



C.M.A.Nos.2750 & 1446 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2750 & 1446 of 2021
and C.M.P.No.15729 of 2021

C.M.A.No.2750 of 2021

The Manager,
ICICI Lombard General Insurance Company Limited,
ICICI Lombard House,
414, Veer Savarkar Marg,
Prabhadevi, Mumbai – 400 025.

...Appellant

Vs.

1.Bhuvaneswari
2.Minor Hari Saran
3.Chinnappan
4.Chellammal
(Minor represented by its
Mother & NF Bhuvaneswari)
5.Senthilkumar
6.M.Sivakumar

...Respondents



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For Appellant

in CMA No.2750/2021 : Mr.K.Poomalai

For Respondents

in CMA No.2750/2021 : Mr.S.P.Yuvaraj for R1 to R4

R5 – Disd. vide order

dt.13.02.2023

R6 – No appearance

C.M.A.No.1446 of 2021

1.Bhuvaneswari

2.Minor Hari Saran

3.Chinnappan

4.Chellammal

*(Minor 2nd appellant is rep. by his
Next Friend/ Mother 1st appellant)*

...Appellants

Vs.

1.Senthilkumar

2.M.Sivakumar

3.The Manager,

ICICI Lombard General Insurance Company Ltd.,

ICICI Lombard House,

414, Veer Savarkar Marg,

Prabhadevi, Mumbai – 400 025.

...Respondents



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Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, challenging the Judgment and Decree dated 16.08.2019 made in M.C.O.P.No.497 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants

in CMA No.1446/2021 : Mr.S.P.Yuvaraj

For Respondents

in CMA No.1446/2021 : R1 – Disd. vide order
dt.13.02.2023

R2 – No appearance

Mr.K.Poomalai for R3

COMMON JUDGMENT

These appeals have been filed challenging the judgment and decree passed by the Motor Accidents Claims Tribunal/Special District Court, Krishnagiri in M.C.O.P.No.497 of 2018 dated 16.08.2019.

2.Since the parties and the issues are one and the same, these appeals are disposed of by a common judgment.



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3.C.M.A.No.2750 of 2021 has been filed by the appellant Insurance Company questioning the quantum of compensation as well as negligence. C.M.A.No.1446 of 2021 has been filed by the claimants seeking enhancement of compensation.

4.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

5.The brief facts of the case as follows:

On 11.09.2017 at about 17.00 hours, the deceased was travelling as a pillion in TVS Victor motorcycle bearing Registration No.TN-24-AF-9986 and the first respondent was riding the said vehicle from Muslimpur towards Veppanapalli, the first respondent drove the motorcycle in a rash and negligent manner and dashed on Honda Shine Motorcycle bearing Registration No.TN-24-Q-7314 and caused the accident in which the pillion rider Karuppaiya fell on the road and sustained fatal injuries in head, chest and in his vital organs and the said Karuppaiya died on the way to the Government Hospital. A criminal case was registered in



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Crime No.300/2017 for offence under Sections 279, 337, 304(A) of IPC by Veppanapalli Police. The claimants filed a claim petition before the Tribunal in M.C.O.P.No.497 of 2018, the Tribunal has awarded a sum of Rs.20,02,800/-. Challenging the same, the present appeal has been filed.

6.Learned counsel appearing for the appellants submitted that the accident occurred due to the rash and negligent driving by the second respondent, the deceased was died on the way to the Government hospital. He further submitted that the deceased was 27 years at the time of the accident and the accident was occurred in the year 2017, the correct notional income for the accident 2017 at Rs.14,000/-. He further submitted that the Tribunal has awarded a meagre compensation and hence, he prayed to allow the appeal.

7.Per contra, learned counsel appearing for the Insurance Company submitted that the accident occurred due to the rash and negligent driving of the rider bearing Registration No.TN 24 AF 9986 in which the deceased was travelled as a pillion rider. The Tribunal has awarded a



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higher compensation in respect of all heads. Hence, he prayed for appropriate orders.

