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CMA.No.2376 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2376 of 2023

1.Marakka

2.Subramani

... Appellants

vs.

1.N.Suresh

2.The Branch Manager,
Cholamandalam MS General Insurance Co. Ltd.,
Branch Office, No.74/22,
3rd Floor, H.V.Arcade,
Bagalur Road, Hosur – 635 109.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 23.12.2021 made in MCOP.No.16 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellants : Mr.S.P.Yuaraj

For R1 : No appearance

For R2 : Mr.J.Michael Visuvasam



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J U D G M E N T

The appellants are the claimants in M.C.O.P.No.16 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of one Krishnappa (husband of the 1st claimant and father of the 2nd claimant) in a road accident that occurred on 25.04.2018.

2. The case of the claimants is as follows:

The deceased Krishnappa, aged about 54 years was a vegetable vendor earning a sum of Rs.30,000/- per month. On 25.04.2018 at about 9.00 hours he was traveling as a pillion rider in a two-wheeler bearing Registration number TN-70-L-2917 on Soolagiri – Berigai Road and when he was nearing Pindaganapalli, a Mahindra Maxx pick-up vehicle bearing Registration number KA-05-AB-4589 belonging to the 1st respondent came on the opposite direction and rammed the two-wheeler, as a result of which Krishnappa fell down from the two-wheeler and



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sustained injuries all over his body. He was immediately taken to the Government Headquarters Hospital at Krishnagiri from where he was referred to Government Medical College Hospital, Dharmapuri. However, he succumbed to injuries on 25.04.2018.

3. According to the claimants, the rash and negligent driving of the driver of the Mahindra Maxx pick-up van bearing Reg.No.KA-05-AB-4589 was the cause of the accident and since the owner of the said vehicle (1st respondent) insured it with the 2nd respondent, the Cholamandalam MS General Insurance Co. Ltd., the owner and the insurer are jointly and severally liable to pay compensation to them.

4. The owner of the vehicle remained absent before the Tribunal and therefore was set *ex-parte*. The second respondent, the Cholamandalam MS General Insurance Co. Ltd., contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act. The learned Additional District Judge / Motor Accident Claims Tribunal, Hosur after analysing the evidence on record, fixed the notional income of the deceased at Rs.8,000/- per month and



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awarded compensation of Rs.4,35,000/- to the claimants. The Tribunal also deducted 10% towards 'composite negligence' on the part of the rider of the two-wheeler and deducted a sum of Rs.43,500/- from the total compensation. Thus, the claimants were awarded a sum of Rs.3,91,500/- together with interest at the rate of 7.5% per annum. The award passed by the Tribunal under various heads is extracted hereunder:

<i>S. No.</i>	<i>Head</i>	<i>Amount granted</i>
	Annual Income (Rs.8,000 x 12)	Rs.96,000/-
	Less – Personal expenses – 1/3 rd (Rs.32,000/-)	Rs.64,000/-
1.	Compensation for loss of dependency after multiplier of '5' is applied (As per Sarala Verma case)	Rs.3,20,000/-
2.	Filial consortium	Rs.40,000/-
3.	Spousal Consortium	Rs.40,000/-
4.	Transportation	Rs.5,000/-
5.	Funeral expenses	Rs.15,000/-
6.	Loss of estate	Rs.15,000/-
Total Compensation awarded (by adding Sl.Nos.1 to 6)		Rs.4,35,000/-
Less 10% 'composite negligence'		Rs.43,500/-
Net Compensation		Rs.3,91,500/-



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Aggrieved by the quantum of compensation and fastening 'composite negligence' on the part of the rider of the two-wheeler, the present appeal is filed by the claimants under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent.

6. Mr.S.P.Yuaraj, learned counsel appearing for the appellants / claimants would contend that the deceased Krishnappa was a vegetable vendor earning a sum of Rs.30,000/- per month but the Tribunal fixed the notional monthly income of the deceased only as Rs.8,000/-. He also contended that the Tribunal though fixed 'composite negligence' on the part of the rider of the two-wheeler, had wrongly deducted 10% of the compensation amount payable to the present claimants, who are the dependants of the deceased pillion rider. He therefore prayed for setting aside the said portion of the order.



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7. In the instant case, the deceased was a vegetable vendor and he would have easily made a sum of Rs.10,000/- per month. The notional income fixed by the Tribunal at Rs.8,000/- per month appears to be meagre and therefore, a sum of Rs.10,000/- is fixed as notional monthly income of the deceased. As per the postmortem certificate the age of the deceased is 62 years and hence the proper multiplier to be adopted in the instant case is '5' as per the decision rendered in **Sarla Verma and Others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. The claimants are the wife and the son of the deceased. Son is 35 years old and he may not be dependent on his father. Therefore, 50% is deducted towards the personal expenses of the deceased.

8. It is pertinent to point out that the Tribunal having found contributory negligence on the part of the rider of the two wheeler got confused and fastened 'composite negligence' on the part of the pillion rider (the deceased) to the extent of 10%. This is totally unknown to law and therefore the same is liable to be set aside. The Tribunal had misunderstood the whole concept of 'composite negligence' and



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'contributory negligence'. In any event there is nothing on record to show that the deceased (pillion rider) contributed to the accident. Therefore, deduction of 10% from the total compensation amount is erroneous.

Loss of Dependency :

[(Rs.10,000/- x 12 x 5 x 50% = Rs.3,00,000/-)]

Therefore, the total compensation would be as follows:

<i>S.No</i>	<i>Description</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of Dependency	3,00,000/-
2.	Loss of consortium (40,000 x 2)	80,000/-
3.	Loss of estate	15,000/-
4.	Funeral Expenses	15,000/-
	Total	4,10,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,91,500/- to Rs.4,10,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.



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(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,91,500/- to Rs.4,10,000/-.

(iii) The appellants 1 and 2 / claimants 1 and 2 are directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / Cholamandalam MS General Insurance Co. Ltd., is directed to deposit the enhanced compensation amount of Rs.4,10,000/- (less the amount, if any, already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.16 of 2019 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Hosur, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants 1 and 2 / claimants 1 and 2 are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

13.08.2024



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Index : Yes/No

Speaking/Non-speaking order

dsa

To

1. The Motor Accidents Claims Tribunal, Additional District Judge, Hosur.
2. The Branch Manager, Cholamandalam MS General Insurance Co. Ltd., Branch Office, No.74/22, 3rd Floor, H.V.Arcade, Bagalur Road, Hosur – 635 109.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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