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C.M.A.Nos.1572 and 1933 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1572 and 1933 of 2017

And

C.M.P.No.10423 of 2017

- 1.Kalaiselvi
- 2.Minor.Deepika
- 3.Minor.Madhan Kumar

(Minors 2 and 3 rep. by next
friend/ guardian/ Mother
Kalaiselvi)

4.Kannammal ... Appellants in C.M.A.1572/2017

The ICICI Lombard Motor
Insurance Company Ltd.,
By its Branch Manager,
Running at Ram Arcade,
D-63, 3rd Floor,
Court Street,
Thiruppur,
Thiruppur District.

... Appellant in C.M.A.1933/2017

Vs.

- 1.Anandkumar
- 2.Marimuthu

3.The ICICI Lombard Motor Insurance Company Ltd.,
Rep. by its Branch Manager,
Running at Ram Arcade,
D-63, 3rd Floor, Court Street,
Thiruppur,
Thiruppur District.



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(The respondents 1 and 2,
remained ex-parte before the
tribunal, hence notice may be
dispensed with for the respondents
1 and 2 in this appeal) ... Respondents in C.M.A.1572/2017

1.Kalaiselvi
2.Minor.Deepika
3.Minor.Madhan Kumar

(Minors 2 and 3 rep. by next
friend/ guardian mother
first respondent Kalaiselvi)

4.Kannammal
5.Anand Kumar
6.Marimuthu ... Respondents in C.M.A.1933/2017

Prayer in C.M.A.No.1572 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in the judgment and decree dated 16.06.2015 made in M.C.O.P.No.7 of 2013 on the file of MACT/ Sub Court at Gobichettipalayam, with interest and cost by allowing the Civil Miscellaneous Appeal.

Prayer in C.M.A.No.1933 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.06.2015 in M.C.O.P.No.7 of 2013 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam.



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For Appellant : Mr.SP.Yuvaraj
in C.M.A.No.1572 of 2017

M/s.R.Sreevidhya
in C.M.A.No.1933 of 2017

For Respondents : R1 and R2 – Exparte
M/s.R.Sree Vidhya for R3
in C.M.A.No.1572 of 2017

Mr.SP.Yuvaraj for R1 to R4
R5 – Exparte
R6 – No Appearance
in C.M.A.No.1933 of 2017

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the judgment and decree dated 16.06.2015 in M.C.O.P.No.7 of 2013 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam.

2.The petitioners before the Motor Accident Claims Tribunal are the appellants in C.M.A.No.1572 of 2017 (hereinafter referred to as 'claimants'). The third respondent before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.1933 of 2017 (hereinafter referred to as 'Insurance Company').



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3.The brief facts of the case is that on 23.07.2009 at about 1.15 p.m. the deceased Kamaraj @ Subramani was proceeding in his TVS Star City Motor Cycle bearing Registration No.TN-37-AM-4284 on Gobi to Sathy Main Road from East towards West on the extreme left side of the road at moderate speed and when he came near KPR Spinning Mill at Indiyampalayam, the driver of the lorry bearing Registration No.TN-40-Z-4141 who was proceeding ahead of the deceased suddenly applied the brake without any signal, due to which, the deceased lost his control and dashed against the lorry and died on the spot.

4.Thereafter, the dependants of the deceased Kamaraj @ Subramani/ claimants filed claim petition before the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam, claiming compensation of Rs.10 Lakhs.

5.After adjudication, the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam, awarded a sum of Rs.10,83,000/- as compensation to the claimants and directed the Insurance Corporation to pay the compensation amount with interest



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at the rate of 7.5% p.a. from the date of petition till realization and costs. Aggrieved by the same, the Insurance Company has filed C.M.A.No.1933 of 2017 seeking to set aside the award and the claimants have filed C.M.A.No.1572 of 2017 seeking enhancement of the award amount.

6.The learned counsel appearing for the Insurance Company submitted that the deceased drove his motor cycle in a rash and negligent manner and dashed against the lorry which was parked on the left side of the road. The driver of the lorry who was examined as P.W.2 also deposed that the lorry was parked on the left side of the road and without noticing the same, the deceased drove the motor cycle in a rash and negligent manner and dashed against the lorry. Even the wife of the deceased, when she preferred complaint before the law enforcing agency has stated that the deceased dashed his motor cycle against a stationed lorry. Hence, the Tribunal ought to have fixed some liability on the part of the deceased. Further, the claimants filed claim petition claiming only Rs.10 Lakhs as compensation, however, the Tribunal awarded more than what the claimants claimed. The learned counsel further submitted that at the



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time of death, the deceased was aged 36 years and the correct multiplier to be adopted is 15, however, the Tribunal adopted the multiplier 16 and awarded compensation which is not sustainable one.

7.Per contra, the learned counsel appearing for the claimants submitted that the driver of the lorry bearing Registration No.TN-40-Z-4141 who was proceeding ahead of the deceased suddenly applied the brake without any signal, due to which, the deceased lost his control and dashed against the lorry and died on the spot, leaving behind his wife, two children and mother as his legal heirs. The Tribunal has not awarded any amount towards future prospects and hence, the claimants are entitled for enhancement of the compensation amount.

8.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimants and perused the materials available on record.

9.Admittedly, on 23.07.2009 at about 1.15 p.m. the deceased Kamaraj @ Subramani was proceeding in his TVS Star City Motor Cycle bearing Registration No.TN-37-AM-4284 on Gobi to Sathy Main Road



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from East towards West. The claimants claim that when the deceased came near KPR Spinning Mill at Indiyampalayam, the driver of the lorry bearing Registration No.TN-40-Z-4141 who was proceeding ahead of the deceased suddenly applied the brake without any signal, due to which, the deceased lost his control and dashed against the lorry and died on the spot. The Insurance Company claim that the lorry was parked on the left side of the road and the deceased drove the motor cycle in a rash and negligent manner and without noticing the stationed lorry, dashed against the lorry and died on the spot.

