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CMA NO.2703 OF 2023 & CROS.OBJ.78 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13 / 11 / 2024

JUDGMENT PRONOUNCED ON : 03 / 12 / 2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.2703 OF 2023
AND CMP NO.24996 IN CMA NO.2703 OF 2023
AND CROS.OBJ.NO.78 OF 2024**

CMA NO.2703 OF 2023

The Branch Manager
Reliance General Ins. Co. Ltd.,
Office No.10/4/4, 2nd Floor, Thaha Plaza,
South By Pass Road, Vannarapettai,
Tirunelveli – 627 003.

... Appellant /
2nd Respondent

Vs.

1.Tamilarasi	...	1 st Respondent / 1 st Petitioner
2.Paramasivam	...	2 nd Respondent / 2 nd Petitioner
3.Parameshwari	...	3 rd Respondent / 3 rd Petitioner
4.Minor Manjula D/o.Paramasivam Rep. by mother and next friend Tamilarasi	...	4 th Respondent / 4 th Petitioner



CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

5.Patchamuthu

... 5th Respondent /
1st Respondent

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated October 14, 2022 passed in M.C.O.P.No.56 of 2021 by the Motor Accident Claims Tribunal, Additional District Court at Ariyalur.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.Parthi Kannan
1 to 4

CROS.OBJ.NO.78 OF 2024

1.Tamilarasi
2.Paramasivam
3.Parameshwari
4.Minor Manjula
D/o.Paramasivam
Rep. by mother and next friend Tamilarasi

... Cross Objectors /
Respondents 1 to 4 /
Petitioners

Vs.

1.The Branch Manager
Reliance General Insurance Co. Ltd.,
Office No.10/4/4, 2nd Floor, Thaha Plaza,
South By Pass Road, Vannarapettai,
Tirunelveli – 627 003.

... 1st Respondent /
Appellant /
2nd Respondent

2.Patchamuthu

... 2nd Respondent /
5th Respondent
1st Respondent

PRAYER: Cross Objection filed under Order XLI Rule 22 of Code of



CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

Civil Procedure, 1908 for enhancement of compensation awarded vide Award dated October 14, 2022 passed in M.C.O.P.No.56 of 2021 by the Motor Accident Claims Tribunal, Additional District Court at Ariyalur.

For Cross Objectors : Mr.S.Parthi Kannan
For Respondent-1 : Ms.C.Bhuvanasundari

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated October 14, 2022 passed by the 'Motor Accident Claims Tribunal, Additional District Judge, Ariyalur' ['Tribunal' for short] in M.C.O.P.No.56 of 2021, the second respondent therein - Insurance Company has preferred C.M.A.No.2703 of 2023 praying to set aside the Award, while the petitioners therein have preferred Cross Objection No.78 of 2024 praying to enhance the compensation. This Common Judgment will now decide both, the Civil Miscellaneous Appeal and the Cross Objection.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array before the Tribunal in the Motor Claims Original Petition.

Petitioners' case:



3. The 1st petitioner is the mother of the deceased –

Ajithkumar. 2nd petitioner is his father while 3rd and 4th petitioners are his sisters. On the fateful day viz., March 22, 2021, at about 09.30 p.m., the deceased–Ajithkumar was riding a Pulsar motorcycle bearing Registration No.TN-61-R-6059 with one Arvind on the pillion, on Sendurai to Jayankondam Main Road. While so, the 1st respondent's Lorry viz., Ashok Leyland Dhosth bearing Registration No.TN-23-CY-5836 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle, knocking the deceased off the motorcycle. The deceased sustained injuries on his head and consequently, passed away on the spot. Then postmortem was conducted at Government Hospital, Ariyalur.

3.1. At the time of accident, the deceased was aged about 21 years old, had completed Diploma in I.T.I. and was earning a sum of Rs.30,000/- as an A.C. Mechanic. He was earning a sum of Rs.2,00,000/- per annum by way of cultivating his own land as well.

3.2. The 1st petitioner lodged a complaint before Sendurai



Police station against the driver of the 1st respondent's Lorry. According to the petitioners, the accident occurred only due to the rash and negligent driving of the driver of the 1st respondent's Lorry; the first respondent's vehicle has been insured with the second respondent – Insurance Company; and hence, both the respondents are liable to pay compensation to the petitioners. Accordingly, the petitioners filed the Claim Petition before the Tribunal seeking compensation of Rs.60,00,000/- (Rupees Sixty Lakhs only) along with interest and costs.

