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C.M.A.No.2620 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2620 of 2018

and

C.M.P.No.19775 of 2018

and

Cross Objection No.73 of 2023

C.M.A.No.2620 of 2018

The Divisional Manager
The Oriental Insurance Company Ltd.,
Hub 3rd Party Claims
Vijayalakshmi Complex First Floor
No.32/13, Phase No.2
Sathuvachari, Vellore.

... Appellant

Vs.

1. Amudha
W/o.Late Sankar
2. Minor Kishore
S/o.Late Sankar
3. Minor Anushkha
S/o. Late Sankar
4. Minor Saranraj
S/o.Late Sankar



C.M.A.No.2620 of 2018

5. Thayar
W/o.Late Raji

[Minors 2 to 4 are represented by their mother
Tmt.Amudha]

6. M/s.H&R Johnson India Ltd.,
1st Floor, 5/1, Race Course Road
Indore, Madhya Pradesh State.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 04.07.2018 made in MCOP No.193 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Thiruvannamalai.

For Appellant	:	Mr.D.Bhaskaran
For Respondents	:	Mrs.Sunithi Abirami representing Mrs.M.Malar for R1 to R5 R6 - not ready-in notice

Cross Objection No.73 of 2013

1. Amudha
W/o.Late Sankar
2. Minor Kishore
S/o.Late Sankar
3. Minor Anushka
S/o. Late Sankar



C.M.A.No.2620 of 2018

WEB COPY

4. Minor Saranraj
S/o.Late Sankar

5. Thayar
W/o.Late Raji

[Minors 2 to 4 are represented by their guardian/mother
Tmt.Amudha] ... Cross Appellants

Vs.

1. The Divisional Manager
The Oriental Insurance Company Ltd.,
Hub 3rd Party Claims
Vijayalakshmi Complex First Floor
No.32/13, Phase No.2
Sathuvachari, Vellore.

2. M/s.H&R Johnson India Ltd.,
1st Floor, 5/1, Race Course Road
Indore, Madhya Pradesh State. ... Respondents

Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code praying against the Award and decree dated 04.07.2018 made in MCOP No.193 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Thiruvannamalai.

For Appellant : Mrs.Sunithi Abirami
representing Mrs.M.Malar

For Respondents : Mr.D.Bhaskaran for R1
R2 - not ready-in notice



C.M.A.No.2620 of 2018

WEB COPY

COMMON JUDGMENT

Aggrieved by the Award of the Motor Accidents Claims Tribunal (Special Judge), Tiruvannamalai in MCOP.No.193 of 2017, wherein Rs.16,30,400/-, was awarded for the death of one Sankar in a road accident that occurred on 19.11.2016, the present appeal has been filed by the Insurance Company. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed cross-objection, seeking enhancement.

2. For the purpose of convenience, the parties are described as per their ranking before the Tribunal.

3. The facts in nutshell are as follows :

(i) On 19.11.2016 at about 6.30 a.m., when the deceased Sankar was riding his Honda Motor Cycle bearing Registration No.TN-25-BB-5018 on the bridge near Veraiyur in Tirukoilur-Tiruvannamalai Main Road on the extreme left side of the road, a Maruthi Car bearing



C.M.A.No.2620 of 2018

Registration No.MP-09-1961 came in the opposite direction and dashed against the motor cycle. Due to the said impact, the deceased sustained fatal injuries and was taken to Government Tiruvannamalai Medical College and Hospital for treatment. Despite treatment, the deceased succumbed to injuries on 21.11.2016. Claiming that the deceased was working as a Mason and also doing agricultural work, earning not less than Rs.15,000/- per month, the claimants, who are the wife, 3 minor children and mother of the deceased sought for a compensation of Rs.30,00,000/- with interest.

4. Before the Tribunal, the first respondent/owner of the Maruthi car bearing Registration No.MP-09-1961 remained *ex-parte*.

5. The claim was resisted by the Insurance Company by filing a counter affidavit and denied the manner of accident as projected by the claimants in the claim petition. They also denied the avocation and income and other claims mentioned in the claim petition. They also contended that at the time of the accident, the deceased, who rode the two-wheeler, did not possess any valid driving licence as per the provisions contemplated under



C.M.A.No.2620 of 2018

the Motor Vehicles Act. It is the further contention of the Insurance Company that at the time of accident, the said Maruthi car was not insured with the second respondent/Insurance Company or any other Insurance Company and the driver of the car also did not possess any valid driving licence and thus, they sought for dismissal of the claim petition.

6. Before the Tribunal, the first claimant/wife of the deceased examined herself as PW1 and one eye witness was examined as P.W.2. Ex.P1 to Ex.P9 were marked. The Insurance Company did not let in any evidence on its behalf.

7. On an appreciation of the materials and the entire evidence on record, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the driver of the Maruthi car bearing Registration No.MP-09-1961, and hence, its insurer, the appellant herein is liable to pay the compensation. Further, the Tribunal awarded a sum of Rs.16,30,400/- as compensation and directed the Insurance Company to pay compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:



C.M.A.No.2620 of 2018

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	Loss of Income	13,10,400/-
2.	Loss of consortium to the 1 st petitioner	40,000/-
3.	Loss of Estate	15,000/-
4.	Funeral expenses of Sankar	15,000/-
5.	Loss of love and affection of the minor petitioners 2 to 4 at the rate of Rs.75,000/- each	2,25,000/-
6.	Loss of love and affection of the 5 th petitioner	25,000/-
	Total	16,30,400

8. Challenging the same, the second respondent / Insurance company has filed the present appeal and the claimants have filed cross-objection, seeking enhancement.

