BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.09.2023

Pronounced on : 22.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.177 of 2018
and Cros.Obj.(MD)No.22 of 2023
and C.M.P.(MD)No.2610 of 2018

C.M.A.(MD)No.177 of 2018

Cholamandalam MS General Insurance Co. Ltd.,
Rashmi Tower-II,
Floor No.1, Village Road,
Chennai – 600 006. ...Appellant/
Respondent No.2

Vs.

1. Dhanalakshmi ...Respondent/
Petitioner

2. K.Kottaisamy ...Respondent/
Respondent No.1

Cros.Obj.(MD)No.22 of 2023

Dhanalakshmi ...Cross Objector/
1st Respondent/
Petitioner

Vs.

1. Cholamandalam MS General Insurance Co. Ltd.,
Rashmi Tower II Floor,
No.1, Village Road,
Chennai – 600 006. ...1st Respondent/ Appellant/ 2nd Respondent

2. K.Kottaisamy ...2nd Respondent/ 2nd Respondent/ 1st Respondent

Prayer in C.M.A.(MD)No.177 of 2018 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 07.08.2017 made in M.C.O.P.No.4 of 2014 on the file of Motor Accidents Claims Tribunal, (Sub Judge), Uthamapalayam, and allow this civil miscellaneous appeal.

Prayer in Cros.Obj.(MD)No.22 of 2023 : This Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the award passed by the Motor Accidents Claims Tribunal, Subordinate Court, Uthamapalayam passed in M.C.O.P.No.4 of 2014 dated 07.08.2017 and enhance the award amount in the interest of justice.

<u>(in C.M.A.(MD)No.177 of 2018)</u>

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.N.Vallinayagam

For R2 : No appearance

(in Cros.Obj.(MD)No.22 of 2023)

For Appellant	: Mr.N.Vallinayagam
For R1	: Mr.S.Srinivasa Raghavan
For R2	: No appearance

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.4 of 2014 dated 07.08.2017 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Uthamapalayam.

2. The appellant/insurer, who was made liable to pay compensation of Rs.5,65,000/- (Rupees Five Lakhs and Sixty Five Thousand only) with interest at 7.5% per annum and costs to the first respondent/claimant for the death of her son Muthu Kamatchi, consequent to an accident occurred on 07.05.2013, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The Cross Objector/claimant, who was awarded with compensation of Rs.5,65,000/- (Rupees Five Lakhs and Sixty Five

Thousand only) with interest at 7.5% per annum and costs for the death of her son Muthu Kamatchi, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

For the sake of convenience and brevity, the parties herein will be referred as per their status/ranking in the Tribunal.

4. The case of the claimant is that on 07.05.2013 at about 15.30 hours, the deceased Muthu Kamatchi along with her sister and grandmother were travelling as passengers in an auto bearing Registration No.TN-60-T-9102 to Mariyamman Temple at Veerapandi, that when the auto was proceeding in Bodinayakanur – Kurangani main road, near Hotel Green Royal, the first respondent/auto driver had driven the vehicle rash and negligently and at that time, when a dog crossed the road, the first respondent applied sudden brake and as a result of which, the auto got capsized, that the said Muthu Kamatchi had sustained serious head injury, that he was immediately taken to Government Hospital, Bodi and after first aid treatment, he was transferred to Theni Government Medical College Hospital, that subsequently he succumbed to the injuries on

08.05.2013 and that the accident was occurred only due to the rash and negligent driving of the first respondent.

5. It is the further case of the claimant that the deceased Muthu Kamatchi was the only son of the claimant and that he was aged 13 years and was studying 7th standard in Sri Sowdambika Middle School at Bodi.

6. The defence of the insurer is that the deceased Muthu Kamatchi had travelled in the auto without due care and not holding the hand bar and fell down on the road and sustained injuries, that the accident was occurred only due to the negligence of the deceased and that the first respondent is no way responsible for the accident.

7. During trial, the claimant has examined herself as P.W.1 and two other witnesses Amaravathi and Hema as P.W.2 and P.W.3 respectively and exhibited 8 documents as Ex.P.1 to Ex.P.8. The insurer has examined one Ariyanachi as R.W.1 and exhibited 2 documents as Ex.R.1 and Ex.R.2.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has

passed the impugned award dated 07.08.2017 holding that the accident was occurred only due to the rash and negligent driving of the first respondent directed the insurer to pay compensation of Rs.5,65,000/- with interest and costs. Aggrieved by the impugned award mulcting liability, the insurer has come forward with the present appeal. Not satisfied with the quantum of compensation, the claimant has filed the cross objection.

