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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.07.2023
CORUM

**The Hon'ble Mr.Justice Krishnan Ramasamy**

**C.M.A.No.945 of 2020**
**and**
**C.M.P.No.5908 of 2020 +**
**Cross. Obj. No.22 of 2022**

The Branch Manager,
National Insurance Company Ltd.,
DO – X Hero Honda Vertical
101-106, BMC House,
Cannaught Place, New Delhi – 110 001.
Now at
National Insurance Company Ltd.,
Motor 3rd Party claim Cell,
No.66, Greams Road,
Chennai – 600 006. ... Appellant in C.M.A.
R-1 in Cross Objection

Vs.

1. Venkatesh R-1 in C.M.A. & Cross objector

2. Bagyalakshmi
3. Lagumappa

... Respondents 2 and 3 in both Appeal and Cross objection

WEB COPY Civil Miscellaneous Appeal and Cross Objection has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 07.08.2019, in M.C.O.P.No.97 of 2016, passed by the Motor Accident Claims Tribunal (Additional District Judge), Hosur.

***Appearance***

For Appellant in C.M.A.
and R-1
in Cross objection : Mr.P.Sankaranarayanan

For Respondents1 & 2 in CMA
and Cross Objector : Mr.S.P.Yuvaraj

For Respondent-3 : Notice served, no appearance

## JUDGMENT

This Civil Miscellaneous Appeal and cross objection arise out of an award passed by the Motor Accidents Claims Tribunal (Additional District Judge), Hosur (hereinafter, referred to as 'the Tribunal') in M.C.O.P.No.97 of 2016, dated 07.08.2019.

**2.** On 09.03.2014, at 19.45 hours, Harish (since deceased) was riding the two wheeler, bearing Regn.No.TN-24-K-7494, in Kelamangalam to Rayakottai Road along with one Minor, Ajith Kumar as pillion rider and when the said Vehicle was nearing Erudhalam, the rider of the two wheeler,

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viz., Hero Honda Splendor, bearing Regn.No.TN-70-K-1885, belonging to the first respondent/owner and insured with the second respondent came in a rash and reckless manner, dashed against the deceased's Vehicle and thus, caused the accident. Due to the accident, both Harish and pillion rider, Ajith Kumar sustained grievious injury and despite treatment, the deceased died in the Hospital.

**3.** At the time of the accident, the deceased was a Student, aged about 18 years and was studying +2 in a Government School. Apart from his studies, he was also assisting his father, in Milk Vending Business and earning a sum of Rs.9,000/- per month. Hence, the claimants, being parents of the deceased, made a claim in a sum of Rs.25,00,000/-/- as compensation against the owner of the offending vehicle, first respondent as well as the insurer of the offending vehicle, second respondent.

**4**. The owner of the offending Vehicle remained absent before the Tribunal, and hence, he was set ex parte.

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**5.** The second respondent/Insurance Company, Chennai contested the claim petition by filing a counter statement, *inter alia* disputing their liability on the ground that the deceased was a minor, and without possessing driving licence, he rode the vehicle, in a hurried manner, at an uncontrollable speed, without observing observing the traffic rules, and in an attempt to overtake the another vehicle, he hit against the Hero Honda Splendor, which resulted in the accident. Therefore, it is contended that accident had occurred due to rash and negligent act of the deceased, for which, second respondent cannot be mulcted with any liability and hence, prayed for dismissal of the claim petition with costs.

**6.** Before the Tribunal, the father of the deceased was examined as P.W.1 and Pillion Driver, named Ajith Kumar, was examined as P.W.2 and eight documents were marked as Exs.P.1 to P.8. On the side of the Insurance Company, a person named Latha was examined as R.W.1, and two documents were marked as Exs.R.1 and R.2

**7.** The Tribunal, on appreciation of both oral and documentary

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evidence has come to the conclusion that the accident had occurred only due to the rash and negligent act of the rider of vehicle, viz., Hero Honda Splendour, bearing Registration No.TN-70-K-1885 belonging to the first respondent, insured with the second respondent, and therefore, directed the second respondent/Insurance Company to pay compensation to the claimants, and then, to recover the same from the first respondent. By coming to such a conclusion, the Tribunal has made calculation under different heads and passed an award for a total sum of Rs.15,77,000/- with interest at the rate of 7.5% p.a. from the date of claim petition (i.e. 30.06.2014) till the date of realisation, as compensation.