9. Heard the learned counsel on either side and perused the materials available on record.

10. The learned counsel for the appellant would argue that the quantum of compensation awarded is on the higher side. As the deceased



C.M.A.No.2620 of 2018

did not ride the two-wheeler with due care and caution, the Tribunal ought to have fixed 50% negligence on the part of the deceased, but the Tribunal fixed entire negligence on the part of the driver of the car. The learned counsel further argued that the claimants/cross objectors have not produced any corroborative evidence to prove the avocation and income of the deceased. There is a lack of evidence, and the Tribunal ought not to have fixed the monthly income of the deceased at Rs.6,500/- as notional income. Further, the amount awarded under head loss of love and affection is unsustainable, in view of the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd., Vs. Pranay Sethi & Oths reported in 2017 (2) TN MAC 609 (SC)*** and the amounts awarded under the other heads are also on the higher side.

11. Contending contra, the learned counsel appearing for the respondents 1 to 5/claimants would submit that at the time of accident, the deceased was aged about 32 years and working as a Mason and also doing agricultural activities and the same was proved by the claimants. However, the Tribunal ought to have fixed a sum Rs.15,000/- as monthly income of



C.M.A.No.2620 of 2018

the deceased, but fixed a sum of Rs.6,500/- per month as notional income.

It is further contended that the Tribunal has added 40% of the income of the deceased towards future prospects, however, considering the age of the deceased, the Tribunal ought to have awarded more compensation. Similarly, the Tribunal has not awarded any compensation under the heads transportation, mental agony, parental and filial compensation, loss of damages and loss of expectation of life. Hence, the impugned Award passed by the Tribunal does not reflect as just, fair and reasonable compensation.

12. Considering the arguments advanced on either side, this Court is of the view that as contended by the learned counsel for the appellant, the deceased also contributed negligence on his part, there is no oral and documentary evidence to prove the same, more so, the Insurance Company did not let in any evidence on its behalf to prove the said claim. Per contra, the negligence on the part of the driver of Maruti car was proved from the evidence of P.W.2 and Ex.P1/First Information Report, which clearly proves that the accident took place only due to rash and negligent driving of the driver of the Car. Hence, this Court is of the view that the



C.M.A.No.2620 of 2018

Tribunal has rightly fixed entire liability on the part of the driver of the Maruthi car and directed the Insurance Company to indemnify them.

13. As regards loss of income, there are lack of materials to prove the avocation and income of the deceased, but the Tribunal fixed the income of the deceased at Rs.6,500/- per month and as per the decision of the Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*, considering the age of the deceased which was 32 years at the time of the accident, 40% of the income of the deceased should be added towards future prospects and the Tribunal also rightly added 40% of the income as future prospects. While so, following the judgment of the *Sarala Verma (SMT) and Others Vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121* since 5 dependants were depending upon the income of the deceased, the Tribunal deducted 1/4th of the monthly income of the deceased towards personal expenses and rightly applied multiplier "16" and awarded a sum of Rs.13,10,400/- under the head "Loss of Income". Hence, the amount awarded under such head is confirmed.



C.M.A.No.2620 of 2018

14. So far as love and affection is concerned, it is rightly contended by the learned counsel for the appellant that in this case, Rs.75,000/- was awarded by the Tribunal to each of claimants 2 to 4, which had resulted in awarding an exorbitant sum of Rs.2,25,000/- under the head "Loss of Love and Affection". Hence, the sum of Rs.2,25,000/- awarded by the Tribunal under the head "Loss of Love and Affection" is set aside, instead, a sum of Rs.1,50,000/- is awarded under such head, by awarding a sum of Rs.50,000/- to each of the claimants 2 to 4.

15. Similarly, a sum of Rs.25,000/- awarded by the Tribunal under the head "Loss of love and affection" to the fifth claimant/who is the mother of the deceased appears to be on the lower side and hence, the same is hereby enhanced to Rs.50,000/-.

16. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed. Therefore, this Court does not find any reason to interfere with the impugned Award of the Tribunal.



C.M.A.No.2620 of 2018

17.Thus, the total compensation payable to the claimants is re-

calculated and tabulated below:

S.No.	<i>Heads under which amounts are awarded</i>	<i>Amount in Rs.</i>	<i>Amount in Rs.</i>
1.	Loss of Income	13,10,400	13,10,400
2.	Loss of consortium to the 1 st petitioner	40,000	40,000
3.	Loss of Estate	15,000	15,000
4.	Funeral expenses of Sankar	15,000	15,000
5.	Loss of love and affection of the minor petitioners 2 to 4 at the rate of Rs.75,000/- each	2,25,000	1,50,000
6.	Loss of love and affection of the 5 th petitioner	25,000	50,000
	Total	16,30,400	15,80,400

18. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. Thus, the total compensation of Rs.16,30,400/- awarded by the Tribunal is hereby reduced to Rs.15,80,400/-, which shall carry interest at 7.5% from the date of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a



C.M.A.No.2620 of 2018

copy of this judgment. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. On such deposit, claimants 1 and 5 are permitted to withdraw their respective shares as apportioned by the Tribunal, less, the amount, if any, already withdrawn together with proportionate interest and costs. Insofar as the minor claimants 2 to 4 are concerned, their respective shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother, once in three months.

19. In view of the above, Cross objection stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in both the appeal and cross objection.

21.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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C.M.A.No.2620 of 2018

To

- 1.The Special Sub-Judge,
Motor Accident Claims Tribunal
Tiruvannamalai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.No.2620 of 2018

P.VELMURUGAN, J.

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Cross Objection No.73 of 2023**

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