



C.M.A.No.4472 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.11.2023

CORAM

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

C.M.A.No.4472 of 2019

and

Cros.Obj.No.91 of 2023

and

C.M.P.No.25303 of 2019

C.M.A.No.4472 of 2019

The Manager,
M/s.National Insurance Company Limited,
Cuddalore.

... Appellant

Vs

1.Rajivee
2.Jagadeesan
3.Jayaraj
4.Jayakumar
5.S.Kaveri

... Respondents

Cros.Obj.No.91 of 2023
in C.M.A.No.4472 of 2019

1.Rajivee
2.Jagadeesan
3.Jayaraj
4.Jayakumar

... Cross Objectors

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C.M.A.No.4472 of 2019

Vs

1.The Manager,
M/s.National Insurance Company Limited,
Cuddalore.

2.S.Kaveri

... Respondents

Prayer in C.M.A.No.4472 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 02nd day of November, 2018 passed in M.C.O.P.No.758 of 2016, by the Motor Accidents Claims Tribunal (In the Court of I Additional District Judge – I), Tindivanam.

Prayer in Cros.Obj.No.91 of 2023: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and award dated 02.11.2018 passed in M.C.O.P.No.758 of 2016 on the file of the Motor Accidents Claims Tribunal (In the Court of I Additional District Judge – I), Tindivanam.

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For Appellant	:	Mr.J.Michael Visuvasam
For Respondent-1 to 4	:	Mr.P.Mani
For Respondent-5	:	No appearance

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For Cross Objectors	:	Mr.P.Mani
For Respondent-1	:	Mr.J.Michael Visuvasam
For Respondent-2	:	No appearance

COMMON JUDGEMENT



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The Insurance Company has filed this appeal challenging the award passed by the Motor Accidents Claims Tribunal (In the Court of I Additional District Judge – I), Tindivanam in M.C.O.P.No.758 of 2016 dated 02.11.2018.

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

3. On 12.12.2011 at about 6.00 p.m., the deceased Jayamoorthy proceeded from his native Thailapuram village towards Pondicherry in a motorcycle bearing Reg.No.PY-01-BG-0712 on the extreme left side of the road. While he was nearing Rawthankuppam bus stop, one canter lorry bearing Reg.No.TN 31 H 0663 was coming on the back side in the same direction in a rash and negligent manner with high speed without raising horn sound and dashed on the motorcycle. As a result, the deceased sustained head injury and serious injuries all over the body and died on the spot. The accident was solely due to the rash and negligent driving by the driver of the first respondent. Therefore, the claimants have filed a claim petition claiming a sum of Rs.90,00,000/-.

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4. Before the Tribunal, the claimants have examined four witnesses viz., P.W.1 to P.W.4 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the respondents, they have examined one witness viz., R.W.1 and no documents were marked. After adjudication, the Tribunal had partly allowed the petition and awarded a sum of Rs.10,97,800/- as compensation under various heads. Aggrieved by the said award, the Insurance Company has preferred the appeal and the claimants have filed the cross objection seeking enhancement.

5. The learned counsel appearing on behalf of the appellant/Insurance Company submitted that, though the accident had happened on 12.12.2011 at about 06.00 p.m., however, the FIR was lodged only on the next day, which throws doubt on the FIR. It is the further submission of the learned counsel that the driver of the first respondent himself had deposed as R.W.1 and had categorically denied about the involvement in the accident. It was incumbent on the claimants to prove that the canter lorry was involved in the accident. However, without proving the involvement of the said lorry and the delayed



submission of the complaint on the next day cause a doubt on the involvement of the offending vehicle in the said offence. Further, the final report filed by the police under Ex.P.5 says that the lorry was coming from the opposite direction, whereas in the complaint it reveals that the lorry hit the vehicle from behind. The final report as well as the complaint are mutually contradictory and therefore, the involvement of the vehicle in the offence is prone to serious doubt. Further, he submitted that, the compensation awarded under the various heads are excessive and without proving the involvement of the said lorry, awarding the said compensation is totally erroneous. Accordingly, he prays for setting aside the award passed by the Tribunal.

6. Per contra, the learned counsel appearing on behalf of the cross objectors/claimants submitted that, merely because the FIR has been registered on the next day would not be a ground to down the said FIR as the first priority of the claimants would be to look after the deceased, who had been seriously injured and who had died and steps were taken on the next day after ascertaining information from the local persons, namely P.W.2 and P.W.3, who have seen the occurrence and had lodged the FIR and therefore, the doubt



expressed on the FIR is wholly without any substance. Further, the FIR is not an encyclopedia and any discrepancy in the FIR and the final report cannot form the basis to doubt the FIR as well as the final report. Further, the compensation awarded is very meagre, more particularly, the notional income fixed for the deceased at Rs.6,500/- p.m. as the deceased was studying final year in Engineering. So the notional income has to be fixed on the higher side for computing the loss of earnings to the claimants. Accordingly, he seeks for appropriate enhancement in favour of the claimants.

