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CMA No.1806 of 2022
and
Cross.Obj.No.8 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1806 of 2022
and C.M.P. No.13010 of 2022
and Cross.Obj.No.8 of 2023

C.M.A.No.1806 of 2022

The Manager,
Royal Sundaram General Insurance Co. Ltd.,
No.4B, 4th Floor, "A" Block,
Mena Kampala Arcade,
Sir Tiyagaraya Road, T.Nagar,
Chennai – 600 017.

... Appellant

Vs.

1.Sathya
2.Minor Prabhakaran
3.Minor Gowri
4.Chellammal
5.Muruganandham
6.The Manager,
New India Assurance Co., Ltd.,
No.83, T.S.R.Big Street,
Kumbakonam- 621 001.

..

Respondents



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PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 18.12.2019 passed in M.C.O.P.No.117 of 2017 on the file of the Motor Accidents Claims Tribunal(Additional District and Sessions Court) Ariyalur.

For Appellant : Mr.G.Vasudevan
For Respondents 1 to 4 : Mr.P.Parthi Kannan
For Respondent 6 : Mr.V.Vikma
for Mr.Michael Visuvasam

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- 1.Sathya
- 2.Minor Prabhakaran
- 3.Minor Gowri
- 4.Chellammal

....Cross Objectors

Vs

1. The Manager,
Royal Sundaram General Insurance Co. Ltd.,
No.4B, 4th Floor, "A" Block,
Mena Kampala Arcade,
Sir Tiyyagaraya Road, T.Nagar,
Chennai – 600 017.
- 2.Muruganandham
- 3.The Manager,
New India Assurance Co., Ltd.,
No.83, T.S.R.Big Street, Kumbakonam- 621 001.

4. Kaalidhass

...Respondents



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PRAYER: This Cross Objection is filed under Section 41 Rule 22 of CPC, against the judgment and award dated 18.12.2019 passed in M.C.O.P.No.117 of 2017 on the file of the Motor Accidents Claims Tribunal(Additional District and Sessions Court) Ariyalur.

For Cross Objector	: Mr.P.Parthi Kannan
For Respondent 1	: Mr.G.Vasudevan
For Respondent 3	: Mr.V.Vikma
	for Mr.Michael Visuvasam

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Appellant/ 4th respondent in the claim petition against the Judgment and Decree made in M.C.O.P.No.117 of 2017 on the file of the Motor Accidents Claims Tribunal(Additional District and Sessions Court) Ariyalur. The appeal has been preferred challenging the finding with regard to the negligence. The cross objectors/claimants had preferred the above cross objection seeking enhancement of the compensation.



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2. The cross objectors had filed the claim petition stating that on 16.08.2016 at about 11.30pm, while the deceased was driving the lorry insured with the appellant herein, the lorry which was insured with the 6th respondent herein came in the opposite direction in a rash and negligent manner and while attempting to overtake another vehicle, dashed against the lorry driven by the deceased, as a result of which, the deceased sustained fatal injuries.

3. The owner of the lorry driven by the deceased remained exparte before the Tribunal. The owner of the offending vehicle also remained exparte before the Tribunal.

4. The Insurance Company of the offending vehicle filed a counter stating that the accident took place only due to the negligence of the deceased and hence they are not liable to pay any compensation.

5. The appellant, the insurer of the lorry driven by the deceased, had filed a counter stating that the accident took place entirely due to the



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negligence of the offending vehicle namely the lorry bearing registration No.TN 31 BQ 2338 and hence no liability can be fixed on the appellant.

6. Before the Tribunal, the cross objectors examined P.W.1 and P.W. 2 and marked Ex.P1 to Ex.P13. On the side of respondents, R.W.1 was examined. However, no document was filed.

7. The Tribunal, after taking into consideration the oral and documentary evidence, found that the accident took place due to a head on collision and the deceased had contributed to the accident to the extent of 25% and directed the appellant being the insurer of the vehicle driven by the deceased to pay 25% of the compensation amount determined by the Tribunal. The Tribunal had determined the compensation payable as Rs.17,71,000/- (Rupees Seventeen lakhs seventy one thousand only).



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WEB COPY 8. The learned counsel for the appellant submitted that the rough sketch and the other evidence on record would show that the accident took place only due to the negligence of the offending lorry insured with the 6th respondent herein and therefore, finding of the Tribunal fixing 25% contributed negligence on the deceased is erroneous. Hence, prayed for setting aside the award.