1st Respondent's case

4. The 1st respondent filed counter denying the Claim Petition averments and also contending that the petitioners are put to strict proof of the same. According to him, while his driver was driving carefully, it is the deceased, who in an inebriated mood, rode his motorcycle rashly and negligently, crossed the median, lost balance, fell down and sustained injuries, due to which he passed away on the spot. However, a false case was registered against the 1st respondent. Further, at any rate the 1st respondent is not liable to pay compensation as his vehicle was insured



with the 2nd respondent. Accordingly, he sought the Claim Petition to be dismissed with costs.

4.1. To be noted, though 1st respondent filed Counter, he remained absent before Tribunal and therefore, set *ex-parte* on June 22, 2022.

2nd Respondent's case

5. The 2nd respondent – Insurance Company filed Counter, whereby they deny the allegations levelled by the petitioners in the Claim Petition and contend that the petitioners are put to strict proof of the same. According to them, while 1st respondent's driver was driving in a slow and cautious manner, the deceased was a riding two-wheeler along with a pillion rider in a zig zag manner. Though the 1st respondent's driver cautioned the deceased by blowing horn and flashing headlights and stopped his vehicle as well, the deceased continued riding in the same fashion, fell down, sustained head injuries and consequently, passed away on the spot. The accident happened only due to negligence of the



deceased. The Police have registered First Information Report (FIR) against the 1st respondent's Driver without proper investigation. Further, the 1st respondent's driver lacked a valid driving licence, which the 1st respondent knowingly ignored, violating policy conditions. The petitioners also failed to implead the owner and insurer of the motorcycle bearing Registration No. TN-61-R-6059, making the petition bad for non-joinder of necessary parties. The deceased – Ajithkumar lacked a valid licence and also violated Section 129 of the Motor Vehicles Act, 1988 by not wearing a helmet. According to the 2nd respondent, they are not liable to pay any compensation to the petitioners and the petition is liable to be dismissed with costs.

6. At trial, on the side of the petitioners, the 1st petitioner was examined as P.W.1, one Aravind was examined as P.W.2 and Ex-P.1 to Ex-P.10 were marked. On the side of the respondents, one Mr.Gopalakrishnan, Junior Assistant at Regional Transport Office, Ariyalur was examined as R.W.1 and Ex-R.1 to Ex-R.3 were marked through him, and one Mr.Thanvanth, Legal Advisor of the 2nd respondent / Insurance Company



was examined as R.W.2 and Ex-R.4 to R.8 were marked through him.

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7. The Tribunal, after analysing the oral and documentary evidence adduced before it, partly allowed the Claim Petition and accordingly, awarded compensation as hereunder:

Sl.No.	Head	Amount
1	Loss of Dependency	Rs.25,70,400.00
2	Loss of Estate	Rs.20,000.00
3	Loss of Consortium	Rs.45,000.00
4	Transport Expenses	Rs.10,000.00
5	Funeral Expenses	Rs.20,000.00
	Total	Rs.26,65,400.00

7.1. Further, the Tribunal held that since the first respondent's driver did not possess a valid license to drive the Lorry, the second respondent shall pay the Award amount to the petitioners and thereafter, recover the same from the first respondent.

8. Feeling aggrieved by the said Award, the second respondent – Insurance Company has preferred the Civil Miscellaneous Appeal.



9. Dissatisfied with the Award amount, the petitioners have preferred the Cross Objection praying to enhance the Award amount.

Arguments

10. The learned Counsel for the appellant / 2nd respondent - Insurance Company argued that the Tribunal awarded a sum of Rs.25,70,400/- under the head 'loss of dependency', which is excessive and incorrect. The petitioners have not produced any document to show that the deceased earned a sum of Rs.30,000/- per month and Rs.2,00,000/- per annum from and out of the agriculture. Further, it was the deceased who rode the two-wheeler without valid driving licence and insurance, that too without wearing helmet. Further, Motor Vehicle Inspection Report [M.V.I. Report] of the deceased's vehicle was not produced during trial. P.W.2 is a relative of the deceased and hence, he cannot be treated as an independent witness. The Tribunal failed to consider these aspects and erroneously fixed 85% liability on the 1st respondent's Driver. Further, the Award amount is excessive and not justifiable. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.



