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C.M.A.No.1940 of 2018 and Cross objection No.70 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1940 of 2018
and
Cros.objection No.70 of 2023
&
C.M.P.No.21497 of 2023
in
Cross Objection No.70 of 2023

C.M.A.No.1940 of 2018

1. Muthulakshmi

2. Venkateshan

3. Arun

... Appellants

Vs.

1. S.Senthilkumar

2. M.A.Mohamed Jabarullah

3. Oriental Insurance Company Limited,
1st Floor, Gopal Rao Library Building,
Town Hall Road,
Kumbakonam,
Thanjavur District.

Respondents

...



C.M.A.No.1940 of 2018 and Cross objection No.70 of 2023

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 to enhance the compensation amount awarded in the judgment and decree dated 14.12.2017 made in M.C.O.P.No.780 of 2012 on the file of the learned Motor Accident Claims Tribunal/Principal Sub Court, Tiruppur.

For Appellants : Mr.N.Manokaran

For R1 : No appearance

For R2 : Mr.S.Nambi Arooran
for M/s.Ajmal Associates

For R3 : Mr.R.Sivakumar

Cross Objection No.70 of 2023

M.A.Mohamed Jabarulla

... Cross Objector

Vs.

1. Muthulakshmi

2. Venkateshan

3. Arun

4. S.Senthilkumar

5. The Oriental Insurance Company Limited,
1st Floor, Gopal Rao Library Building,
Town Hall Road, Kumbakonam,
Thanjavur District.



C.M.A.No.1940 of 2018 and Cross objection No.70 of 2023

PRAYER: This Cross Appeal has been file under Order 41 Rule 22 of C.P.C., against the judgment and decree dated 14.12.2017 made in M.C.O.P.No.780 of 2012 on the file of the learned Motor Accident Claims Tribunal/Principal Sub Court, Tiruppur.

For Cross Objector	: Mr.Nambi Arooran for M/s.Ajmal Associates
For R1 to R3	: Mr.N.Manokaran
For R4	: No appearance
For R5	: Mr.R.Sivakumar

J U D G E M E N T

Appellants, who are the claimants in M.C.O.P.No.780 of 2012 on the file of the learned Motor Accident Claims Tribunal/Principal Sub Court, Tiruppur, filed the Civil Miscellaneous Appeal against the Award dated 14.12.2017 passed in M.C.O.P.No.780 of 2012 on the file of the Tribunal, seeking enhancement of compensation. Appellants are the wife and sons of the deceased.

2. According to the appellants, the quantum fixed by the Tribunal does not reflect “just compensation”. The first and the second respondents are the driver and the owner of the offending vehicle,



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respectively. The third respondent is the Insurance Company, who is the insurer of the second respondent.

3. Facts of the case are that on 23.05.2012, at about 9.30 pm, when the deceased Sivabaladhandapani was riding his motor cycle bearing Registration No.TN-33-T-8732, towards West on Tiruppur to Kangeyam Road, Near, Vannandurai bus stop, Nachipalayam Village, the first respondent has driven the van bearing Registration No.TN 49 AZ 3138 towards East in a rash and negligent manner, and dashed against the motor cycle, due to which, many of the passengers in the tourist van sustained injuries and the rider of the motor cycle died.

4. Learned counsel for the appellants submitted that the accident had occurred only due to rash and negligent driving of the first respondent, who is the driver of the tourist van bearing Registration No.TN 49 AZ 3138 and the said van was insured with the third respondent. One of the passengers of the offending tourist van has lodged the complaint before the Police and based on his information, a case was



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registered against the first respondent herein. P.Ws.2 and 3, who are the eye witnesses have clearly spoken about the manner of the accident. Contrary to the evidence of the said eye-witnesses, the respondents have not let in any evidence before the Tribunal. Considering the fact that one of the passengers of the offending tourist van has given the complaint against the driver of the offending tourist van and also based on the evidence of the eye witnesses, the Tribunal held that the accident had occurred due to rash and negligent driving of the driver of the tourist van, who is the first respondent herein. Since the first and second respondents have violated the policy conditions, “pay and recovery” was ordered by the Tribunal. The deceased was an agriculturist and a copy of the patta has not been considered by the Tribunal and the quantum fixed by the Tribunal is not “just compensation”. The Tribunal has fixed the notional income as Rs.7,500/- which is on the lower side. Award amount under the head of “loss of consortium”, had been given only to the wife of the deceased and not to the other appellants, who are the sons of the deceased. The Tribunal has not followed the decisions of the Hon'ble Apex Court in various decisions categorically holding that each of the



