# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3628 of 2013
and
Cros.Obj.No.79 of 2023
and
M.P.No.1 of 2013

C.M.A.No.3628 of 2013

M/s.Oriental Insurance Company Ltd.,
PLA Building 1st Floor,
No.12/A, Kovai Road,
Karur – 639 002. ... Appellant / Respondent – III

Vs

1.S.Ramamoorthy

2.R.Dhanalakshmi

3.R.Shiyamala ... Respondents 1 to 3 / Petitioners

4.V.Singaravelan ... 4th Respondent / Respondent – I

5.A.Ramasamy (Died) ... 5th Respondent / Respondent – II

6.Nagalakshmi ... 6th Respondent / Respondent – IV

Cros.Obj.No.79 of 2023

in C.M.A.No.3628 of 2013

1.S.Ramamoorthy
2.R.Dhanalakshmi
3.R.Shiyamala ... Cross Objectors

Vs

1.M/s.Oriental Insurance Company Ltd.,
PLA Building 1st Floor,
No.12/A, Kovai Road,
Karur – 639 002.

2.V.Singaravelan

A.Ramasamy (Died)

3.Nagalakshmi ... Respondents

**Prayer in C.M.A.No.3628 of 2013:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.37 of 2010 on 30.04.2013 on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge) of Bhavani at Erode District.

**Prayer in Cros.Obj.No.79 of 2023:** Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code against the decree and judgment in M.C.O.P.No.37 of 2010 dated 30.04.2013 on the file of MACT, Sub Court at Bhavani by allowing this cross objection.

C.M.A.No.3628 of 2013

| | | |
|---|---|---|
| For Appellant | : | Mr.J.Chandran |
| For Respondent-2 & 3 | : | Mr.Ma.P.Thangavel |
| For Respondent-4 | : | Not Ready in Notice |
| For Respondent-5 | : | No appearance |

Cros.Obj.No.79 of 2023

| | | |
|---|---|---|
| For Cross Objectors | : | Mr.Ma.P.Thangavel |
| For Respondent-1 | : | Mr.J.Chandran |

*****

## COMMON JUDGEMENT

The Insurance Company has filed this appeal challenging the award passed by the Motor Accident Claims Tribunal (Subordinate Judge) of Bhavani at Erode in M.C.O.P.No.37 of 2010 dated 30.04.2013 on the grounds of liability and quantum of compensation.

2. The Cross Objection has been filed by the claimants seeking an enhancement of the compensation.

3. When the case was taken up for hearing, the learned counsel for the

respondents 2 and 3 submitted that a memo dated 25.01.2022 has been filed stating that the first respondent/first claimant died on 22.04.2021 and the respondents 2 and 3 are his legal representatives. The death of the first respondent is therefore recorded and the respondents 2 and 3 are recorded as his legal representatives. The Registry is directed to carry out the amendments.

4. On 30.08.2009 at about 04.00 a.m., the deceased Govindaraj driven the motorcycle bearing Reg.No.TN-33/AK-8690 and one Karthick @ Karthikeyan travelling as a pillion rider on the left side of the Erode EVN road from south to north direction, at that time, near weight bridge, the first respondent/driver parked the lorry bearing Reg.No.TN-25/Z-4127, which was owned by the second respondent and insured with the third respondent, without indicator on the centre of the road, the deceased Govindaraj hit against the lorry, due to the accident, the deceased sustained grievous injuries and died on the spot. Thereafter, the claimants filed a claim petition claiming a sum of Rs.15,00,000/-.

5. Before the Tribunal, the claimants examined two witnesses viz.,

P.W.1 and P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, they have examined one witness viz., R.W.1 and marked one document viz., Ex.R.1. After adjudication, the Tribunal had partly allowed the petition and awarded a sum of Rs.7,39,620/- as compensation under various heads. As the insurer of the offending vehicle, the third respondent/Insurance Company was directed to pay the compensation to the claimants. Aggrieved by the said order, the Insurance Company has preferred the appeal and the claimants have filed the cross objection seeking enhancement.

6. The learned counsel appearing on behalf of the Insurance Company would submit that the offending vehicle was parked on the left extreme of the road, at that time, the deceased came in a rash and negligent manner and dashed against the parked vehicle, thereby the law enforcing agency registered an FIR against the deceased. However, the Tribunal fastened the liability as against the owner and insurer of the offending vehicle is wholly unsustainable. Further, without any proof for income, the adoption of a sum of Rs.6,500/- as notional income was on the higher side. Accordingly, he prays for allowing the

appeal and dismissal of the cross objection.

