IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

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

C.M.A.No.771 of 2021
and
Cros.Obj.No.74 of 2021
and
C.M.P.No.4629 of 2021

C.M.A.No.771 of 2021

The Manager,
Shriram General Insurance Company Limited,
E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan – 302 022. ... Appellant

Vs.

1.Nagamma
2.Sangeetha
3.Srinivasan
4.Vignesh
5.P.Perumal ... Respondents

Cros.Obj.No.74 of 2021
in C.M.A.No.771 of 2021

1.Nagamma
2.Sangeetha
3.Srinivasan
4.Vignesh ... Cross Objectors

Vs.

1.The Manager,
Shriram General Insurance Company Limited,
E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur, Rajasthan – 302 022.

2.P.Perumal ... Respondents

Prayer in C.M.A.No.771 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 16th day of November, 2018 made in M.C.O.P.No.498 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

Prayer in Cros.Obj.No.74 of 2021 : Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, praying to enhance the compensation amount awarded in the judgment and decree dated 16.11.2018 made in M.C.O.P.No.498 of 2017 on the file of the Motor Accident Claims Tribunal/Additional District Court, Hosur by allowing the cross appeal in C.M.A.No.771 of 2021 on the file of this Court.

C.M.A.No.771 of 2021

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.S.P.Yuvaraj [R1 to R4]
No appearance [R5]

Cros.Obj.No.74 of 2021

For Cross Objectors : Mr.S.P.Yuvaraj

For Respondents : Mr.S.Dhakshnamoorthy [R1]
No appearance [R2]

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COMMON JUDGEMENT

Questioning the procedure adopted by the Motor Accident Claims Tribunal, Additional District Court, Hosur in computing the quantum of compensation in M.C.O.P.No.498 of 2017, dated 16.11.2018, the insurance company has filed the appeal, since the death of the deceased was not due to accident.

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

3. <u>The facts in brief are as follows :-</u>

The claimants are the wife, daughter and sons of the deceased Chandrappa. On 20.01.2014 at about 14.30 hours, when the deceased was travelling in the Tata motor L.M.V bearing Reg.No.TN-34/J.2549 along with others in shoolagiri to Kalingavaram road, the driver of the 407 bearing Regn.No.TN-41/1949 belonging to the 1st respondent and insured with the 2nd respondent drove the same in a rash and negligent manner and without sounding horn and without minding the rules of the road came from opposite side towards shoolagiri side and caused the accident. Due to which, the deceased and some other person sustained grievous injuries. Immediately after the accident, the deceased was taken to Government Hospital, Krishnagiri and admitted as inpatient in the said hospital. After taking first-aid treatment, he was taken to the Fortis Hospital, Bangalore and he was admitted as inpatient from 21.01.2014 to 16.02.2014 and thereafter, he died on 12.05.2016. Hence, the claimants have filed a claim petition claiming a sum of Rs.35,00,000/- for the death of the deceased.

4. Before the Tribunal, the claimants have examined three witnesses viz., P.W.1 to P.W.3 and marked 22 documents viz., Ex.P.1 to Ex.P.22. On the side of the Insurance Company, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal awarded a sum of Rs.12,39,674/-by ordering pay and recovering. Aggrieved by the same, the Insurance Company has filed the appeal and the claimants have filed the cross objection.

5. The learned counsel appearing for appellant/insurance company submitted that, in order to prove that the death of the deceased was due to the injuries sustained by the deceased in the accident, no document was marked before the Tribunal except the discharge summaries issued by the G.H. Krishnagiri and Fortis Hospital, Bangalore and the same was marked as Ex.P.2 to Ex.P.4. He further submitted that, the discharge summaries makes it clear

that the deceased sustained multiple injuries and after taking treatment, he was discharged from hospital on 16.02.2014 and no document is available to prove that the deceased had taken treatment in any other hospital. In the absence of any proof with regard to the fact that the deceased had died due to accidental injuries, the Tribunal awarded compensation by applying multiplier method is wholly unsustainable. Accordingly, he prays for allowing the appeal and dismissal of the cross objection.

