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C.M.A.No.1345 of 2023 and Cros. Obj.No.45 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HON'BLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1345 of 2023

and

Cros. Obj.No.45 of 2024

and

C.M.P.No.13509 of 2023

C.M.A.No.1345 of 2023 :

The United India Insurance Company Limited,
Branch Manager,
Door No.3, Giriram Building,
Main Road, Gopichettyalayam.

Now at,
United India Insurance Company Limited,
Regional Office,
No.178, Dr.Nanjappa Road,
Coimbatore - 641 018.

... Appellant

Vs.

1.Suhail Basha (Died)

2.Parveen Banu

(Respondent - 1 Died. Respondent 2, who is already on record,
is recorded as LR of the deceased R-1 viz., Suhail Basha
as per memo dated 20.06.2023 are recorded and
vide Court order dated 22.06.2023 made in
C.M.P.No.6044 of 2023 in C.M.A.Sr.No.34322 of 2023
by NMJ)



C.M.A.No.1345 of 2023 and Cros. Obj.No.45 of 2024

3.Tamizhselvan

4.A.S.M.Bus Service,
Owner V.Shanmuga Sundaram,
Door No.61, Velayutham Road,
Anthiyur Taluk, Erode District - 638 501.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 20.06.2022 made in M.C.O.P. No.191 of 2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Avinashi.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : R1 - Died

Mr.R.Prabakar
for R2 (Recorded as LR of
deceased R1)

R3 and R4 - Dispensed with

Cros. Obj.No.45 of 2024:

1.Suhail Basha (Died)

2.Parveen Banu

(Appellant - 1 Died. Appellant 2, who is already on record, is recorded as LR of the deceased Appellant -1 viz., Suhail Basha as per memo dated 20.06.2023 are recorded and vide Court order dated 22.06.2023 made in C.M.P.No.6044 of 2023 in C.M.A.Sr.No.34322 of 2023 by NMJ)

... Cross Objectors

Vs.



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1. The United India Insurance Company Limited,
Branch Manager,
Door No.3, Giriram Building,
Main Road, Gopichettypalayam.

Now at,
United India Insurance Company Limited,
Regional Office,
No.178, Dr.Nanjappa Road,
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2.Tamizhselvan

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Owner V.Shanmuga Sundaram,
Door No.61, Velayutham Road,
Anthiyur Taluk, Erode District - 638 501.

... Respondents

PRAYER: Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure challenging the Judgment and Decree dated 20.06.2022 made in M.C.O.P. No.191 of 2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Avinashi.

For Appellants : Mr.R.Prabakar

For Respondents : Mr.P.Sankaranarayanan
for R1

R2 and R3 - Dispensed with



COMMON JUDGMENT

WEB COPY Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Court, Avinashi in M.C.O.P. No.191 of 2017, the present appeal is filed by the appellant, the United India Insurance Company Limited. The claimants have filed Cross Objections stating that the quantum of compensation awarded is inadequate.

2. The cross objectors are the claimants in M.C.O.P. No.191 of 2017 on the file of the Motor Accidents Claims Tribunal. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Asbia Thamanna (daughter of claimants) in a road accident that took place on 24.07.2017.

3. The brief case of the claimants is as follows :

On 24.07.2017 at about 08.30 a.m., Asbia Thamanna (deceased) was travelling in a Bus bearing registration No.TN 36 AH 1999 on Salem - Coimbatore By-pass. The driver of the bus drove the bus rashly and negligently and rear ended a lorry bearing registration No.TN 52 D 9531 which was going ahead of him. Resultantly, all the passengers including



Asbia Thamanna (deceased) sustained injuries. Though Asbia Thamanna was rushed to KMCH Hospital, Coimbatore she succumbed to injuries on 26.07.2017.

4. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of the accident and since the owner of the bus has insured the vehicle with the appellant / Insurance Company, both the owner and the Insurance Company are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the driver and the owner of the bus remained absent and were set *ex-parte*. The appellant Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record awarded a sum of Rs.27,23,351/- towards compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 20.06.2022. The Tribunal also held that the liability of the



owner and the Insurer are joint and several.

7. Aggrieved over the orders passed by the Tribunal, the appellant, Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 and the claimants have filed cross objections.

