



WEB COPY



CMA No.1107 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1107 of 2023
and C.M.P. No.11703 of 2023

The Cholamandalam MS General Insurance
Company Limited, Date House, 2nd Floor,
No.2, NSC Road, Chennai – 600 001 ..

Appellant

Vs.

1.Venkitachalam
2.Kumutha
3.Thamaraiselvan ..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.12.2022 made in MCOP.No.41 of 2022 on the file of the Additional Motor Accidents Claims Tribunal, Mettupalayam.

For Appellant : Ms.R.Srevidhya

For Respondents : Mr.C.Ramkumar for R1 & R2
No appearance for R3



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 12.12.2022 made in MCOP.No.41 of 2022 on the file of the Additional Motor Accidents Claims Tribunal, Mettupalayam.

2. The appellant is the second respondent in MCOP No.41 of 2022. The respondents/claimants filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of their son Gowrishankar who died in the accident that took place on 07.01.2019.

3. According to the respondents/claimants, on the date of accident, at about 19.00 hrs., while the deceased Gowrishankar was travelling in a TVS XL Heavy Duty motorcycle bearing Regn.No.TN40 F 4745 on the Mettupalayam to Badrakaliamman Kovil Road from East to West, near Bhuvaneswari Farm, the first respondent who was driving the Ashok Leyland Dosth Minidor vehicle in a rash and negligent manner from West to East, dashed against the vehicle of the said Gowrishankar and caused the accident. Immediately after the accident the said Gowrishankar was taken to the



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Government Hospital, Mettupalayam but died on the way to the Hospital.

Thus, the respondents/claimants filed the above said claim petition claiming compensation.

4. The appellant/Insurance company filed counter statement denying the various averments made in the claim petition. The age, occupation and income of the deceased are denied. The deceased did not wear helmet at the time of accident. The manner of accident is also denied and hence the appellant/insurance company is not liable to pay compensation to the respondents. In any event, the total compensation claimed by the respondents are excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 2nd respondent, mother of the deceased examined herself as PW1 and one Ganesh as PW2. Fourteen documents were marked as Exs.P1 to P14. On the side of the appellant, M.V. Report was marked as Ex.R1 but no witness was examined.

6. The Tribunal, considering the oral and documentary evidence, held



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that the accident occurred due to the rash and negligent driving by the 3rd respondent and directed the appellant, being the insurer of the offending vehicle to pay a sum of Rs.33,34,000/- as compensation to the respondents.

7. Aggrieved against the award of the Tribunal, the appellant/Insurance Company has filed the instant appeal.

8. The learned counsel appearing for the appellant submitted that the deceased did not wear helmet at the time of accident. However, the Tribunal has not fixed any contributory negligence on the part of the deceased. Further, the quantum of compensation awarded by the Tribunal is also excessive. The respondents have not produced any document to prove that the deceased was earning a sum of Rs.22,500/- per month at the time of accident. However, the Tribunal had fixed the notional income of the deceased at Rs.22,500/- which is excessive. The compensation awarded by the Tribunal under different heads are also excessive and prayed for setting aside the award of the Tribunal.



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9. Per contra, the learned counsel appearing for the respondents/claimants submitted that the manner in which the accident took place would show that the driver of the offending vehicle was entirely responsible for the accident. There is no evidence to show that the deceased died due to non-wearing of helmet. The deceased did not suffer any injury on the head. Hence, the Tribunal had rightly fixed the entire negligence on the part of the third respondent. Further, the deceased owned a tempo traveller and was running a provision store at the time of accident. Therefore, the Tribunal was right in fixing the notional income of the deceased at Rs.22,500/- per month and prayed for dismissal of the appeal.

10. The issues involved in the instant appeal are -

- (a) whether the deceased died due to the head injury suffered by him in the accident.
- (b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.



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11 (i) As regards the first question is concerned, it is seen from the records that the deceased had not suffered any head injury. The appellant has not let in any evidence to show that the deceased did not wear helmet at the time of accident. The deceased sustained injuries only in the other parts of the body. Therefore, in the absence of any evidence to show that the deceased did not wear helmet at the time of accident, this Court cannot fix any contributory negligence on the part of the deceased. The finding of the Tribunal is therefore justified and hence confirmed.

11 (ii) As far as quantum of compensation awarded by the Tribunal is concerned, this Court finds that though the respondents have stated that at the time of accident, the deceased was owning a tempo traveller and also running a provision store and earned a sum of Rs.22,500/- per month. However, the respondents failed to substantiate the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal had fixed a sum of Rs.22,500/- per month as notional income of the deceased which is excessive. The accident is of the year 2019. This Court had consistently in similar



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circumstances had taken the notional income at Rs.15,000/- per month for the accident of the year 2019. Considering the age of the deceased, cost inflation index and the fact that he was running a provision store at the time of accident, this court is of the view that it would be just and reasonable to fix a sum of Rs.15,000/- per month as notional income of the deceased. Thus, the compensation towards loss of income is calculated as follows -

$$15,000 + (15000 \times 40\%) \times 12 \times 17 \times 50\% = 21,42,000/-$$

The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	32,13,000/-	21,42,000/-	Reduced
2.	Loss of estate	16,500/-	16,500/-	Confirmed
3.	Loss of love & affection	44,000/-	44,000/-	Confirmed
4.	Funeral expenses	16,500/-	16,500/-	Confirmed
	Total	33,34,000/-	22,19,000/-	Reduced by Rs.11,15,000/-



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12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.33,34,000/- is hereby reduced to Rs.22,19,000/- together with interest at 5.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant / Insurance company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J.



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rgr

WEB COPY To

1.The Subordinate Judge,
Additional Motor Accidents Claims Tribunal,
Mettupalayam.

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

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31.07.2023