**7.1** The break up details of the compensation amount awarded by the Tribunal are as follows:-

| ***Sl.No.*** | ***Heads*** | ***Amount*** |
|---|---|---|
| 1 | Loss of Dependency | Rs.10,80,000/- |
| 2 | Loss of Love and Affection | Rs. 20,000/- |
| 3 | Transportation | Rs. 10,000/- |
| 4 | Funeral Expenses | Rs. 15,000/- |
| 5 | Loss of Estates | Rs. 20,000/- |
| 6 | Future Prospects | Rs. 4,32,000/- |
| | **Total** | **Rs.15,77,000/-** |

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**8**. Aggrieved by the findings rendered by the Tribunal with regard to the liability fastened on the appellant/Insurance Company as well as the quantum of compensation awarded by the Tribunal as excessive and exorbitant, the appellant/Insurance Company has filed the present Appeal, Whereas, finding the quantum of the award as not satisfactory, the claimants filed Cross Objection.

**9.** Mr.P.Sankaranarayanan, learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal was wrong in holding that the accident occurred only due to the rash and negligent act of the rider of the two wheeler, Hero Honda Splendor, bearing Regn.No.TN-70-K-1885 and not due to the negligence of the deceased. The learned counsel submitted that, the Tribunal failed to take into consideration one important aspect that at the time of the accident, the deceased was a minor student, studying only 12 std, and therefore, his age can be only '17' and not '18', as mentioned in the post- martem report and that, the deceased being a

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minor, aged 17, he could not have possessed driving licence even to ride the vehicle and to prove that the deceased possessed valid licence, no document has been produced. Therefore, it is contended that, in the absence of any such document to show that deceased was having driving license, which is is in violation of policy conditions, the Tribunal ought not to have fixed liability on the Insurance Company and directed the Insurance Company to pay compensation by adopting pay and recovery theory.

**9.1** Further, learned counsel for the appellant submitted that the Tribunal, while determining compensation towards Loss of Dependency, fixed the notional monthly income of the deceased at Rs.10,000/- is high. The learned counsel submitted that, deceased was only a student, studying +2, and even assuming he is doing part time work, (i.e. assisting his father in milkvending business) he cannot earn such a maximum of Rs.10,000/- per month and therefore, notional income fixed by the Tribunal at Rs.10,000/- is on the higher side. The learned counsel furthermore contended that, the Tribunal also erred in awarding 40% towards future prospects. Similarly, the compensation awarded by the Tribunal towards

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Los of Estate at Rs.20,000/- is high and the same is against the ratio laid down by the Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 601,** as in the said decision, it is held that, under the conventional head of Loss of Estate, only a sum of Rs.15,000/- can be awarded. Therefore, the learned counsel contended that the award passed by the Tribunal on the aforesaid aspects is liable to be set aside.

**10.** Per contra, Mr.S.P.Yuvaraj, learned counsel for the claimant,/cross objector would submit that, accident had occurred solely due to the negligent act of the driver of the offending Vehicle, viz., Hero Honda Splendor, bearing Registration No.TN-70-K-1885, belonging to the first respondent and before arriving at such conclusion, the Tribunal has taken note of Ex.P.1/FIR, and Deposition of P.W.1 (father of the deceased), which would buttress the fact that the accident occurred only to the negligence of the rider of Hero Honda Splendor. Further, the Tribunal has also taken into consideration Ex.R.2/MVI's report wherein, it is clearly stated the rider of the first respondent's vehicle did not produce his driving licence at the time

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of inspection. Therefore, it is contended that, when the Tribunal has rightly fastened entire liability against the rider of the two wheeler, who hit the deceased's vehicle, the question as to whether the deceased possessed any driving licence or not? does not even arise. Further, it is submitted that even as per Ex.P.2, Post Mortem Certificate, at the time of the accident, the age of the deceased was only 18 years and therefore, the contentions of the the learned counsel for the Insurance Company that the deceased was only a +2 student, aged 17, and he could not have possessed driving licence at such younger age and could not have earned a sum of Rs.10,000/- per month will not in any way improve the case. Therefore, the learned counsel submitted no interference of this Court is warranted with regard to findings rendered by the Tribunal on the negligent aspect.