11. Per contra, learned Counsel for the Cross Objectors / petitioners submitted that the total compensation awarded viz., Rs.26,65,400/- is on the lower side. The Tribunal failed to consider the age of the deceased and fixed the notional income at Rs.15,000/- per month, which is too low and against various reported judgments that laid down the guidelines for fixing notional income. The Tribunal failed to note that the deceased was a hale and healthy I.T.I. graduate at the time of accident and would have definitely earned a better sum in order to maintain himself and his family. Accordingly, he prayed to allow the Cross Objection and enhance the compensation.

Discussion

12. This Court has considered both sides' submissions and perused the materials available on record.

13. The accident is admitted. The case of the petitioners is that the accident occurred due to the negligence of the 1st respondent's driver whereas case of the respondents is that the accident occurred due to the negligence of the deceased, who was riding in an inebriated mood.



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14. Ex-P.1 - FIR was registered by the Sendurai Police Station in Crime No.156 of 2021 under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860 against the 1st respondent's Driver. Ex-P.2 – Final Report charged against 1st respondent's Driver under the above Sections. Ex-P.3 – Post-mortem Report indicates that the deceased succumbed to the injuries caused to the vital organs including the brain. Ex-P.9 and Ex-R.3 are M.V.I. Reports showing the factum of damage to the front right side of the 1st respondent vehicle. P.W.2, who was the pillion rider, is a competent person to depose about the manner of accident. He has deposed to the effect that the accident occurred due to the rash and negligence of the 1st respondent's driver. There is no contra evidence. The second respondent neither examined the 1st respondent nor the driver of the Lorry to substantiate their defence that the deceased was riding negligently in a zig-zag manner in an inebriated mood. Ex-P.3 – Post-mortem Report does not suggest that the deceased was under the influence of alcohol. There is no medical evidence in support of the 2nd respondent's defence. Hence, this Court is of the considered view that the petitioners have proved that the



accident primarily occurred due to the rash and negligent driving of the driver of the first respondent's Lorry.

15. Admittedly and as evident from Ex-R.4 – Insurance Policy, the first respondent's vehicle bearing Registration No.TN-23-CY-5836 was insured with the second respondent under Policy No.705222023340000520 and the policy was in force on the date of the accident. Hence, the second respondent, as an insurer, is liable to pay compensation to the petitioner.

16. The Tribunal erred in fixing 15% contributory negligence on the part of the deceased. During cross examination, P.W.2 denied the suggestion made by the 2nd respondent's Counsel that the deceased was not wearing Helmet at the time of accident. At the same time, there is no other evidence to suggest that the deceased was wearing helmet at the time of accident. Ex-P.3 shows serious head injury. In these circumstances, it can be inferred that the deceased was probably not wearing helmet at the time of accident and this Court deems it fit to fix 10% contributory negligence on the part of the deceased.



17. Regarding the quantum of compensation, the petitioners

have not adduced any evidence to establish the alleged occupation and monthly income of the deceased. Hence, the Tribunal has notionally fixed Rs.15,000/- as his monthly income. Bearing in mind that the accident occurred in 2021 and that the deceased was an I.T.I Graduate at the time of accident, this Court is of the view that he would have naturally earned at least a sum of Rs.16,000/- per month. Hence, the Tribunal is not correct in notionally fixing the monthly income of the deceased at Rs.15,000/-. Further, at the time of the accident, the age of the deceased was 21 years. The Tribunal has rightly applied the multiplier of '18' and granted 40% towards future prospects, in accordance with the Judgments of the Hon'ble Supreme Court in **Sarla Verma** and **Pranay Sethi** (cited *infra*).