6. The learned counsel appearing for the cross objectors submitted that, by considering all the materials, the Tribunal has rightly arrived at a conclusion that the deceased had died due to the accidental injuries and awarded compensation by adopting multiplier method, which is wholly sustainable. Accordingly, he prays for allowing the cross objection and dismissal of the appeal.

7. Heard the learned counsel appearing for the insurance company as well as the cross objectors and perused the materials available on record.

8. There is no quarrel that the deceased had suffered the injuries as a

result of the accident, in which the vehicle, which has been insured with the appellant/insurance company was involved. The Tribunal, considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the offending vehicle that the accident had happened and therefore, it is the duty of the insurance company as insurer of the offending vehicle to compensate the claimants. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.

9. Now, the only issue which arises for consideration is whether the death of the deceased in the year 2016 is due to the accident or not. In order to ascertain the nature of injuries sustained by the deceased, Ex.P.2 to Ex.P.4 were marked, which reveals that the deceased sustained multiple injuries and there is no fracture injury. Ex.P.3/discharge summary issued by Fortis Hospital, reveals that the final diagnosis was C3-C5 Ossified posterior Longitudinal Ligament with Cord compression, Hypertension, Diabetes Mellitus, Urethral Stenosis and he discharged from hospital on 16.02.2014. However, after 16.02.2014, the claimants have not produced any materials before the Tribunal for taking further treatment in any other hospital from the date of accident till the date of death of the deceased and no post-mortem report or death summary was marked before the Tribunal. However, in the absence of any oral and

documentary evidence, the Tribunal had erred in arriving at a conclusion that the deceased had died due to the accidental injuries and awarded compensation by adopting multiplier method, which is wholly unsustainable and the same is liable to be interfered with. Therefore, this Court is of the view that the death of the deceased was not due to the accidental injuries.

10. Once this Court holds that the death was not the result of the injuries, then it would be necessary for this Court to deal with the claim petition on the basis of the injuries suffered by the injured, who has since deceased.

11. Though doctor has not assessed the disability suffered by the deceased, however, considering the nature of injuries sustained by the deceased, this Court awards a sum of Rs.50,000/- towards disability. Necessarily the deceased would also have taken the assistance of an attender considering his age and under the head “Attender charges”, a sum of Rs.15,000/- is awarded. Further, the injuries suffered and the consequential treatment taken by his would definitely have been painful and under the head “Pain and Suffering”, this Court awards a sum of Rs.75,000/- and towards “Extra Nourishment” a sum of Rs.25,000/- is awarded. Further, this Court awards a sum of Rs.20,000/- towards “loss of income during treatment period”. The amount of Rs.4,89,674/-

and Rs.10,000/- awarded by the Tribunal towards “Medical expenses” and “Transportation” are confirmed.

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 income	**6,30,000/-**	**-**
2	Loss of love and affection	**40,000/-**	-
3	Transportation	10,000/-	10,000/-
4	Funeral Expenses	**15,000/-**	**-**
5	Loss of estate	**15,000/-**	**-**
6	Loss of consortium	**40,000/-**	**-**
7	Medical expenses	4,89,674/-	4,89,674/-
8	Disability	**-**	**50,000/-**
9	Attender charges	**-**	**15,000/-**
10	Pain and Suffering	**-**	**75,000/-**
11	Loss of income during treatment period	**-**	**20,000/-**
12	Extra nourishment	-	**25,000/-**
	Total	**12,39,674/-**	**6,84,674/-**

13. Accordingly, the impugned award passed by the Tribunal is modified, reducing the compensation amount from **Rs.12,39,674/-** to **Rs.6,84,674/-**. The appellant/insurance company is directed to deposit the said amount to deposit to

the credit of M.C.O.P.No.498 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants as per the apportionment of the Tribunal through RTGS within a period of two (2) weeks thereafter.

14. In the result, the civil miscellaneous appeal is allowed and the cross objection is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.12.2023

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

1.The Motor Accident Claims Tribunal, Additional District Court, Hosur.
2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

sp

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