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CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1443 of 2020 & C.M.P. Nos.10600 of 2020 and 9499 of 2024
&
Cros. Obj. No.13 of 2024

C.M.A. No.1443 of 2020

Cholamandalam MS General Insurance Company Limited,
2nd Floor, Dare House, No.2, NSC Bose Road
Chennai 600 001.

... Appellant

VS.

1. E. Vishnupriya
2. Minor. E. Naveenkumar
3. Minor E. Yoheshwaran
4. Thirumathal
5. A. Senthil Kumar
6. A Maheswari

...Respondents

CROS. OBJ. NO.13 of 2024

1. E. Vishnupriya
2. Minor. E. Naveenkumar
3. Minor E. Yoheshwaran
4. Thirumathal

...Cross Objectors

Vs.



CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

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1. Cholamandalam MS General Insurance Company Limited
2nd Floor, Dare House, No.2, NSC Bose Road
Chennai 600 001.
2. A. Senthil Kumar
3. A Maheswari

...Respondents

PRAYER in C.M.A. No.1443 of 2020: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 27.08.2018 in M.C.O.P.85/2017 on the file of the Special District Court, Motor Accident Claims Tribunal, Erode.

PRAYER in CROS.OBJ. No.13 of 2024

Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award dated 27.08.2018 in M.C.O.P.85/2017 on the file of the Special District Court, Motor Accident Claims Tribunal, Erode.

Appearance In C.M.A. No.1443 of 2020

For Appellant	:	Mr. K. Vinod
For R1 to R4	:	Mr. R. Nalliyappan
R5 & R6	:	No appearance

Appearance in Cros. Obj. No. 13 of 2024

For Cross Objectors	:	Mr. R. Nalliyappan
For R1	:	Mr. K. Vinod
For R2	:	No appearance.



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CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

COMMON JUDGMENT

The appellant in CMA No.1443 of 2020 is the Insurance Company while the Cross Objectors in Cros. Obj. 13/2024 are the claimants in MCOP No.85/2017 on the file of the Special District Court, Motor Accident Claims Tribunal, Erode.

2. The Cross Objectors / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of one Ethiraj (husband of the first claimant, father of the claimants 2 and 3 and son of the claimant 4) in a road accident that took place on 06.11.2016.

3. The case of the claimants in a nutshell is as follows:

3.1. On 06.11.2016, Ethiraj (since deceased) was travelling as a pillion rider on TVS XL moped bearing Registration No.TN-41-P-7293, driven by his friend Thirugnanam on Kottur-Pondaliyur Road and a 407 van bearing Registration No.TN-43-A-5978, owned by the second respondent, came in the opposite direction in a rash and negligent manner



and hit the two wheeler, as a result of which, Ethiraj fell down and sustained injuries all over his body. He was immediately rushed to the hospital. However he succumbed to injuries on 30.11.2016.

3.2. According to the claimants the rash and negligent driving of the driver of the second respondent's van, bearing Registration No.TN-43-A-5978, was the cause of the accident and that since the said vehicle was insured with the third respondent, both of them are jointly and severally liable to pay compensation to them.

4. The respondents contested the claim petition by filing their counters.

5.The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the van bearing Registration No.TN-43-A-5978. Since the driver of the said van did not have a valid driving license to drive a goods vehicle on the date of accident, the Tribunal directed the appellant Insurance Company to pay compensation of Rs.26,04,000/- to the claimants together with interest at



CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

the rate of 7.5% per annum from the date of petition till the date of realisation in the first instance, and then recover the same from the owner of the vehicle, vide its orders dated 27.08.2018.

6. Challenging fastening of negligence on the part of the driver of 407 van bearing Registration No.TN-43-A-5978, the Cholamandalam MS General Insurance Company Limited, Chennai, has filed CMA No.1443 of 2020, and the claimants filed Cross Obj. 13/2024 seeking enhancement of compensation.

7. Heard Mr. K. Vinod, learned counsel for the appellant in C.M.A. No.1443 of 2020 and Mr. R. Nalliyappan, learned counsel for the respondents.

8. Mr.K. Vinod, learned counsel appearing for the appellant, the Cholamandalam MS General Insurance Company Limited, contended that the driver of the van bearing Registration No.TN-43-A-5978 was examined as R.W.1 and that he has deposed that the rider of the two wheeler came in the opposite direction in a rash and negligent manner and



hit the van. In the circumstances, the Tribunal was wrong in fixing the entire negligence on the part of the driver of the van bearing Registration No.TN-43-A-5978. He therefore, prayed for setting aside the order of the Tribunal in this regard. He also contended that the compensation awarded by the Tribunal is also on the higher side.

