



C.M.A.No.467 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.467 of 2022

and C.M.P.No.3414 of 2022

The New India Assurance Co., Ltd.,
Branch Office 17/B, Gandhi Road,
LIC of India, North Branch Compound,
Hasthamapatty,
Salem – 7.

... Appellant

Vs.

1.Amirthavalli
2.T.Perumal
3.P.Mariappan
4.Dr.Mang Chen Sheih

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2021 in M.C.O.P.No.2173 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : Mr.S.P.Yuvaraj for R1 & R2

No appearance for R3

Ms.K.Priya for R4



C.M.A.No.467 of 2022

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 01.11.2021 in M.C.O.P.No.2173 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2.The first and second respondents herein filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of Kamalraj, who died in the accident that took place on 03.03.2019. According to the respondents first and second , on 03.03.2019 at 8.30 p.m., while the deceased was sitting near Murugesan Panyarakadai in Nangavalli to Tharamangalam Main Road, a car bearing registration No.TN-30-AE-5455 belonging to the 3rd respondent which came from the opposite direction in a rash and negligent manner, dashed against one Manimegalai and again hit against the said deceased Kamalraj. In the accident, the deceased sustained fatal injuries and died on the spot. Hence, the respondents first and second filed claim petition against the respondents 3 and 4 and applicant/Insurance Company.



C.M.A.No.467 of 2022

WEB COPY

3. The third respondent who is the present owner of the car which is the offending vehicle was set *ex-parte* before the Tribunal.

4. The fourth respondent filed counter stating that he is unnecessary party since he had sold the vehicle to the third respondent and prayed for dismissal of the claim petition as against him.

5. The appellant/Insurance Company filed counter statement denying the averments made by the first and second respondents and contended that the driver of the car was not responsible for the accident. He further contended that one Manimegalai crossed the road suddenly and as a result of which the driver of the car lost control and hit against the deceased Kamalraj who is the son of the first and second respondents. Therefore, the appellant is not liable to pay any compensation to the first and second respondents. In any event the quantum of compensation claimed by the first and second respondents is excessive and prayed for dismissal of claim petition.



C.M.A.No.467 of 2022

WEB COPY

6. Before the Tribunal, the first and second respondents examined P.W.1 to P.W.3 and marked Exs.P1 to P22 and Ex.X.1. The appellant/Insurance Company did not let-in any oral or documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the third respondent and directed the appellant/Insurance Company being the insurer of the car to pay a sum of Rs.10,00,000/- as compensation to the first and second respondents. The Tribunal dismissed the claim petition as against the fourth respondent.

8. Against the said award of the Tribunal dated 01.11.2021, the appellant has filed the instant appeal.

9. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal at Rs.10,00,000/- is excessive



C.M.A.No.467 of 2022

WEB COPY

and in any case it is without any basis. The Tribunal ought to have spelt out under what heads the compensation of a sum of Rs.10,00,000/- was awarded. The learned counsel further pointed out two cases where the notional income, in respect of minor children were taken between Rs.36,000/- to R.50,000/- per annum and submitted that for the compensation under the head “Loss of dependency” awarded by the Tribunal is excessive and hence, he prayed for reduction of compensation awarded by the Tribunal.

10. Per contra the learned counsel for the first and second respondents submitted that this Court in several cases have taken the monthly income at Rs.7,000/- even for a two year old child. In the instant case, the deceased was aged 14 years and hence, the monthly income has to be fixed at Rs.7,000/- and after adding the future prospects and awarding compensation under various heads, the first and second respondents shall be entitled to more compensation and hence the finding of the Tribunal awarding compensation of Rs.10,00,000/- need not be interfered with.



C.M.A.No.467 of 2022

WEB COPY

11. The learned counsel appearing for the fourth respondent submitted that the Tribunal had dismissed the claim petition as against him and that there is no reason to interfere with the said finding of the Tribunal.

12. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the first and second respondents and the learned counsel appearing for the fourth respondent.

13. The only issue involved in this instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

14. This court on perusal of the award passed by the Tribunal finds that the Tribunal had awarded a consolidated sum of Rs.10,00,000/- under the heads “Loss of Income”, “Loss of love & affection” and “Funeral expenses”. The Tribunal ought to have



C.M.A.No.467 of 2022

WEB COPY

tabulated the compensation that is sought to be awarded. As per the II Schedule of the Motor Vehicles Act, for minor, a non earning member, the income is fixed as Rs.15,000/- per annum. The Hon'ble Apex Court in the judgment reported in **2014 (1) SCC 244 (Kishan Gopal and another vs. Lala and others)**, held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the deceased minor. This Court has fixed notional income of the minor deceased as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the deceased was aged 14 years and was a school student at the time of accident. In view of the above, a sum of Rs.45,000/- per annum is fixed as income of the deceased. As per II Schedule of the Motor Vehicles Act, the multiplier applicable is '15'. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.6,75,000/- (Rs.45,000/- x 15). A sum of Rs.40,000/- is awarded towards filial consortium to each of the parents of the deceased. Further, a sum of Rs.15,000/- is awarded towards loss of estate and another sum of Rs.15,000/- towards funeral expenses. Thus, the compensation



C.M.A.No.467 of 2022

WEB COPY

awarded by the Tribunal is modified as follows -

Sl.No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,00,000	6,75,000	reduced
2.	Filial consortium		80,000	granted
3.	Funeral expenses		15,000	granted
4.	Loss of estate	----	15,000	granted
	Total	Rs.10,00,000/-	Rs.7,85,000/-	Reduced by Rs.2,15,000/-

15. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.10,00,000/- awarded by the Tribunal is hereby reduced to Rs.7,85,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The appellant/Insurance Company is directed to deposit the modified award amount, now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first and second respondents are permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, after adjusting



C.M.A.No.467 of 2022

WEB COPY

the amount if any, already withdrawn on the basis of apportionment fixed by the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2173 of 2019 on the file of Motor Accident Claims Tribunal, Special District Court, Salem, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

17.07.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No

gba

To

1.The Motor Accident Claims Tribunal,
Special District Court, Salem.

2.The Section Officer
VR Section, High Court of Madras.

SUNDER MOHAN,J.



WEB COPY



C.M.A.No.467 of 2022

gba

C.M.A.No.467 of 2022

17.07.2023