10.The law enforcing agency registered F.I.R. based on the information given by the wife of the deceased and the F.I.R. marked as Ex.P1 makes it clear that the offending vehicle was parked on the left side of the road without any signal, thereby, the accident happened. Further, R.W.2 the driver of the vehicle insured with the Insurance Company deposed that the vehicle was parked on the left side of the road. Ex.R1 – Final Report and Ex.R2 – RCS order with final report also make it clear that the deceased dashed against the parked vehicle.



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11.Hence, the Tribunal ought to have fixed some negligence on the part of the deceased motor cyclist. Hence, this Court fix 40% liability on the part of the deceased motor cyclist and 60% liability on the part of the owner of the vehicle insured with the Insurance Company.

12.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.7,68,000/- for loss of earnings, Rs.5,000/- for transport to Hospital, Rs.10,000/- for funeral expenses, Rs.2,00,000/- for love and affection, Rs.1,00,000/- for loss of consortium and arrived at a total compensation of Rs.10,83,000/- with interest at the rate of 7.5% p.a. from the date of petition till realization.

13.In the claim petition, the claimants claim that the deceased was earning Rs.10,000/- as monthly salary, however, no proof has been filed. The Hon'ble Apex Court in Syed Sadiq case fixed Rs.6,500/- to the vegetable vendor. Applying the yardstick fixed by Hon'ble Apex Court, this Court fix a sum of Rs.8,000/- as the notional income of the deceased per month. This Court fix that 1/4th of the amount has to be deducted for his personal and living expenses. Hence, if 1/4th of the amount is deducted from Rs.8,000/-, the loss of



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income per month would be Rs.6,000/-. The deceased was aged 36 years at the time of death and the correct multiplier to be adopted is 15. Adopting multiplier 15, the actual loss of income to the claimants comes to Rs.6000/- X 12 X 15 = Rs.10,80,000/-. This Court is of the opinion that some amount has to be awarded for future prospects and for loss of estate. Accordingly, this Court awards 40% of actual loss of income for future prospects, which comes to Rs.4,32,000/- [40% of Rs.10,80,000/- = Rs.4,32,000/-] and a sum of Rs.15,000/- for loss of estate.

14.The amount awarded under the heads loss of love and affection and loss of consortium, in the opinion of this Court are high and hence, the amount awarded under the head loss of love and affection is reduced to Rs.1,00,000/- from Rs.2 Lakhs and the amount awarded under the head loss of consortium is reduced to Rs.60,000/- from Rs.1Lakh. However, the amount awarded under the head funeral expenses, in the opinion of this Court is low and hence, the amount awarded for funeral expenses is enhanced to Rs.15,000/- from Rs.10,000/-. Since the deceased died on the spot, this Court delete the amount of Rs.5,000/- awarded under the head transport to Hospital.



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15. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of earnings	Rs.7,68,000/-	Rs.10,80,000/-
2.	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
3.	Loss of Love and affection	Rs.2,00,000/-	Rs. 1,00,000/-
4.	Loss of consortium	Rs.1,00,000/-	Rs. 60,000/-
5.	Loss of estate	---	Rs. 15,000/-
6.	Future prospects	---	Rs. 4,32,000/-
7.	Transport to Hospital	Rs. 5,000/-	---
	Total	Rs.10,83,000/-	Rs.17,02,000/-

16. The total compensation works out to Rs.17,02,000/- and the claimants are entitled to total compensation of Rs.10,21,200/- [60% of Rs.17,02,000/-], out of which, the claimants 1, 2 and 3/ petitioners 1, 2 and 3 in the claim petition are entitled to a sum of Rs.3,06,360/- each and the fourth claimant/ fourth petitioner in the claim petition is entitled to a sum of Rs.1,02,120/-. The Insurance Company shall deposit 60% of the modified/ enhanced award amount i.e., Rs.10,21,200/- [60% of Rs.17,02,000/-] with interest at the rate of 7.5% p.a. from the date of petition till realization.

17. The civil miscellaneous appeals are partly allowed. The



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decree and judgment dated 16.06.2015 passed in M.C.O.P.No.7 of 2013 by the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam, is modified to the above extent.

18.The Insurance Company is directed to deposit the 60% of the modified/ enhanced award amount i.e., Rs.10,21,200/- [60% of Rs.17,02,000/-] before the Motor Accident Claims Tribunal (Subordinate Judge) at Gobichettipalayam, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. The Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

19.On such deposit being made, the claimants 1 and 4/ appellants 1 and 4 in C.M.A.No.1572 of 2017/ respondents 1 and 4 in C.M.A.No.1933 of 2017 are permitted to withdraw their respective shares as apportioned by this Court, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The claimants 2 and 3/ appellants 2 and 3 in C.M.A.No.1572 of 2017/ respondents 2 and 3 in C.M.A.No.1933 of 2017 are permitted to withdraw their respective shares as apportioned by this Court, along with accrued interest and proportionate costs, on



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making proper and necessary application before the Tribunal and on production of necessary proof with regard to their majority. If the claimants 2 and 3 are still minors, their shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minors shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minors.

20.The claimants are not entitled to any interest for the period of delay, if any, in filing C.M.A.No.1572 of 2017. The claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if necessary.

21.The civil miscellaneous appeals are partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.10.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No
To
1.The Motor Accident Claims Tribunal (Subordinate Judge) at
Gobichettipalayam.

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M.DHANDAPANI,J.
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**C.M.A.Nos.1572 and
1933 of 2017
And
C.M.P.No.10423 of 2017**

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