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C.M.A.No.1693 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1693 of 2019
and C.M.P.No.5225 of 2019

Shriram General Insurance Co. Ltd.,
10003-W8, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan – 302 022.

... Appellant

Vs.

1.Khader Basha
2.Aseena Begam
3.P.Mariyasusai

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, against the judgment and decree dated 29.11.2013 made in MACT O.P.No.85 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellants : Mr.S.Dhakshinamoorthy

For Respondents

For R1 & R2 : Mr.Mukund R.Pandiyan

For R3 : Died



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J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by Motor Accident Claims Tribunal (Special District Court), Krishnagiri, in M.C.O.P.No.85 of 2013 dated 29.11.2013.

2. Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.85 of 2013, on the file of Motor Accident Claims Tribunal (Special District Court), Krishnagiri, on the ground of quantum.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The factum of the accident, manner of the accident, rash and negligent driving of the 1st respondent vehicle insured with the 2nd respondent / Insurance Company are not in dispute in this appeal and hence, the finding rendered by the Tribunal in this regard are hereby confirmed.



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5. It is the case of the claim petitioners that on 06.06.2011 at about 19.30 hours, while minor Shabeena (since deceased) was standing on the left side of the road on Varattanapalli to Kuppam Road at Gurivinayanapalli, the lorry bearing Regn.No.TN-24-B-7737 belonging to the 1st respondent and insured with 2nd respondent, driven by the owner-cum-driver / 1st respondent, in a rash and negligent manner, at an uncontrollable speed, without blowing horn, without following the traffic rules, came from Varattanapalli side towards Kuppam side and knocked on the said minor and caused the accident, due to which, the deceased sustained grievous injuries. Immediately, she was taken to Government Hospital, Krishnagiri, and admitted as in-patient. After first aid, she was referred to St.Johns Hospital, Bangalore and thereafter to NIMHANS Hospital. Thereafter, she was treated in Victoria Hospital, Bangalore and on 01.07.2011, she was admitted in Government Hospital, Krishnagiri. In spite of treatment, she died. Hence, the claim petition.



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6. Before the Tribunal, on behalf of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P8 were marked and on the side of the Respondents, no one was examined and no document was marked.

7. On appreciation of the materials before it, the Tribunal awarded compensation as follows:

(a) Loss of income	:	Rs. 7,20,000/-
(b) Non pecuniary damages	:	Rs. 75,000/-
(c) For future prospects	:	Rs. 75,000/-
(d) Loss of love and affection	:	Rs. 50,000/-
(e) Transport to hospital expenses	:	Rs. 1,000/-
(f) Medical bills	:	Rs. 50,000/-
(g) Funeral expenses	:	Rs. 10,000/-

		Rs. 9,81,000/-

The said sum was directed to be paid by the respondents along with interest at 7.5% per annum from the date of petition till the date of realization.

8. According to the learned counsel for the appellant / Insurance Company, the Tribunal erred in awarding a huge compensation of Rs.9,81,000/- and erred in assessing the loss of income of the deceased as



Rs.7,20,000/-. The Tribunal having found that the deceased being a student studying 9th standard, went wrong in assessing the earnings as Rs.40,000/- per annum without any basis. The Tribunal ought to have taken the notional income, to assess the loss of income of the deceased, as per the principles laid down by tis Court and the Apex Court. The Tribunal went wrong in fixing the multiplier as 18 without any basis as the student studying 9th standard at the time of accident and there was no proof to substantiate that the age of the deceased was 15 years at the time of accident. The Tribunal erred in awarding Rs.75,000/- for Non-pecuniary damages without giving any reasoning further an amount of Rs.75,000/- was awarded for future prospects without any base. The Tribunal erred in awarding penal interest at 9% instead of 7.5% if the amount awarded was not deposited within one month from the date of award. Hence, he prays for modification of the compensation.

9. The learned counsel for the respondents 1 and 2, on the other hand, submitted that the compensation awarded by the Tribunal is fair and justified and it does not require any interference by this Court.



10. In support of his contention, the learned counsel for the appellant relied upon the judgment of this Court dated 10.11.2020 passed in C.M.A.No.1625 of 2020 wherein it is stated that the appropriate multiplier in the case of a child aged 13 years would be 15. Hence, it is clear that the same is also applicable to the case on hand.

11. Heard the learned counsel appearing for the parties and perused the records.

12. In the light of the judgment passed by this Court in a similar case in C.M.A.No.1625 of 2020 dated 10.11.2020 and the same is also applicable in this case, the compensation awarded by the Tribunal is modified as follows:

<i>Sl.Nos.</i>	<i>Heads</i>	<i>Compensation</i>
1.	Loss of income (dependency)	Rs.6,30,000/- (Rs.3500x12x15)
2.	Loss of love and affection	Rs.80,000/- (40,000 x 2)
3.	Funeral expenses	Rs.15,000/-
4.	Loss of estate	Rs.15,000/-
5.	Transportation	Rs.5,000/-
<i>Total</i>		<i>Rs.7,45,000/-</i>



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Accordingly, the compensation awarded by the Tribunal is hereby modified from Rs.9,81,000/- to Rs.7,45,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation.

13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, modifying the compensation from Rs.9,81,000/- to Rs.7,45,000/- with 7.5 % interest per annum, to the extent indicated above. No Costs. Connected miscellaneous petition is closed.

(ii) the Appellant / Insurance Company is directed to deposit the modified award amount i.e., Rs.7,45,000/-, with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioners/respondents 1 and 2 herein are entitled to get their share in the modified award amount, as per



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the ratio of apportionment made by the Tribunal, by filing appropriate application.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the modified compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

21.06.2023

Index:yes/no
Internet:yes/no
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To

The Presiding Officer,
The Motor Accident Claims Tribunal,
(Special District Court),
Krishnagiri.



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A.A.NAKKIRAN.J.,

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