9. Per contra, the learned counsel for the cross objectors submitted that the award of compensation by the Tribunal is meagre. Though the cross objectors had established that the deceased was working as a driver and earning more than Rs.20,000/- per month, the Tribunal had fixed a meagre income of Rs.9,000/- per month and hence, prayed for enhancement of the compensation. The learned counsel further submitted that the Tribunal had not awarded compensation towards loss of love and affection and the compensation under other heads are also meagre.

10. The learned counsel for the 6th respondent/Insurance Company of



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the offending vehicle submitted that the award of the Tribunal is just and reasonable and no interference is called for.

11. The questions involved in the instant appeal and the cross objection are as follows:-

a) Whether the Tribunal was right in fixing 25% contributory negligence on the deceased and directing the appellant to pay 25% of the compensation amount?

b) Whether the Tribunal had awarded just and reasonable compensation?

12. As regards the 1st question, it is seen that the accident had taken place predominantly due to the negligence of the offending vehicle insured with the 6th respondent herein. There is no dispute with regard to the said fact.



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The rough sketch reveals that the accident took place on the western side of the road while the deceased was proceeding from South to North direction. Therefore, the deceased was on the correct side of the road. The offending vehicle, as seen from the evidence, had attempted to overtake another vehicle and dashed against the lorry driven by the deceased. However, it is seen from the rough sketch that the accident took place almost at the centre of the road. Considering the evidence on record, the Tribunal found that the deceased ought to have been careful and could have avoided the accident if he had exercised due care and caution. The Tribunal, therefore, fixed 25% contributory negligence on the deceased. This Court is of the view that the said finding of the Tribunal is justified and hence, no interference is called for. Therefore, this Court is of the view that the appeal is liable to be dismissed and accordingly, the civil miscellaneous appeal is dismissed.

13. As regards the cross objection, this Court is of the view that admittedly the deceased was driving the lorry belonging to the 7th respondent herein. P.W.1/wife of the deceased had deposed before the Tribunal that the



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deceased was working as a driver. The accident took place in the year 2016.

The deceased was aged 40 years at the time of accident and survived by his wife and two minor children.

14. Considering the age, avocation, year of accident and number of dependents, this Court is of the view that it would be just and reasonable to fix notional income as Rs.13,000/- per month. The deceased would be entitled to 40 % enhancement towards future prospects and the applicable multiplier is '15'. Thus, deducting $1/4^{\text{th}}$ towards personal expenses, the compensation under the head 'loss of income' is calculated as follows:-

$$\text{Rs.13,000} + 5,200(13,000 \times 40\%) \times 12 \times 15 \times 3/4 = \text{Rs.24,57,000/-}$$

15. It is also seen that the amount of Rs.40,000/- awarded under the head loss of consortium is just and reasonable and the same is confirmed. However, the respondents 2 to 4/cross objectors have not been awarded compensation under the head loss of love and affection. Hence, a sum of



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Rs.1,20,000/- (Rs.40,000*3) is awarded under the head 'loss of love and affection'. The compensation awarded under the head funeral expenses and loss of estate are just and reasonable and hence the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.17,71,000/- to Rs.26,47,000/- break-up 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	17,01,000/-	24,57,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Loss of love and affection	-	1,20,000/-	Granted
	Total	17,71,000/-	26,47,000/-	Enhanced by Rs.8,76,000/-

16. With the above modification, the cross objection is partly allowed



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and the compensation awarded by the Tribunal at Rs.17,71,000/- is hereby enhanced to Rs.26,47,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay 25% of the compensation amount now determined by this Court and the 6th respondent is directed to pay 75 % of the compensation amount. The appellant and 6th respondent shall deposit the compensation amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, except the 3rd respondent/minor claimant, the other respondents/cross objectors shall be entitled to withdraw the same in the same proportion fixed by the Tribunal. The share of the minor/3rd respondent shall be deposited in anyone of the nationalized bank in interest bearing scheme for a period of two years and thereafter renewable periodically until the minor claimants attains majority. The 1st respondent/mother is permitted to withdraw interest once in three months. The cross objectors are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.



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17. Accordingly, the civil miscellaneous appeal is dismissed and cross objection is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No
nr

SUNDER MOHAN, J.

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To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Court, Ariyalur.
2. The Section Officer,
VR Section,
High Court, Madras.

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and C.M.P. No.13010 of 2022
and

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