18. As regards personal deductions, the Tribunal has computed and deducted 1/3 share as personal expenses of the deceased from his monthly income. The deceased was a bachelor, and the claimants are his parents and sisters. The Tribunal has failed to take note of the fact that the father (2nd petitioner) and the sisters (3rd and 4th petitioners) would not be financially dependent on the deceased. The 2nd petitioner



being the father, aged 51 years, would have had his own income and the

sisters would have been primarily dependent on their father / 2nd petitioner

for money. To be noted, the 3rd petitioner is married. Further, it is assumed that a bachelor would prioritize his own expenditures and tend to spend more on himself. Hence, the Tribunal ought to have fixed 50% deduction towards personal and living expenses of the deceased. In the absence of evidence to the contrary, father and sisters cannot be considered as financial dependants. Hence, this Court is inclined to deduct ½ share as personal expenses of the deceased from his monthly income. In this regard, it is apposite to cite the Judgment of the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation***, reported in (2009) 6 SCC 121. Relevant extract is hereunder:

“31.Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the



mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32.Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

19. As regards the three conventional heads, no doubt that the parents are entitled to filial consortium as laid down by Hon'ble Supreme Court in ***Magma General Insurance Co -vs- Nanu Ram***, reported in ***(2018) 18 SCC 130***.

19.1. As far as the sisters are concerned, in Indian society, siblings, especially when they are young, share a strong bond of love and affection. When a child passed away, parents are given compensation for the loss of love and affection (filial consortium), but young siblings are



overlooked. The young siblings also miss the companionship, care, solace and emotional connection they had with their deceased sibling. In short, they are equally deprived of love and affection as their parents. Hence, in the facts and circumstances of this case, this Court is of the view that, it is only fair that young sisters who lost their brother receive compensation under the head of 'loss of love and affection'. It is clarified that this is not a rigid, one-size-fits-all rule. Its application must be decided on the facts and circumstances of the case.

19.2. One may argue that the 3rd petitioner is married and hence, she would not be entitled to compensation under this head. In this case, considering the 3rd petitioner's age *viz.*, 21 years, it can be inferred that the 3rd petitioner got married only a few years before the accident. Hence, though she would have not been monetarily dependant on the deceased, she would have been dependent on him for love, affection, care, protection, guidance *etc.* Given the Indian cultural standards where familial bonds are strong and siblings share deep emotional connections, the deceased would have been naturally concerned about his recently married sister's well-being and would have been of some assistance such as accompanying her to hospital, emotional support, *etc.*, at least during the



initial years of her marriage. Hence, in the facts and circumstances of this case, this Court is of the view that the 3rd petitioner is entitled to compensation under the head of loss of love and affection along with her minor sister / 4th petitioner.

19.3. To be noted, personal deductions are different from loss of consortium. As far as personal deductions are concerned, those who are monetarily dependent on the deceased are alone to be taken into account. But when it comes to loss of consortium, married sister can also be taken into consideration, if it could be inferred from the facts and circumstances that she was dependent on the deceased to a considerable extent, provided the absence of evidence to the contrary. Hence, though the 3rd petitioner is not a dependent for the purpose of personal deductions, she shall be considered a dependent for the purpose of compensation under the head of loss of love and affection, in view of the facts and circumstances of this case.

19.4. The Tribunal has awarded only a sum of Rs.45,000/- totally under this head which is not in tune with the guidelines laid down



by the Hon'ble Supreme Court in *National Insurance Company Limited*

v. Pranay Sethi & Others, reported in (2017) 16 SCC 680. Further, the compensation awarded by the Tribunal under the heads of loss of estate, and funeral expenses are also not in accordance with *Pranay Sethi*. On the strength of *Pranay Sethi*, this Court is of the view that the petitioners are entitled to Rs.16,500/- towards loss of estate, Rs.44,000/- each towards loss of filial consortium as regards parents and loss of love and affection as regards sisters, and Rs.16,500/- as funeral expenses.

20. Further, the Tribunal has awarded Rs.10,000/- towards transportation charges and this Court does not find any infirmity with the same.

21. As already discussed in paragraph No.16, this Court deems it fit to fix 10% contributory negligence on the part of the deceased.