8.Heard learned counsel appearing for the appellants as well as the respondents and perused the materials available on record.

9.Before the Tribunal, the first petitioner was examined as PW1 and one Parasuraman was examined as PW2 and on the side of the petitioners, 16 documents were marked as Exs.P1 to P16. On the side of the Respondents, Mr.Rajendiran, S.S.I of Police, Veppanapalli was examined as RW1 and Mr.Mithun Maharaja, Legal Manager was examined as RW2 and True copy of the final report was marked as Ex.R1. and True copy of the rough sketch was marked as R2.

10.This Court is of the view that there was no eye witness to the accident. In the absence of any eye witness, the claim made by the Insurance Company with regard to negligence on the part of the rider bearing Registration No.TN 24 AF 9986 in which the deceased was



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travelled as pillion rider, this Court is not inclined to accept the claim and accordingly, the same is rejected.

11.The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.19,27,800/- for loss of dependency, Rs.20,000/- for loss of consortium, Rs.20,000/- for loss of estate, Rs.15,000/- for funeral expenses, Rs.20,000/- for love and affection and arrived at a total compensation of Rs.20,02,800/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

12.As per the judgment in *National Insurance Company Limited vs. Pranay Sethi and Ors.* reported in 2017 13 S.C.R.100 and in *Sarla Varma and Ors. Delhi Transport Corporation and Anr.* reported in 2009 5 S.C.Rr.1095, this Court is inclined to fix Rs.14,000/- as notional monthly income. Loss of dependency is works out in the following manner:

$$\text{Rs.14,000/-} - 1/2 = \text{Rs.10,500/-} + 40\% = \text{Rs.4,200} = \text{Rs.14,700/-}$$

$$\text{Rs.14,700/-} \times 12 \times 17 = \text{Rs.29,98,800/-}$$



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13.The amount awarded under the head loss of dependency, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded under the head loss of dependency is enhanced to Rs.29,98,800/- from Rs.19,27,800/-. The amount awarded under the head loss of love and affection, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded under the head loss of love and affection is enhanced to Rs.1,60,000/- (4 x Rs.40,000/-) from Rs.20,000/-. The amount awarded under the head loss of estate, in the opinion of this Court is excessive and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded under the loss of estate is reduced to Rs.15,000/- from Rs.20,000/-. The Tribunal has awarded a sum of Rs.20,000/- for loss of consortium, However, this Court is not inclined to award any amount for loss of consortium as it is not necessary.



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14. Accordingly, the compensation awarded by the Tribunal is re-assessed as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	19,27,800/-	29,98,800/-
2.	Loss of consortium	20,000/-	-
3.	Loss of Estate	20,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Love and Affection	20,000/-	1,60,000/-
	Total	Rs.20,02,800/-	Rs.31,88,800/-

15. The claimants are entitled to a sum of Rs.31,88,800/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

16. The judgment and decree passed by the Motor Accident Claims Tribunal/Special District Court, Krishnagiri in M.C.O.P.No.497 of 2018 dated 16.08.2019, is modified to the above extent.



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17.In the result, the appeal filed by the claimants in C.M.A.No.1446 of 2021 is allowed and the claim made by the Insurance Company in C.M.A.No.2750 of 2021 is rejected and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.The appellant Insurance Company is directed to deposit the modified/enhanced award amount, if not deposited earlier before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment and permitted to withdraw the excess amount, if any. On such deposit being made, the respondents 1, 3 and 4/claimants are permitted to withdraw their share along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The second respondent is permitted to withdraw his share as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on



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production of necessary proof with regard to his majority. If the second respondent is still minor, his share shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until she attains majority and the interest derived from out of the said share of the minor shall be paid to the first claimant/mother every quarter to be utilized for the welfare of the said minor.

19.The respondents 1 to 4/claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal.

27.11.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accidents Claims Tribunal/
Special District Court, Krishnagiri.



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2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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M.DHANDAPANI, J.

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