



CMA No.1334/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No.1334 of 2023

and

Cross Objection No.51 of 2023

and

C.M.P.No.13344 of 2023 in C.M.A.No.1334 of 2023

C.M.A. No. 1334 of 2023

The United India Insurance Co. Ltd.,
5 Big Bazaar Street,
Dharapuram – 638 656.

... Appellant

Versus

1.Arumugam
2.Valliammal
3.Prakash @ Kaliraj

... Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 02.02.2023 made in M.C.O.P.No.318 of 2016 on the file of the Motor Accident Claims Tribunal, Tiruppur (III Additional District and Sessions Judge), Dharapuram.



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For Appellant : Mr.D.Bhaskaran

For Respondents : R1 and R2 - Mr. R. Nalliyappan
R3 - No Appearance

Cross Obj. No. 51 of 2023:

1.Arumugam,
2.Valliammal

... Cross objectors

Versus

1.The United India Insurance Co Ltd.,
5 Big Bazaar Street,
Dharapuram – 638 656.

2.Prakash @ Kaliraj

... Respondents

PRAYER : Cross Objection filed under Order XLI Rule 22 of the Civil Procedure Code to enhance the award with interest at the rate of 18% per annum and costs.

For Cross objectors : Mr. R.Nalliyappan

For Respondents : R1- Mr. D.Bhaskaran
R2 - No Appearance

COMMON JUDGMENT

The Insurance Company has preferred the above appeal challenging the finding with regard to negligence and the quantum of compensation. The claimants have filed the cross objection seeking enhancement of the compensation.



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2. The respondents 1 and 2/Cross Objectors filed a claim petition stating that on 20.08.2015 at about 9.30 P.M, when the deceased A.Satheesh @ Satheeshkumar was riding his two wheeler bearing Reg.No.TN 57 U 9339 with his friend Saravanan as a pillion rider at Keeranur in the Dharapuram to Palani road near Dasanaickenpatty Milk Society on the extreme left side of the road, the rider of the motorcycle bearing Registration No.TN 78 A 6613, insured with the appellant applied sudden brake and took a right turn without any signal in a rash and negligent manner as a result of which, the vehicle ridden by the deceased hit the insured vehicle and the deceased sustained fatal injuries; that the deceased was a Coolie earning Rs.15,000/- per month and hence, they were entitled to compensation of Rs.20,00,000/-.

3. The third respondent herein remained exparte before the Tribunal.

4. The appellant/insurance company resisted the claim petition stating that the accident occurred only due to the negligence of the deceased; that the deceased did not have a valid driving license and came in a rash and negligent manner and hit the insured vehicle; and that in



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any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5. The respondents 1 and 2 examined P.W.1 and P.W.2 and marked twelve documents as Exs.P1 to P12. The appellant did not examine any witness and mark any document.

6. The Tribunal, after taking into consideration the evidence on record, awarded a total compensation of Rs.18,49,000/- to the respondents 1 & 2/Cross Objectors herein.

7. The learned counsel for the appellant/insurance company submitted that the accident took place only on account of rash and negligent riding of the deceased; that the rough sketch/Ex.P3 would show that the version of the alleged eye-witnesses is not correct; that as per the rough sketch, the rider of the insured vehicle was on the extreme left hand side of the road and there is nothing to suggest that he had taken a right turn; that the deceased came in a rash and negligent manner and hit the insured vehicle from behind; that therefore, the Tribunal ought not to have fixed entire negligence on the rider of the insured vehicle. The



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learned counsel also pointed out the contradictions in the evidence of P.W.1 and P.W.2 and also the fact that the pillion rider, who was the first informant, was not examined before the Tribunal and hence, prayed for reduction of compensation.

8. The learned counsel for the respondents 1 and 2/ Cross Objectors, per contra, submitted that the rider of the insured vehicle was not examined by the Insurance Company; that in the absence of any evidence let in on the side of the appellant, the Tribunal rightly accepted the evidence of P.W.1 and P.W.2 and fixed the entire negligence on the rider of the two-wheeler. The learned counsel further submitted that the notional income fixed by the Tribunal at Rs.8,000/- per month is meagre and prayed for enhancement of compensation.

9. Though notice has been served on the third respondent, none has entered appearance on behalf of him.

10. Heard the learned counsel for the appellant/insurance company as well as the respondents 1 and 2/Cross Objectors and perused the materials available on record.