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claimants are entitled to get consortium of Rs.40,000/- . Hence, the appellants are also entitled to get consortium of Rs.40,000/- each. The Tribunal has not awarded any amount under the head of “loss of love and affection”. The award passed by the Tribunal is not just and fair compensation which is on the lower side. Hence the present Civil Miscellaneous Appeal.

5. Learned counsel for the second respondent who is the owner of the offending vehicle has also filed Cross Objection stating that since the summons were not served on him, he could not appear before the Tribunal, either to file any counter or to produce relevant documents. In the F.I.R, it is stated that the rider of the motor vehicle has driven the motor cycle in a rash and negligent manner, and had hit the van and due to which, he succumbed to injury. The said fact has not been considered by the Tribunal. The liability fixed by the Tribunal is erroneous and the same is liable to be set aside.



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6. Learned counsel for the third respondent/ Insurance Company submitted that the deceased was aged 47 years at the time of accident. Hence, the multiplier to be adopted is “13”. Future prospects would be fixed as Rs.25,000/- for the age group between 45 and 50 years. Instead of awarding an amount Rs.25,000/-, towards future prospects, the Tribunal has wrongly fixed 40% which is on the higher side.

7. Considering the facts and circumstances of the case, this Court finds that higher percentage has been given under the head of “future prospects” which can be compensated with the amount towards “loss of consortium” to other appellants. However, on a reading of the entire materials, this Court finds that the total compensation awarded by the Tribunal is “just compensation”. There is no reason to enhance the compensation. Therefore, under these circumstances, there is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed.



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8. Learned counsel for the Cross objector submitted that the cross objector had not been served with the notice before the Tribunal. But he has not produced any material to show that they have not been served. The objectors ought not to have raised any grounds that they were not served, and they were not given opportunity. The cross objector had not filed any petition to set aside the exparte decree before the Tribunal. If already remained exparte, either they can file a petition to set aside the exparte order or they can file appeal.

9. Cross objector submitted that even in the F.I.R, it is stated that the rider of the two wheeler who came in the opposite direction, rode the vehicle in a rash and negligent manner, and hit the van and the same has not been considered by the Tribunal. The Tribunal has fixed the total liability on the driver of the tourist van, which has to be set aside. Both the driver of the van and rider of the two wheeler attributed their negligence, and therefore, part of negligence might be foisted on the side of the rider of the two wheeler also. In this case, F.I.R is registered only as against the driver of the van. One of the passengers who travelled in



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the van at the time of accident had given the complaint. F.I.R is not an encyclopaedia. In order to prove the accident and manner of accident, P.Ws.2 and 3 have been examined and they are stated to be the eye witness, who have categorically stated that the accident had occurred only due to rash and negligent driving of the driver of the tourist van. Per contra, there is no evidence or material produced on the side of the cross objector and also the Insurance Company. In the absence of any contra evidence to the evidence of P.Ws.2 and 3, the findings of the Tribunal cannot be found fault with.

10. This Court as the appellate court and a final court of fact finding, has to re appreciate the entire materials independently. On a reading of the entire materials, placed before the Tribunal, and also the evidence of P.Ws.2 and 3, it is clear that the accident had occurred only due to rash and negligent driving of the driver of the tourist van and hence there is no material to take a different view by this Court. Therefore, under these circumstances, this Court finds that there is no merit in the Cross Objection and the same is liable to be dismissed. Accordingly, the Cross Objection is dismissed.



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11. In fine, Civil Miscellaneous Appeal and Cross Objection are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The Motor Accident Claims Tribunal,
Principal Sub Court,
Tiruppur.
2. The Section Officer,
VR Section,
High Court, Madras.



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P.VELMURUGAN, J.

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