8. Heard Mr.P.Sankaranarayanan, learned counsel appearing for the appellant / Insurance Company and Mr.R.Prabakar, learned counsel for the claimants.

9. Mr.R.Prabakar, learned counsel for the claimants contended that the deceased was a second year B.Sc. (Bio-Chemistry) Student in PSG Arts and Science College, Coimbatore and was outstanding as a student as evidenced by several certificates of merits obtained by her (Ex.P13). However, the Tribunal fixed the notional monthly income of the deceased only at Rs.10,000/-. He, therefore, prayed for enhancement of compensation towards the notional monthly income of the deceased.



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10. Per contra, Mr.P.Sankaranarayanan, learned counsel appearing for the Insurance Company would contend that when the deceased was a student, the Tribunal should not have fixed an exorbitant amount of Rs.10,000/- as her notional monthly income. He further contended that though the deceased is a spinster, the Tribunal had deducted 1/3 towards her personal expenses. He therefore, prayed for scaling down the award amount.

11. The award passed by the Tribunal is shown in the following tabular column:

<i>S.No.</i>	<i>Heads</i>	<i>Amount granted by the Tribunal in Rs.</i>
1.	Pecuniary Loss	20,16,144
2.	Medical expenses as per Ex.A8	5,66,207
3.	Loss of Consortium(Rs.44,000/- x 2)	88,000
4.	Loss of estate	16,500
5.	Funeral Expenses	16,500
6.	Transportation expenses	20,000
	Total	27,23,351

12. It is seen from the records that the deceased was studying second year B.Sc. (Bio-Chemistry) in PSG Arts and Science College. She had won



several competitions as is seen from the certificates (Ex.P13), which shows that the deceased was a very promising student. In such circumstances fixing the notional monthly income of the deceased at Rs.12,000/- would meet the ends of justice. 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**, 40% is added towards future prospects of the deceased and since she is a spinster 50% is deducted towards her personal expenses. The deceased was aged about 18 years on the date of the accident and the proper multiplier to be adopted in the instant case is 18 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.12,000/-

Adding 40% Future Prospects = Rs.16,800/-

After 1/2 deduction = Rs.8,400/-

Loss of dependency:

= Rs.8,400/- x 12 x 18

= Rs.18,14,400/-

In addition to that claimants are entitled for Rs.5,66,207/-, Rs.80,000/-



(Rs.40,000/- x 2), Rs.15,000/-, Rs.15,000/- and Rs.10,000/- for medical expenses, loss of consortium, loss of estate, funeral expenses and transportation expenses respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.25,00,607/- (Rs.18,14,400/-, Rs.5,66,207/-, Rs.80,000/- (Rs.40,000/- x 2), Rs.15,000/-, Rs.15,000/- and Rs.10,000/-) as shown in the following tabular column.

<i>S.No.</i>	<i>Heads</i>	<i>Amount granted by this Court in Rs.</i>
1.	Loss of dependency	18,14,400
2.	Medical expenses	5,66,207
3.	Loss of Consortium(Rs.40,000/- x 2)	80,000
4.	Loss of estate	15,000
5.	Funeral Expenses	15,000
6.	Transportation expenses	10,000
	Total	25,00,607

13. In the result,

- i. The Civil Miscellaneous Appeal filed by the appellant / Insurance Company and the Cross Objection filed by the claimants are partly allowed. No Costs. Consequently, the connected miscellaneous



petition is closed.

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- ii. The compensation awarded by the Tribunal is scaled down to Rs.25,00,607/- from Rs.27,23,351/-.
- iii. The appellant / Insurance Company is directed to deposit the compensation amount of Rs.25,00,607/- (less the amount already deposited, if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit 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.191 of 2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Avinashi.
- iv. On such deposit being made, the appellants / claimants 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.

21.08.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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- To
1. The Motor Accidents Claims Tribunal, Subordinate Court, Avinashi.
 2. The Section officer, Record Section, High Court of Madras.



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R. HEMALATHA. J.,

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**C.M.A.No.1345 of 2023
and
Cros. Obj.No.45 of 2024
and
C.M.P.No.13509 of 2023**

21.08.2024