**10.1** The learned counsel for the cross objector further contended that as far as the notional income fixed by the Tribunal at a sum of Rs.10,000/- is concerned, the same is just and fair, and the same cannot be stated to be on the higher side. The learned counsel also produced the webcopy of a judgment rendered by the Hon'ble Division Bench of this Court, in the case of **S.Chinnaraj and another Vs. Sureshkumar and**

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**another, made in** C.M.A.No.1826 of 2018, dated 17.12.2018, wherein, a sum of Rs.10,000/- is fixed as notional monthly income of the deceased, who died due to accident occurred in the year, 2012. In a similar way, the future prospects awarded by the Tribunal at 40% cannot be stated to be wrong, since as per ratio laid down by the Honourable Supreme Court of India in **Pranay Sethi's case (referred to supra),** 40% should be added towards Future Prospects.

**10.2** As far as compensation awarded by the Tribunal under others Heads are concerned, the learned counsel contended that the same is just and fair, however, he expressed grievance over compensation awarded by the Tribunal towards Loss of Love and Affection at Rs.20,000/- by stating the same to be inadequate and is against the principle laid down by the Hon'ble Supreme Court, in the case of **(Magma General Insurance Co. Ltd., Vs. Nanu Ram @ Chuhru Ram),** as in the said decision, it is held that a maximum of Rs.40,000/- can be awarded towards Filial Consortium. Therefore, the award passed by the Tribunal on the aforesaid aspect warrants interference.

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**11.** I have given due consideration to the submissions made by Mr.P.Sankaranarayanan, learned counsel for Insurance Company and Mr.S.P.Yuvaraj, learned counsel appearing for the claimant/cross objector and also perused the materials available on record.

**i) Liability :-**

**12.** On a perusal of the award passed by the Tribunal, it is seen that the Tribunal, while determining the aspect to who is the cause for the accident, has rightly taken into consideration the statement made by P.W.1, whose deposition is to the effect rider of the two wheeler, viz., Hero Splendor, bearing Regn.No.TN-70-K-1885, belonging to the first respondent/owner and insured with the second respondent came in a rash and reckless manner, at an uncontrollable speed and dashed against the deceased's Vehicle, resulting in an accident. The Tribunal also taken note of Ex.P.1/FIR, wherein, it is clearly mentioned that the accident occurred due to the negligent act of the rider of the first respondent's vehicle. Further,

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the Tribunal also considered Ex.R2/Motor Vehicle Inspector's report, wherein, it is stated that the rider of the Hero Splendor has failed to produce the driving licence at the time of inspection. Thus, the Tribunal, based on the aforementioned documents, marked as Ex.P.1, Ex.R.2, and Deposition of P.W.1, rightly came to the conclusion that the accident had occurred solely due to the negligence on the part of the rider of the two wheeler, Hero Honda Splendor, bearing Regn No.TN-70-K-1885, and by holding so, rightly fastened entire liability against the rider of the two wheeler, viz., first respondent who hit the deceased's vehicle, and the second respondent, being the insurer, directed to pay the compensation, and then, to recover the same from the first respondent, (since the rider of the first respondent's vehicle, failed to produce licence at the time of inspection), and therefore, where comes the question of determining the aspect as to whether the rider of the two wheeler, viz, the deceased, possessed licence or not. Therefore, the findings rendered by the Tribunal with regard to the negligent aspect is hereby confirmed and the contention of the learned counsel for the appellant/Insurance Company is held to be unsustainable.