7. Per contra, the learned counsel appearing on behalf of the cross objectors/claimants would submit that though initially the FIR was registered against the deceased, however, subsequently, the law enforcing agency conducted investigation and based on the MV report, filed charge sheet against the driver of the offending vehicle, thereby the Tribunal arrived at a conclusion that the negligence is on the part of the driver of the offending vehicle and fastened the liability as against the insurer, which cannot be interfered. Further, at the time of death, the deceased was aged about 25 years, however, the Tribunal had taken the multiplier with regard to the age of the mother of the deceased, which is wholly unsustainable and the same is contrary to judgment in ***Sube Singh & Anr. Vs. Shyam Singh (Dead) & Ors.*** reported in ***CDJ 2018 SC 082***. That apart, the Tribunal had not awarded future prospects, which requires to be reconsidered by this Court. Accordingly, he prays for appropriate enhancement in favour of the claimants.

8. Heard the learned counsel appearing on behalf of the insurance company as well as the cross objectors and perused the materials available on record.

9. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. Admittedly, initially the FIR was registered against the deceased, subsequently, after conducting investigation, the law enforcing agency filed the charge against the driver of the offending vehicle. However, in order to disprove the same, no document was filed either by the owner of the offending vehicle or by the insurer, thereby the Tribunal had fastened the entire liability against the insurer. Hence, this Court is not inclined to interfere with the award passed by the Tribunal with regard to liability.

10. A perusal of the award reveals that at the time of death, the age of the deceased was 25 years, however, the Tribunal has taken the multiplier considering the age of the mother of the deceased, which is not in terms of the

decision of the Apex Court in the case of ***Sube Singh & Anr. Vs. Shyam Singh (Dead) & Ors.*** reported in ***CDJ 2018 SC 082*** and the same is liable to be interfered with. Though it is claimed by the claimants that the deceased was earning a sum of Rs.12,000/- per month by working as a bank staff, the Tribunal has fixed the notional income at Rs.6,500/- per month, since the claimants have not filed any proof to that effect, which appears to be in order. Therefore, by fixing a sum of Rs.6,500/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.9,100/-. Deducting 50% towards the personal expenses of the deceased, since the deceased was a bachelor, the loss of income to the family is arrived at Rs.4,450/- per month and the deceased being aged about 25 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.4,550/- * 12 * 18 = Rs.9,82,800/-, which is worked out as follows :-

| ***Loss of Income*** | ***Amount in Rs.*** |
|---|---|
| Notional income (Per month) | 6,500 |
| **Add:** Future Prospects (Rs.6,500 x 40%) (Per month) | 2,600 |
| | 9,100 |
| **Less:** Personal expenses (50%) (Rs.9,100/- x 50%) (Per month) | 4,550 |
| | 4,550 |
| Notional income (per annum) (Rs.4,550/- x 12) | 54,600 |
| Multiplier | 18 |
| **Total** | **9,82,800** |

11. Since the deceased was unmarried, the compensation towards loss of consortium does not arise and accordingly, the same is set aside. Further, the amount of compensation awarded under the head loss of love and affection is enhanced to a sum of Rs.80,000/-, as this Court is of the considered view that the compensation awarded by the Tribunal under the aforesaid head is very meagre and deserves enhancement. In all other aspects, the award remains the same.

12. In view of the above, the compensation awarded by the Tribunal is

modified as under :-

| *S.No.* | *Description* | *Awarded by the Tribunal (Amount in Rs.)* | *Awarded by this Court (Amount in Rs.)* |
|---|---|---|---|
| 1 | Loss of earning power | **7,80,120/-** | **9,82,800/- (enhanced)** |
| 2 | Funeral expenses | 2,000/- | 2,000/- |
| 3 | Love and affection | **5,000/-** | **80,000/- (enhanced)** |
| 4 | Loss of consortium | **2,500/-** | **-** |
| | **Total** | **7,89,620/-** | **10,64,800/-** |

13. In the result, the appeal is dismissed and the cross objection is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from Rs.7,89,620/- to Rs.10,64,800/-. The Appellant /Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.37 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. It is made clear that the cross objectors/claimants will not be entitled to claim interest for the delay

period of 743 days in filing the cross objection. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter, as per the apportionment of the Tribunal, upon production of proof with regard to payment of Court fee on the enhanced compensation. The claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

**18.10.2023**

Index : Yes / No
Speaking order/Non-speaking order
Neutral Citation Case : Yes / No
sp

**M.DHANDAPANI,J.,**

sp

To

1.The Motor Accident Claims Tribunal (Subordinate Judge) of Bhavani at Erode District.

2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.3628 of 2013
and
Cros.Obj.No.79 of 2023
and
M.P.No.1 of 2013

18.10.2023