9. Per contra Mr. R.Nalliyappan, learned counsel for the cross objectors/claimants contended that FIR was registered against the driver of 407 van bearing Registration No.TN-43-A-5978 and the eye witness account is that the driver of the van was rash and negligent in driving his vehicle. Hence, the Tribunal had rightly fastened negligence on the part of the driver of the van. He also contended that the deceased was a driver by profession earning as sum of Rs.40,000/- per month. However, the Tribunal had fixed notional monthly income of the deceased only as Rs.15,000/-, which, according to him, is very much on the lower side and the same has to be enhanced.

10. The scene of occurrence, as per the rough sketch Ex.P2, is



on the left hand side of Kottur-Pongaliyur Road which runs North-South.

The two wheeler was proceeding towards Pongaliyur from Kottur i.e. from North to South. The place of occurrence, as already observed, is on the left hand side of the said road, which clearly shows that the driver of the van bearing Registration No.TN-43-A-5978 was rash and negligent in driving his vehicle. The police had also, after conducting preliminary enquiry, registered FIR against the driver of the van. In the circumstances, fastening negligence on the part of the driver of the van is perfectly in order.

10.1. In the absence of income proof, the Tribunal had fixed the notional monthly income of the deceased as Rs.15,000/-. The deceased was aged about 42 years on the date of accident. Therefore, the notional monthly income of Rs.15,000/- fixed by the Tribunal cannot be found fault with. The Tribunal had awarded compensation under the following heads.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Compensation fixed as loss of	23,94,000/-



<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
	income to the petitioners	
2.	Compensation towards loss of consortium	1,00,000/-
3.	Compensation towards loss of love and affection for 2nd, 3rd and 4th petitioner at Rs.25,000/- each	75,000/-
4.	compensation towards funeral expenses	25,000/-
5.	Compensation towards transportation	10,000/-
	Total compensation	26,04,000/-

As per the decision in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, Rs,40,000/- alone can be awarded to each of the claimant towards loss of consortium, Rs.15,000/- towards Loss of estate and and Rs.15,000/- towards funeral Expenses and therefore, the Award passed by the Tribunal is liable to be set aside.

10.2. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 25% towards future prospects is added to the notional monthly income of the deceased. Since the deceased had four



dependents, 1/4 is deducted towards his personal expenses. The deceased was aged 42 years on the date of the accident and the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***.

Calculation

Notional Income = Rs.15,000/-

25% future prospects = Rs.18,750/-

After 1/4 deduction = Rs.14,063/-

Loss of dependency

= Rs.14,063/- x 12 x 14

= Rs.23,62,584/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for Loss of Consortium, Loss of Estate and Funeral Expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra).

10.3. The modified amount under the different heads are



CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

detailed hereunder:

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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	23,62,584/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	25,52,584/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The appeal in C.M.A. No.1582 of 2022 is partly allowed and the Cross Objection Number 13 of 2024 stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.
- ii. The compensation awarded by the Tribunal is scaled down to Rs.25,52,584/- from Rs.26,04,000/-.
- iii. The appellant,Cholamandalam MS General Insurance Company



CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

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Limited, in C.M.A. No. 1443 of 2020 is directed to deposit the compensation amount i.e., Rs.25,52,584/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, in the first instance, within a period of four weeks from the date of receipt of a copy of this order, to the credit of M.C.O.P.No.85/2017 on the file of the Special District Court, Motor Accident Claims Tribunal, Erode, and then recover the same from the owner of the vehicle under the same cause of action.

iv. The modified compensation amount of Rs.25,52,584/-, is apportioned to the claimants as shown below:

Vishnu Priya (first claimant)	<i>Rs.6,52,584/- with costs and interest.</i>
Minor. E.Naveenkumar (second claimant)	Rs.8,00,000/-
Minor E. Yoheswaran (third claimant)	Rs.8,00,000/-
Thirumathal (fourth claimant)	Rs.3,00,000/-

v. On such deposit being made, the appellants 1 and 4 are at liberty to



CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

withdraw their share as per the apportionment made by this Court,

with costs and interest, after filing a proper petition for withdrawal.

Since the appellants 2 and 3 are minors, their share, shall be deposited in a fixed deposit in any one of the Nationalised bank until they attain majority.

05.09.2024

Index : Yes/No
Speaking/Non-speaking order
bga

To

1. Special District Court, Motor Accident Claims Tribunal, Erode.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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CMA.No.1443 of 2020 & Cross.Obj. No.13 of 2024

R.HEMALATHA, J.

bga

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