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C.M.A.Nos.882 and 884 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE DR. JUSTICE D.NAGARJUN

C.M.A.Nos.882 and 884 of 2021
and
C.M.P.Nos.5075, 5078 of 2021 & 21133 of 2023

C.M.A.No.882 of 2021:

The Oriental Insurance Company Limited,
Rep. by its Branch Manager, having office
At Gopal Rao Library Building, Town Hall Road,
Kumbakonam Munisif and Taluk.

...Appellant

Vs.

1.Mumtaj Parveen

2.Mohamed Mukhthar

[Minor represented by his mother and guardian, 1st respondent herein]

3.M/s.AI Amaan Yourth Movement,
represented by its Secretary,
Having Office at 57-A, West Bazaar Street,
Koothanallur, Needamangalam Munsif and Taluk.

4.Rasool Beevi

5.Mohamed Ariff

...Respondents



C.M.A.Nos.882 and 884 of 2021

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 11th day of September, 2017, made in MCOP.No.60 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Mannargudi.

For Appellant : Mr.K.Vinod

For Respondents : Mr.D.Lakshmipathy for R1 and R2
Mr.P.Tamilavel for R4 and R5
R3 – Served – No appearance

C.M.A.No.884 of 2021:

The Oriental Insurance Company Limited,
Rep. by its Branch Manager, having office
At Gopal Rao Library Building, Town Hall Road,
Kumbakonam Munisif and Taluk.

...Appellant

Vs.

- 1.K.A.Mohamed Arif
- 2.A.Rasool Beevi
- 3.M/s.AI Amaan Yourth Movement,
represented by its Secretary,
Having Office at 57-A, West Bazaar Street,
Koothanallur, Needamangalam Munsif and Taluk.
- 4.Mumtaj Parveen

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5.Mohamed Mukhthar

[Minor represented by his mother and guardian, 4th respondent herein]

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 11th day of September, 2017, made in MCOP.No.105 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Mannargudi.

For Appellant : Mr.K.Vinod

For Respondents : Mr.P.Tamilavel for R1 and R2
Mr. D.Lakshmipathy for R4 and R5
R3 – Served – No appearance

COMMON JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal. The quantum of compensation is under challenge.



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2. The claimants sought for a compensation of Rs.10,00,000/- for the death of one Mohammed Jinnah who died in a motor accident that occurred on 09.09.2009, contending that the said Mohammed Jinnah was employed as a driver of an ambulance owned by AL Ameen Youth Movement and was earning a sum of Rs.10,000/- per month as salary.

3. It was the contention of the claimants that when he was returning in the ambulance from Chennai when the ambulance was nearing Koththattai Village on the Chidambaram - Cuddalore main road, the driver of the ambulance drove the same in a rash and negligent manner and dashed against a tamarind tree on the side of the road. As a result of the accident, the said Mohammed Jinnah suffered fatal injuries and died on the way to hospital. Terming the negligence on the part of the driver of the ambulance as the reason for the accident and the subsequent death, the claimants approached the Tribunal seeking compensation.



4. The Insurance Company resisted the claim contending that there was no negligence on the part of the driver of the ambulance and it was due to the mechanical defect in the vehicle, the accident had happened. It was also contended that since the deceased was spare driver he was not covered by the policy of Insurance. It was also contended that the compensation is on the higher side.

5. Two original petitions were filed seeking compensation one by the wife and minor son in MCOP.No.60 of 2012 and the other by the parents of the deceased in MCOP.No.105 of 2012. Both the petitions were heard together and a common award was passed. Hence, there are two appeals.

6. At trial the 1st claimant/ wife of the deceased Mohammed Jinnah was examined as PW1 and one Anbarasu was examined as PW2. On the side of the parents of the deceased, the mother Rasool Beevi was examined as RW1. Exs.P1 to P6 were marked on the side of the claimants in MCOP.No.60 of 2012/ respondents 1 and 2 and Ex.R1 to R6 were marked on the side of the claimants in MCOP.No.105 of 2012, parents/ respondents



4 and 5. The Insurance Company did not let in any oral or documentary evidence.