22. Accordingly, the petitioners are entitled to a sum of **Rs.23,74,400.00** (Rupees Twenty Three Lakhs Seventy Four Thousand Four Hundred Only) as compensation from the second respondent as tabulated hereunder:



CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

S.No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.25,70,400.00	**Rs.24,19,200.00
2	Loss of filial Consortium (Parents) & Loss of Love and Affection (Sisters)	Rs.45,000.00	Rs.1,76,000.00
3	Loss of Estate	Rs.20,000.00	Rs.16,500.00
4	Transport Expenses	Rs.10,000.00	Rs.10,000.00
5	Funeral Expenses	Rs.20,000.00	Rs.16,500.00
	Total	Rs.26,65,400.00	Rs.26,38,200.00
	Contributory negligence @ 10%		(-) Rs.2,63,820.00
	Grand Total		Rs.23,74,380.00
	Rounded off		Rs.23,74,400.00

**** {Rs.16,000/- (Notional Income) + Rs.6,400/- (40% Future Prospects)– Rs.22,400/- (1/2 Personal Deduction) X 12 (month) X 18 (Multiplier)}**

23. Further, the 2nd respondent contends that the driver of the 1st respondent did not possess a valid driving licence amounting to violation of terms of the Insurance Policy and hence, they are not liable to compensate the petitioners at any rate. The 2nd respondent had sent Ex-R.5 and Ex-R.7-Legal Notices to the 1st respondent and his driver respectively calling upon them to produce the driver's driving licence and depose before the Tribunal. While the legal Notice to the driver was served, the legal Notice to the 1st respondent was returned as no such address. To be noted, the 1st respondent initially appeared before the Trial Court, filed Counter and he was later set *ex-parte*. It is also to be noted that Ex-R.5



was sent to the petition mentioned address. Hence, as per General Clauses

Act, 1897, this Court deems Ex-R.5 to be served duly. The 2nd respondent has made efforts to examine the 1st respondent and his driver, but despite due Notice, neither the 1st respondent nor his driver has produced the driver's licence and deposed before the Court. Further, Ex-R.3 - M.V.I. Report also shows that the driving licence of the 1st respondent's driver has not been produced at the time of vehicle inspection. In these circumstances, this Court is of the view that the 2nd respondent is entitled to pay and recover. Accordingly, the second respondent is directed to pay the Award amount to the petitioners and thereafter, 2nd respondent is entitled to recover the Award amount from the petitioners.

Conclusion

24. In view of the foregoing narrative, the appellant / Insurance company is directed to deposit the modified Award amount of **Rs.23,74,400.00 (Rupees Twenty Three Lakhs Seventy Four Thousand Four Hundred Only)** along with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit as well as



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proportionate costs and Advocate fees the petitioner are entitled to as per Rules, to the credit of MCOP No.56 of 2021 on the file of Motor Accident Claims Tribunal, Additional District Judge, Ariyalur, less the amount if any already deposited, within a period of two months from the date of receipt of a copy of this Judgment. Upon such deposit, the 2nd respondent – Insurance Company is entitled to recover the Award amount from the 1st respondent as if a Decree is passed in favour of the second respondent and against the first respondent in this regard. The modified Award amount shall be apportioned among the petitioners in a manner proportionate to the apportionment made by Tribunal. In the aforesaid terms, a modified Award is passed in favour of the petitioners.

25. In the result, the Civil Miscellaneous Appeal is partly allowed, and the Cross Objection is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

03 / 12 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

To

The Motor Accident Claims Tribunal
Additional District Court
Ariyalur.

PRE-DELIVERY COMMON JUDGMENT MADE IN

CMA NO.2703 OF 2023

AND CROS.OBJ.NO.78 OF 2024

03 / 12 / 2024



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CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

C.M.A.No.2703 of 2023
and
Cross.Obj.No.78 of 2024

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

(Order of the Court was made by **J.NISHA BANU, J.**)

This writ petition is listed today under the caption 'for being mentioned'.

2.The learned counsel for the petitioner submits that in the order dated 03.12.2024, in last lines of para Nos.23 and 24, it has been erroneously mentioned as 'petitioners' instead of 'first respondent' and 'appellant/2nd respondent' respectively and the same may be corrected.

3.In view of the above, the last lines of Para Nos.23 and 24 shall be read as follows:

“23..... Accordingly, the second respondent is directed to pay the award amount to the petitioners and thereafter, 2nd respondent is entitled to recover the award amount from the first respondent.”



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“24.....In the aforesaid terms, a modified award is passed in favour of the appellant/2nd respondent.”

4.The Registry is directed to carry out necessary amendment and issue fresh order copy to the parties concerned.

(J.N.B.,J.) (R.S.V.,J.)
08.04.2025

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CMA NO.2703 OF 2032 & CROS.OBJ.78 OF 2024

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

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