and directed the appellant as well as the 5th respondent herein to jointly and severally pay the compensation and dismissed the claim petition as against the respondents 6 and 7 herein. Aggrieved by the said award, the appellant/ Insurance Company had filed C.M.A. No. 1118 of 2023 and the respondents 1 to 4 have filed Cross Objection No.42 of 2023 for enhancement of compensation.



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7.The learned counsel for the appellants submitted that the Tribunal had erroneously fixed the entire negligence on the driver of the Eicher lorry insured with the appellant. Two vehicles were involved in the accident and the 7th respondent who is the Insurer for the other vehicle viz., Taurus lorry bearing Reg.No. TN-28-BZ-5312 have been completely exonerated. Admittedly, the deceased who came in the two wheeler lost his balance because the Eicher lorry bearing Reg.No. TN-11-J-5717 had in a rash and negligent manner reversed the vehicle and after the deceased fell off from the two wheeler, he was hit by the Taurus lorry, which was insured with the 7th respondent herein. The Tribunal ignored the final report Ex.R1 which suggests that both the drivers of the Eicher lorry which was insured with the appellant and Taurus lorry, which was insured with the 7th respondent were guilty of negligence. The evidence of PW2, eye witness would also suggest that the accident had taken place due to the negligence of both the drivers. Therefore, the learned counsel submitted that the contributory negligence ought to have been fixed on the driver of the Taurus lorry as well. In the absence of any proof, the notional income fixed by the Tribunal is excessive. The



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compensation awarded by the Tribunal under other heads are excessive and prayed for allowing the appeal.

8. The learned counsel for the 7th respondent/ Insurer of the Taurus lorry submitted that the criminal case records cannot be a basis to determine the negligence before the Tribunal. The Tribunal rightly considered the evidence placed before it and fixed the entire negligence on the driver of the Eicher lorry insured with the appellant. PW2 had categorically stated that the accident would not have occurred, but for the rash and negligent driving of the driver of the Eicher lorry. Hence the learned counsel submitted that there is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

9. The learned counsel for the cross objectors/ claimants submitted that the deceased was working as EDP Assistant in a private concern and had produced Ex.P10, his appointment letter and salary certificate Ex.P11 to prove his avocation and income. However, the Tribunal had fixed the monthly notional income at Rs.10,000/- and had not awarded enhancement under the head future prospects. The learned



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counsel further submitted that the award under the head of loss of love and affection is also meagre and no amount was awarded under the head loss of estate. Hence, prayed for enhancement.

10.The questions involved in the instant appeal are

1) Whether the Tribunal was right in fixing the entire negligence on the driver of the Eicher lorry bearing Reg.No.TN-11-J-5717 insured with the appellant.

2) Whether the compensation awarded by the Tribunal is just and reasonable.

11.As regards the first question, it is seen that in order to prove negligence, the cross objectors have examined PW2, eye witness to the accident. The cross objectors have also filed the criminal case records including the FIR. RW1 had filed Ex.R1 final report filed before the jurisdictional Magistrate pursuant to the investigation. It is seen from the evidence of PW2 and the documents filed before the Tribunal that two vehicles were involved in the accident as stated earlier. The lorry insured with the appellant had reversed the vehicle in a rash and negligent



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manner which resulted in the deceased losing his balance and falling off the two-wheeler. Thereafter, he was hit by the Taurus lorry bearing Reg.No. TN-28-BZ-5312, which is insured with the 7th respondent herein. The manner of accident is proved by the evidence of PW2 and also confirmed by Ex.R1, final report. It is also pertinent to note that in the final report both the drivers have been charged under Section 304(A) IPC. From the above evidence, it is therefore clear that both the drivers had contributed to the accident and death of the deceased.

12.However, it is seen that the driver of the Eicher lorry which is insured with the appellant has predominantly contributed to the accident, for his rash and negligent act of reversing the lorry, due to which the deceased lost his balance and fell off the two-wheeler. At the same time, the driver of the Taurus lorry insured with the 7th respondent ought to have been cautious and maintained a safe distance. Therefore, this Court is of the view, that it would be just and reasonable to fix 70% negligence on the driver of the lorry insured with the appellant and 30% on the driver of the lorry insured with the 7th respondent. Thus, the appellant shall pay 70% of the compensation amount and 30% shall be



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borne by the 7th respondent.

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13. As regards the compensation, it is seen that the deceased was working as EDP Assistant in a private concern. Ex.P10 appointment order and Ex.P11 salary certificate were marked to prove his avocation and income. It is seen from the salary certificate Ex.P11 that the deceased was earning Rs.12,500/- per month. There is no reason to reject Ex.P11 salary certificate. Hence, the income of the deceased is fixed at Rs.12,500/- and the respondents 1 to 4 are entitled to 40% towards future prospects. Thus the loss of income has to be computed in the following manner.

Rs. 12,500/- + 5,000/- [40% of 12,500] x 12 x 15 x 3/4 = Rs.23,62,500/-

14. The respondents/ cross objectors 2, 3 and 4 are also entitled to Rs.1,20,000/- for loss of love and affection. The amount awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence a sum of Rs.15,000/- is awarded under the said head. Thus, the award of the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	13,50,000	23,62,500
2.	Loss of Love and affection	80,000	1,20,000
3.	Loss of consortium	40,000	40,000
4.	Funeral Expenses	25,000	15,000
5	Loss of Estate	—	15,000
Total		14,95,000/-	25,52,500/-
70% of compensation		--	17,86,750/-
30% of compensation		--	7,65,750/-

15. With the above modification

(i) C.M.A.No.1118 of 2023 is partly allowed in respect of fixing 30% negligence on the part of the driver of the taurus lorry belonging to the 6th respondent and liability on the 7th respondent.

(ii) Cross Objection No.42 of 2023 is partly allowed by enhancing the award of the Tribunal from Rs.14,95,000/- to Rs.25,52,500/- together with interest at the rate of 7.5% per annum from



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the date of petition till the date of deposit (Excluding the default period, if any).

(iii) Out of the compensation amount of Rs.2552,500/- the appellant is directed to deposit Rs.17,86,750/- being 70% of the award amount together with proportionate interest and costs and the 7th respondent is directed to deposit Rs.7,65,750/- being 30% of the award amount together with proportionate interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment in the proportion fixed by this Court. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The share of the minor respondents 2 and 3 are directed to be deposited in an Interest bearing fixed deposit in any Nationalized Bank, till the minor appellant attains the age of majority. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs. Consequently, the connected Miscellaneous Petition is closed.



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Index :Yes/No

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order

To

- 1.The Motor Accident Claims Tribunal,
Principal District Judge, Cuddalore.
- 2.The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

dsa

**C.M.A.No.1118 of 2023,
Cross Obj.No.42 of 2023
and
C.M.P.No.10826 of 2023**

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