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11. On perusal of the records, this Court finds that the respondents

1 and 2/Cross Objectors examined P.W.1 and P.W.2 on their side. P.W.2 is an eyewitness to the occurrence. It is also seen that the pillion rider, who travelled with the deceased, has not been examined by the respondents 1 and 2 before the Tribunal. The appellant had also not examined the rider of the offending vehicle to prove the manner in which the accident took place. The only evidence available before the Tribunal was the evidence of P.W.2 and the documents pertaining to the criminal case. Ex.P.3/the rough sketch prepared during investigation shows that the accident took place on the left side of the road i.e., on the Eastern side, when both the deceased and the rider of the offending vehicle were travelling from North to South. P.W.2 had admitted in the cross examination that he was relative of the deceased. He had not lodged any complaint. Further P.W.2 had admitted that the deceased had dashed against the two-wheeler insured with the appellant. The relevant portion of the Cross examination of P.W.2 is extracted below:

"இறந்துபோன சதீஸ் இருசக்கர வாகனத்தை
ஒட்டிசென்று தனக்கு முன்னால் சென்ற இருசக்கர
வாகனத்தில் மோதித்தான் இந்த விபத்து ஏற்பட்டது என்றால்
சரிதான்"

Therefore, it is clear from the evidence on record that the rider of the



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insured vehicle had stopped the vehicle and the deceased had hit the vehicle from behind. The deceased ought to have been careful and must have maintained a safe distance from the insured vehicle. Therefore, in the circumstances, this Court is of the view that the deceased also contributed to the accident.

12. Considering all the above facts, including that the respondents 1 and 2 have not examined the pillion rider and the appellant has not examined the rider of the offending vehicle, coupled with the evidence of P.W.2 and the criminal case records, this Court is of the view that it would be reasonable to fix 35% contributory negligence on the deceased for not maintaining a safe distance from the vehicle which was going in front of him.

13. As regards quantum of compensation, it is the case of the Cross Objectors/respondents 1 and 2, that though the accident took place in the year 2015, the Tribunal had fixed a meagre income of Rs.8,000/-. The respondents 1 and 2 had not produced any document to either prove the avocation or income of the deceased. However, P.W.1 had stated that the deceased was working as a Coolie. Considering the avocation, age



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and year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.12,500/- as notional income of the deceased. Since the deceased was aged 25 years at the time of the accident, the claimants are entitled to 40% enhancement towards future prospects. Since the deceased was a bachelor, half of his income has to be deducted towards his personal expenses and the multiplier applicable is '18'. Thus, by fixing Rs.12,500/- as notional income, granting 40% enhancement towards future prospects, applying multiplier '18' and deducting 50% towards personal expenses, the loss of income is calculated as follows:

$$\text{Rs.12,500/-} + \text{Rs.5,000/-} - (40\% \times \text{Rs.12,500/-}) \times 12 \times 18 \times 50\% \\ - \text{Rs.18,90,000/-}$$

14. The award under other heads is just and reasonable and hence, the same is confirmed. Thus, the total compensation awarded by the Tribunal is reduced from Rs.18,49,000/- to Rs.13,07,150/-. The break-up is as follows:

Sl. No	Description	Amount awarded by	Amount awarded by	Award confirmed or
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		Tribunal (Rs)	this Court (Rs)	enhanced or granted
1.	Loss of Income	17,28,000/-	18,90,000/-	Enhanced
2.	Funeral Expenses	16,500/-	16,500/-	Confirmed
3.	Loss of Estate	16,500/-	16,500/-	Confirmed
4.	Loss of Filial Consortium	88,000/-	88,000/-	Confirmed
	Total	18,49,000/-	20,11,000/-	
	Less Contributory Negligence 35%		Rs.7,03,850/-	
	Net compensation amount	Rs.18,49,000/-	Rs.13,07,150/-	Reduced by Rs.5,41,850/-

15. In the result,

(i) C.M.A.No.1334 of 2023 is partly allowed reducing the compensation from Rs.18,49,000/- to Rs.13,07,150/- together with interest @ 7.5 % p.a. from the date of petition till the date of deposit.

(ii) Cross Objection No.51 of 2023 is partly allowed with respect to enhancing the compensation from Rs.17,28,000/- to Rs.18,90,000/- under the head Loss of Income.

(iii) The appellant/Insurance Company is directed to deposit their share of the modified award amount now determined by this Court



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i.e., Rs.13,07,150/- along with interest and cost, less the amount already deposited if any.

(iv) On such deposit, the respondents 1 & 2 / Cross Objectors are permitted to withdraw their share of the award amount along with proportionate interest and cost after adjusting the amount already withdrawn if any.

(v) The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.318 of 2016, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.09.2023

dk

Index: Yes/No

Speaking Order / Non~Speaking Order

Neutral Citation: Yes / No

To

1. The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal
Dharapuram, Tiruppur.



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2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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Civil Miscellaneous Appeal No.1334 of 2023
and
Cross Objection No.51 of 2023
and
C.M.P.No.13344 of 2023

Dated: 11.09.2023