7. The Tribunal on a consideration of the FIR and the motor vehicle inspection report marked as Exs.P1 and P3 respectively concluded that the accident occurred due to the rash and negligent driving of the driver of the ambulance. The Tribunal took the income of the deceased at Rs.10,000/- per month added 50% towards future prospects, deducted 1/4th towards personal expenses and arrived at the monthly loss of dependency at Rs.11,250/- Applying the multiplier '16', the Tribunal arrived at the total loss of dependency at Rs.21,60,000/-. The Tribunal added a sum of Rs.3,50,000/- towards loss of consortium and loss of love and affection for the wife, parents and the son of the deceased. Tribunal also awarded Rs.10,000/- towards transportation and Rs.25,000/- towards funeral expenses. Thus, the total compensation was fixed at Rs.25,45,000/-. Aggrieved the Insurance Company is on appeal.



8. We have heard Mr.K.Vinod, learned counsel appearing for the appellant, Insurance company, Mr.D.Lakshmipathy, learned counsel for the respondents 1 and 2 and Mr.P.Tamilavel, learned counsel for the respondents 4 and 5.

9. Mr.K.Vinod, learned counsel appearing for the appellant would contend that the Tribunal was not right in granting 50% towards future prospects. He would also point out that the award of Rs.3,50,000/- under the heads of loss of consortium and loss of love and affection and Rs.25,000/- towards funeral expenses are on the higher side.

10. Mr.D.Lakshmipathy, learned counsel appearing for the respondents 1 and 2 viz., the wife and son of the deceased and Mr.P.Tamilavel, learned counsel appearing for the respondents 4 and 5 viz., the parents of the deceased would vehemently contend that the quantum as awarded by the Tribunal is justified since the deceased had an international driving license and he had bright future prospects and the fact that the deceased was 31 years at the time of death was also projected as a factor.



WEB COPY 11. We have considered the rival submissions.

12. The Hon'ble Supreme Court in *National Insurance Co. Ltd Vs. Pranay Sethi and others* reported in **2018 (1) LW 331** had laid down that the future prospects would depend on the current employment. Admittedly the deceased was employed in private organization, that too as an additional driver at the time of the accident, therefore his employment cannot be taken as a permanent employment. Hence, the Tribunal was not right in adding 50% towards future prospects, it should have been only 40%. As regards the conventional damages viz., for loss of consortium and loss of love and affection, the award is clearly against the decision of the Hon'ble Supreme Court in *National Insurance Co. Ltd Vs. Pranay Sethi and others* reported in **2018 (1) LW 331**. The Hon'ble Supreme Court has pointed out that it could only be Rs.40,000/- per head. The mother, father, wife and son each will get Rs.40,000/- towards loss of consortium and loss of love and affection. Therefore, the sum of Rs.3,50,000/- awarded towards loss of consortium and loss of love and affection has to be reduced to Rs.1,60,000/-.



The award granted for funeral expenses at Rs.25,000/- also is on the higher side. We modify it as Rs.15,000/- for transportation and Rs.15,000/- for the funeral expenses.

13. If we are to take the income at Rs.10,000/- per month and add 40% towards future prospects, the monthly income would be Rs.14,000/-. If we deduct 1/4th of it towards personal expenses of the deceased, the loss of dependency per month would be Rs.10,500/-. Since the deceased was aged 31 years at the time of the accident, the multiplier '16' is adopted and the total loss of dependency would be $10500 \times 12 \times 16 = \text{Rs.}20,16,000/-$. To this a sum of Rs.1,60,000/- towards loss of consortium and loss of love and affection and a sum of Rs.30,000/- towards transportation and funeral expenses will have to be added. The total compensation would thus work out to Rs.22,06,000/-.

14. The same is apportioned as follows:-

The parents of the deceased will be entitled to Rs.5,00,000/- at Rs.2,50,000/- each with proportionate interest. The wife will be entitled to



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Rs.7,06,000/- with proportionate interest and the minor child will take

Rs.10,00,000/- with propotinate interest. The Insurance Company has deposited the entire award amount. The Tribunal will disburse the compensation as fixed by us and refund the balance to the Insurance Company. The share of the minor child shall be kept in a cumulative interest earning fixed deposit in a nationalized bank till he attains the age of majority. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M.,J.) (D.N.R.,J.)
13.10.2023

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Neutral Citation :No
Speaking order



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To

WEB COM The Motor Accident Claims Tribunal,
Sub Court, Mannargudi.



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R.SUBRAMANIAN, J.
and
Dr.D.NAGARJUN, J.

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