**Quantum of Compensation:-**

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**12.1** As regards the contention of the learned counsel appearing for the appellant/Insurance Company that the Tribunal, while determining compensation towards Loss of Dependency, fixed higher notional monthly income of the deceased at Rs.10,000/-is concerned, this Court is of view that in the light of the judgment relied on by the learned counsel for the cross objector, in **S.Chinnaraj's case (cited supra)** wherein, a sum of Rs.10,000/- was fixed as notional monthly income of the deceased, who was a student died due to the accident occurred in the year 2012, the notional monthly income fixed by the Tribunal at Rs.10,000/- in the case on hand, is correct, as in the present case also, the deceased was a student and died due to the accident occurred in the year, 2014, infact, it should have been even more considering the increase in cost inflation index.

**12.2** Now coming to the point regarding the Tribunal award of 40% towards future prospects, this Court do not find any infirmity in awarding the same, as the same is accordance with the ratio laid down by the Honourable Supreme Court of India in **Pranay Sethi's case (referred to supra).** As far as the compensation fixed by the Tribunal towards Loss of Estate at Rs.20,000/- since the same is against the ratio laid down by the

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Honourable Supreme Court of India in very same case, viz., **Pranay Sethi's case (referred to supra),** the award passed by the Tribunal towards the said head, viz. Loss of Estate is modified and stands reduced to Rs.15,000/-.

**12.3** So far as the grievance expressed by the learned counsel for the claimant/cross objector, with regard to the low fixation of compensation towards Loss of Love and Affection at Rs.20,000/- is concerned, since the same is against the principle laid down by the Hon'ble Supreme Court, in the case of **Magma General Insurance Co. Ltd., (cited supra)** this Court is inclined to modify the award passed by the Tribunal towards Love and Affection from Rs.20,000/- to Rs.40,000/-each (both father and mother of the deceased).

**12.4** Insofar as the compensation awarded by the Tribunal towards i) Transportation at Rs.10,000/- and ii) Funeral Expenses at Rs.15,000/-are concerned, same remains unaltered.

**12.5.** Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

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| ***Sl.No.*** | ***Heads*** | ***Tribunal Award*** | ***High Court Award*** |
|---|---|---|---|
| 1 | Loss of Dependency | Rs.10,80,000/- | Rs.10,80,000/- |
| 2 | Loss of Love and Affection | Rs. 20,000/- | Rs. 80,000/- |
| 3 | Transportation | Rs. 10,000/- | Rs. 10,000/- |
| 4 | Funeral Expenses | Rs. 15,000/- | Rs. 15,000/- |
| 5 | Loss of Estates | Rs. 20,000/- | Rs. 15,000/- |
| 6 | Future Prospects | Rs. 4,32,000/- | Rs.4,32,000/- |
| | **Total** | **Rs.15,77,000/-** | **Rs.16,32,000/-** |

**13.** Consequently, the total compensation amount of **Rs.15,77,000/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.16,32,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit, out of which, the first claimant/father of the deceased is entitled to a sum of **Rs.7,32,000/-** together with proportionate interest and 2nd claimant/mother of the deceased is entitled to the balance sum of **Rs.9,00,000/-** plus proportionate interest.

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**14.** In the result, both the Civil Miscellaneous Appeal filed by the

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Insurance Company and the cross objection filed by the claimant are partly allowed on the following terms:-

(i) National Insurance Company Ltd., is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount, as per the apportionment mentioned supra to the claimants' respective bank account through RTGS within a period of three weeks thereon or from date of furnishing the RTGS particulars by the claimants, whichever is later.

(iii) The claimants are entitled to withdraw their respective share as apportioned by this Court with proportionate interest accrued thereon by making necessary application before the Tribunal.

iv) The claimants are further directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(v) Connected Miscellaneous Petition is closed. No costs.

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To

The Motor Accident Claims Tribunal

(Additional District Judge),

Hosur.

**Krishnan Ramasamy, J.,**

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**C.M.A.No.945 of 2020**
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