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

8. The dispute with regard to the accident, mainly is on the involvement of the offending vehicle in the offence. The FIR is put in issue before this Court on the ground that it was given after a delay of more than twelve hours and therefore, this according to the appellant caused a serious doubt on the veracity on the FIR. P.W.2 and P.W.3 who are eye-witnesses to the occurrence have



noted the accident and have taken the lorry number and their deposed is also to the effect that the offending vehicle was driven in a rash and negligent manner and it had caused the accident. It is to be pointed out that the normal course of action of the claimants would be to see whether the deceased is alive or not and to take him for treatment and no prudent person will rush to the police station to lodge a complaint. Therefore, after finding out that the deceased had died because of the accident and after ascertaining from P.W.2 and P.W.3 who are eye-witnesses to the occurrence, the second claimant had lodged the FIR on the next day which by no means could be doubted. It is the reaction of a normal person and the delay in the lodging of the FIR in the normal course cannot be doubted on the mere ground of delay. Insofar as the discrepancy in the complaint and the final report/Ex.P.5 submitted by the law enforcing agency, it is to be pointed out that it has been the consistent view of the Court that it has been the consistent view of the Courts that FIR is may not and need not contain all the necessary details at the earliest point of time. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in



motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*. Therefore, any error in the FIR would not be a ground to doubt the genesis of the accident. When P.W.2 and P.W.3, who are independent witnesses have spoken about the accident and their evidence has not been shaken in any manner in cross-examination by the appellant, necessarily, the discrepancy in the FIR fades into insignificance. Therefore, the involvement of the offending vehicle in the accident is established beyond doubt and necessarily the insurance company as the insurer of the said vehicle is liable to compensate the claimants.

9. Now, coming to the question of quantum of compensation awarded by



the Tribunal. Insofar as the fixation of notional income of the deceased is concerned, the Tribunal has fixed the notional income of the deceased at Rs.6,500/-. The accident had happened in the year 2001 and there is no dispute about the fact that the deceased was an engineering student doing his final year and had he completed his engineering degree, he would have been suitably placed in a job and necessarily would have earned a good income. Notional income is fixed on the basis of the ratio laid down by the Apex Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, wherein the Apex Court had in the case of persons who could not establish their income such as, vegetable vendor, daily wager, etc., had fixed the notional income at Rs.6,500/-. In the case on hand, the deceased is an engineering student doing his final year engineering and therefore, he cannot be equated to that of a street vendor to fix the notional income, since whose income could not be fixed for the deceased. Therefore, the fixing income of the deceased in relation to the person in unorganized sector is wholly erroneous. Considering the fact that the deceased is doing his final year engineering, which fact is not disputed, this Court is inclined to fix the notional



of the deceased at Rs.10,000/-, which would be just and reasonable considering the fact that the accident had happened in the year 2011. Therefore, by fixing a sum of Rs.10,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.14,000/-. Deducting 50% towards the personal expenses of the deceased, since the deceased was a bachelor, the loss of income to the family is arrived at Rs.7,000/- per month and the deceased being aged about 21 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.7,000/- * 12 * 18 = Rs.15,12,000/-, which is worked out as follows :-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	10,000
Add: Future Prospects (Rs.10,000 x 40%) (Per month)	4,000
	14,000
Less: Personal expenses (50%) (Rs.14,000/- x 50%) (Per month)	7,000



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<i>Loss of Income</i>	<i>Amount in Rs.</i>
	7,000
Notional income (per annum) (Rs.7,000/- x 12)	84,000
Multiplier	18
Total	15,12,000

10. Further, the amount of compensation awarded under the head loss of love and affection is enhanced to a sum of Rs.1,60,000/- by awarding a sum of Rs.40,000/- each to all the claimants, as this Court is of the considered view that the compensation awarded by the Tribunal under the aforesaid head is very meagre and deserves enhancement. Since no amount has been awarded under the head loss of estate, a sum of Rs.15,000/- is granted under the said head.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of Dependency	9,82,800/-	15,12,000/-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
			(enhanced)
2	Love and affection (Rs.40,000/- * 4)	1,00,000/-	1,60,000/- (enhanced)
3	Funeral expenses	15,000/-	15,000/-
4	Loss of Estate	15,000/-	15,000/-
	Total	10,97,800/-	17,02,000/-

12. In the result, the civil miscellaneous appeal is dismissed and the cross objection is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.10,97,800/-** to **Rs.17,02,000/-**. The Appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.758 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. It is made clear that the cross objectors/claimants will not be entitled to claim interest for the delay period of 204 days. On such deposit being made, the Tribunal is directed to transfer the award amount directly to



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the bank account of the claimants through RTGS within a period of two (2) weeks thereafter, as per the apportionment of the Tribunal, upon production of proof with regard to payment of Court fee on the enhanced compensation by the claimants. No costs. Consequently, the connected miscellaneous petition is closed.

24.11.2023

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

To

- 1.The Motor Accident Claims Tribunal (Subordinate Judge) of Bhavani at Erode District.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI,J.,

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