9. The claimant, in order to prove the mode of accident, has examined P.W.2 and P.W.3 alleged to be the occurrence witnesses. P.W.2 and P.W.3, in their evidence, would reiterate the contentions raised in the claim petition with regard to the mode of accident. P.W.2, who is the grandmother of the deceased Muthu Kamatchi who had accompanied the deceased Muthu Kamatchi in the auto at the time of accident, would say that while they were proceeding in the auto for Mariyamman Temple, a dog had suddenly intervened, that the first respondent had applied sudden brake and as a result of which, the vehicle got capsized, that the first respondent was driving the vehicle rashly and negligently and that despite her request to drive slowly, he has not heeded her words. P.W.3, who is the sister of the deceased Muthu Kamatchi who had accompanied her brother

and grandmother in the auto, would reiterate the version given by P.W.2 regarding the mode of accident. During cross-examination of P.W.3, it was suggested that the deceased had travelled in the auto without holding the hand bar, P.W.3 would deny the suggestion and replied that her brother while sitting in the auto was firmly holding the auto. Though P.W.2 and P.W.3 were subjected to cross-examination, their evidence with regard to the mode of accident was not at all shaken.

10. Admittedly, on the basis of the complaint lodged, FIR came to be registered against the first respondent and the jurisdictional police, after completing the investigation, has laid the final report under Ex.P.2 against the first respondent. It is pertinent to note that the first respondent-driver cum owner of the auto had remained *ex parte*. Though the insurer has taken a defence that the first respondent was not responsible for the accident, has not chosen to examine the first respondent or any other witness, who had allegedly witnessed the occurrence. In the absence of any contra evidence with regard to negligence and taking note of the evidence of P.W.2 and P.W.3 and also the fact that the jurisdictional police has laid the final report against the first respondent, the finding of the

Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent cannot be found fault with and this Court is in entire agreement with the finding of the Tribunal. Since the first respondent's vehicle was insured with the insurer, the Tribunal has rightly mulcted liability on the insurer.

11. Now turning to the cross objection filed by the claimant with regard to the quantum of compensation, the Tribunal has granted Rs.4,50,000/- for loss of dependency, Rs.1,00,000/- for love and affection and Rs.15,000/- for funeral expenses, all totalling Rs.5,65,000/-. Considering the records produced by the claimant including the postmortem certificate, the fixation of age of the deceased as 13 years at the time of accident cannot be found fault with.

12. In ***Lata Wadhwa Vs. State of Bihar*** reported in ***(2001) 8 SCC 197,*** the Hon'ble Apex Court has held that in case of death of a child, there is no actual pecuniary benefit derived by its parents during the life time of the child, but however, the parents are entitled to claim for the prospective loss they suffered, that they had a reasonable expectation of pecuniary

benefit had the child lived and that the loss of the child to the parents is irrecoupable, and no amount of money could compensate them. The Hon'ble Supreme Court has further held that in cases of children between the age of group of 10-15 years, the annual contribution can be fixed at Rs.24,000/- and multiplier of 15 be applied. The Hon'ble Supreme Court in ***Kishan Gopal and another Vs. Lala and others*** reported in ***2014 (1) SCC 244,*** for the death of a 10 year old boy, has fixed the notional income at Rs.30,000/- per annum and applied multiplier 15. In ***Meena Devi Vs. Nunu Chand Mahto alias Nemchand Mahto and others*** reported in ***(2023) 1 SCC 2014,*** the Hon'ble Supreme Court, for a 12 year old child, has taken the notional income at Rs.30,000/- per annum and adopted multiplier 15. In the case of ***The Manager, Cholamandalam MS General Insurance Co. Ltd., Dharmapuri Vs. Muniyappan and others (C.M.A.No.1647 of 2020 dated 07.12.2020),*** a learned Judge of this Court, taking note of the facts that the accident was occurred in the year 2017 and the deceased was aged 3 years at the time of accident, has fixed the notional monthly income at Rs.3,500/-. In ***P.Muthu Selvi and another Vs. The Managing Director, State Express Transport Corporation Ltd., Chennai (C.M.A.(MD)No.748 of 2019 dated 29.08.2023),*** this Court, considering the fact that the accident was occurred on 16.05.2012 and taking note of the age of the deceased at 2 years, fixed the notional monthly income at Rs.3,000/- and by applying the decision of the Hon'ble Supreme Court in ***Reshma Kumari Vs. Madan Mohan*** reported in ***(2013) 9 SCC 65,*** multiplier of 15 was adopted. In the case on hand, the Tribunal has fixed the notional annual income of the deceased at Rs.30,000/-. Considering the above decisions and taking note of the fact that the impugned accident was occurred on 07.05.2013 and the age of the deceased Muthu Kamatchi at 13 years, this Court fixes the notional monthly income at Rs.4,000/- and the appropriate multiplier would be 15. Hence, the loss of dependency would be Rs.7,20,000/- (Rs.4,000/- x 12 x 15).

