



C.M.A.No.609 of 2020 and
C.M.A.No.635 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 11.04.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.609 of 2020 and
C.M.A.No.635 of 2021 and
C.M.P.No.3887 of 2021

C.M.A.No.609 of 2020

1.Natarajan
2.Kalaiselvi

... Appellants

Vs.

1.M.Vinothkumar
2.National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.46, Moore Street,
Chennai 600 001.

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2019 in M.C.O.P.No.2030 of 2016 on the file of the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

For Appellants
For Respondents

: Mr.R.Nalliyappan
: Mr.K.S.Karthik Raja for R1
Mr.S.Arunkumar for R2



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National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.46, Moore Street,
Chennai 600 001.

... Appellant

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For Appellant	: Mr.S.Arunkumar
For Respondents	: Mr.R.Nalliyappan for R1 & R2 Mr.K.S.Karthik Raja for R3

COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A.No.609 of 2020 is filed by the Claimants and the Civil Miscellaneous Appeal in C.M.A.No.635 of 2021 is filed by the Insurance Company, challenging the Award passed by the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai, in M.C.O.P.No.2030 of 2016 dated 05.12.2019.



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2. For the sake of convenience, the parties are referred to as Claimants and Insurance Company in this Judgment.

3. The Claimants have filed the Appeal seeking enhancement of compensation and the Insurance Company has filed the Appeal questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal.

4. The succinct facts of the case are as follows:

On 21.12.2015 at about 13.00 hrs while the deceased was riding her two wheeler, bearing Registration No.TN 36 M 5425, near Erangattur LBP Vaikkal Bridge, a motorcycle bearing Registration No.TN 40 E 6795, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler of the deceased who sustained grievous injury and died on the way to hospital. The claimants, the parents of the deceased, therefore filed a Claim Petition claiming a sum of Rs.41,00,000/- towards compensation.

5. According to the Claimants, the deceased was aged about 18 years at the time of the occurrence and was working as a Manager in S.S.Digital Studio, Erangattur, Bhavanisagar and drawing a salary of Rs.15,000/- per month.



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6. The first respondent, the owner-cum-driver of the offending vehicle filed a detailed counter denying all the averments made in the Claim Petition apart from specifically denying his negligence.

7. The second respondent Insurance Company filed a counter generally denying all the averments made in the Claim Petition. The Insurance Company also denied that the deceased was working as a Manager and earning Rs.15,000/- per month. The second respondent Insurance Company stated that the claim was exorbitant and unjustified.

8. Before the Motor Accidents Claims Tribunal, the first Claimant examined himself as P.W.1 and one eyewitness was examined as P.W.2. Exhibits P1 to P10 were marked in support of the Claim Petition. On the side of the respondents, R.W.1 & R.W.2 were examined and Exhibits R1 to R14 were marked.

9. The Motor Accidents Claims Tribunal on going through the pleadings and the evidence on record, returned the finding of negligence against the first



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respondent and further directed the second respondent Insurance Company to pay and recover from the first respondent.

10. On the issue of quantum, the Tribunal assessed the income of the deceased as Rs.10,000/- per month and awarded Rs.16,20,000/- towards loss of dependency. In all, the Tribunal awarded Rs.18,50,000/- as compensation along with the interest at 7.5% per annum. Aggrieved by the award passed by the Motor Accidents Claims Tribunal, the claimants as well as the Insurance Company have filed the above Appeals.

11. The learned counsel for the Claimants submitted that the assessment of income at Rs.10,000/- by the Tribunal is very low and the award under various heads was also unsustainable. The learned counsel therefore submitted that this was a fit case for enhancement of compensation.

12. The learned counsel for the Insurance Company on the other hand submitted that the Tribunal was not justified in assessing the income of the deceased at Rs.10,000/- per month as there was absolutely no evidence to support the same. The learned counsel submitted that the Tribunal erred in awarding



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Rs.1,00,000/- each to the claimants towards loss of love and affection and filial consortium. The learned counsel further submitted that the Tribunal erred in awarding Rs.15,000/- towards medical expenses, when the fact remains that the claimants' daughter died on the way to hospital. The learned counsel therefore submitted that the award of the Tribunal deserved to be modified.

13. Heard the learned counsels for the Claimants and the Insurance Company and perused the materials available on record.

14. The only point to be decided in these Appeals is what would be the just and fair compensation? I am in agreement with the contention of the learned counsel for the Insurance Company that no case is made out by the Claimants for enhancing the compensation as absolutely, no evidence was filed to prove the income and the employment of the deceased. Though the learned counsel for the Insurance Company submitted that in the absence of evidence, the assessment of income at Rs.10,000/- was on the higher side and the same has to be modified, I am of the considered view that the reasons given by the Tribunal for assessing the income is fair and reasonable and does not call for interference.



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15. The learned counsel for the Insurance Company submitted that the addition of 50% towards future prospects is against the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., Vs. Pranay Sethi and Others*. The learned counsel submitted that the addition towards future prospects can be only 40%. The said contention of the learned counsel for the Insurance Company is justified and therefore, the loss of dependency shall be modified by taking 40% towards future prospects instead of 50%.

16. As far as the award towards loss of love and affection and filial consortium is concerned, I am in agreement with the learned counsel for the Insurance Company that the Claimants would be entitled to Rs.80,000/- only towards filial consortium and that the claimants would not be entitled to any amount towards loss of love and affection. The claim towards medical expenses is also set aside as it is clear that the deceased died on the way to the hospital. It is seen that the Tribunal has not awarded any amount towards loss of estate. Therefore, the amount of Rs.15,000/- awarded towards medical expenses is adjusted towards loss of estate.



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17. In the light of the above discussions, the compensation awarded by the Motor Accidents Claims Tribunal in M.C.O.P.No.2030 of 2016 dated 05.12.2019, is modified as under:

<i>S.No.</i>	<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1	Loss of Dependency	Rs.16,20,000/-	Rs.15,12,000/-
2	Loss of Love and Affection	Rs.1,00,000/-	Nil
3	Filial Consortium	Rs.1,00,000/-	Rs.80,000/-
4	Medical Expenses	Rs.15,000/-	Nil
5	Loss of Estate	Nil	Rs.15,000/-
6	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.18,50,000/-	Rs.16,22,000/-

18. It is submitted by the learned counsel for the Insurance Company that Rs.15,00,000/- has already been deposited towards compensation awarded by the Tribunal. Therefore, the Insurance Company is directed to deposit the balance amount along with the interest of 7.5% per annum from the date of the petition till the date of realization, within a period of eight weeks from the date of receipt of a



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copy of this order. On such deposit being made, the Claimants shall be entitled to withdraw the same in the same proportion as directed by the Motor Accidents Claims Tribunal. The appellant Insurance Company is permitted to pay and recover from the first respondent / third respondent herein as directed by the Tribunal.

19. In the result, the Appeal filed by the Claimants in C.M.A.No.609 of 2020 is dismissed and the Appeal filed by the Insurance Company in C.M.A.No.635 of 2021 is partly allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

Index : Yes/No
Internet : Yes/No
Speaking order/non speaking order
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N.MALA,J.

gsk

To

The Motor Accidents Claims Tribunal
(II Small Causes Court), Chennai.

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