13. The Tribunal has awarded Rs.1,00,000/- towards love and affection. Our Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700,*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in

(2018) 18 SCC 130, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others,*** has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

14. The claimant being the mother of the deceased Muthu Kamatchi is certainly entitled to get Rs.40,000/- towards loss of filial consortium. The claimant is also entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses under the conventional heads, all totalling Rs.7,90,000/-.

15. As already pointed out, the mother of the deceased Muthu Kamatchi has laid the claim petition. In Ex.P.6-legal heir certificate, the claimant and her husband Karuppaiah have been shown as the legal heirs of the deceased Muthu Kamatchi. The Tribunal, considering the evidence of the claimant that she has not impleaded her husband as party to the claim petition and that they have not obtained divorce through the Court, has come to a decision that the father of the deceased Muthu Kamatchi is also entitled to get half of the compensation awarded and accordingly, directed the insurer to deposit Rs.2,82,500/- being the 50% of the compensation amount for the said Karuppaiah and he was given liberty to receive Rs.50,000/- immediately.

16. It is pertinent to note that the claimant, in her chief examination affidavit, has specifically stated that she got separated from her husband and was living with her son and daughter separately. P.W.2-mother of P.W.1 and P.W.3-daughter of P.W.1, in their chief examination, would also reiterate the said contention that P.W.1 got separated from her husband. P.W.3 would further say that her father was not helping them in any way and that they does not know about the whereabouts of their father. In

cross-examination, P.W.3 would say that her father and mother have not obtained divorce from the Court and that she was not sure as to whether her father was alive. Considering the above evidence, it is clearly evident that the said Karuppaiah was not living with his wife and children at the time of accident and even according to P.W.3, her father's whereabouts are not known. It is not the case of the insurer that the father of the deceased Muthu Kamatchi has filed any separate claim petition or that he had taken any steps to implead himself in the present claim petition. As rightly contended by the learned counsel appearing for the claimant, when the said Karuppaiah was not taking care of his family and was living somewhere and in the absence of any claim putforth by the said Karuppaiah, the order of the Tribunal directing the insurer to deposit 50% of the amount for the said Karuppaiah is not proper and untenable and as such, the said finding is liable to be set aside. Hence, this Court concludes that the claimant is entitled to get total compensation of Rs.7,90,000/-.

17. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

18. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed and the compensation awarded by the Tribunal at Rs.5,65,000/- (Rupees Five Lakhs and Sixty Five Thousand only) is hereby enhanced to **Rs.7,90,000/- (Rupees Seven Lakhs and Ninety Thousand only)** together with interest at 7.5% per annum and costs from the date of petition till the date of realization. The first respondent/insurer in Cros.Obj(MD)No.22 of 2023 is directed to deposit the modified enhanced amount with interest and costs to the credit of M.C.O.P.No.4 of 2014 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Uthamapalayam, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the cross objector/claimant in Cros.Obj(MD)No.22 of 2023 is permitted to withdraw the amount together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed. The cross objector/claimant in Cros.Obj(MD)No.22 of 2023 is **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.

22.09.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal /
   Subordinate Court, Uthamapalayam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in

C.M.A.(MD)No.177 of 2018
and Cros.Obj.(MD)No.22 of 2023
and C.M.P.(MD)No.2610 of 2018

Dated : 22.09.2023