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C.M.A.No.2324 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2324 of 2021

And

C.M.P.No.13034 of 2021

And

Cross Objection No.84 of 2021

C.M.A.No.2324 of 2021:

M/s.Bajaj Allianz General Insurance Company Limited,
Having Office at Ragavi's Center,
No.21, Nethaji Nagar,
Nanjundapuram Main Road,
Ramanathapuram,
Coimbatore – 641 045.

... Appellant

Vs.

1.M.A.Noufal Babu
2.Gracy George
3.M.Mahesh Kumar

4.The Correspondent,
Adharsh Vidhyalaya Matric Hr. Sec. School,
Adharsh Nagar, Karanampettai,
Palladam Taluk – 641 668.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P. No.1870 of 2018 dated 01.12.2020 on the file of the Motor Accidents



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Claims Tribunal, V Additional District Court, Coimbatore.

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For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates
For Respondents : Mr.R.Navaneetha Krishnan
for R1 and R2
R3 and R4 – No Appearance

Cross Objection No.84 of 2021:

1.M.A.Noufal Babu
2.Gracy George ... Cross Objectors

Vs.

1.M.Mahesh Kumar
2.The Correspondent,
Adharsh Vidhyalaya Matric Hr. Sec. School,
Adharsh Nagar, Karanampettai,
Palladam Taluk – 641 668.
3.M/s.Bajaj Allianz General Insurance Company Limited,
Having Office at Ragavi's Center,
No.21, Nethaji Nagar,
Nanjundapuram Main Road,
Ramanathapuram,
Coimbatore – 641 045. ... Respondents

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the contributory negligence fixed against the petitioners and enhance the compensation.

For Cross Objectors : Mr.R.Navaneetha Krishnan
For Respondents : Ms.C.Harini for R3
for M/s.M.B.Gopalan and Associates



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COMMON JUDGMENT

The civil miscellaneous appeal as well as the cross objection have been filed against the judgment and decree dated 01.12.2020 in M.C.O.P.No.1870 of 2018 on the file of the Motor Accident Claims Tribunal, V Additional District Court, Coimbatore.

2.The third respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeal and the petitioners before the Motor Accident Claims Tribunal are the cross objectors in the cross objection.

3.The brief facts of the case as per the claim petition is that on 16.08.2017 at about 17.30 hours, the deceased Ishan Noufal travelled as a pillion rider in the motorcycle bearing Registration No.TN 66 P 6724 driven by his Mother along with his brother in front, in Covai – Trichy Road in front of Nellai Lala Sweets, Opposite to Kallimadai Junction. At that time, a car took reverse and to avoid hitting the car, the mother of the deceased applied brake and at that time, the School bus bearing Registration No.TN 54 E 2299 came in a rash and



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negligent manner on the right side of the motorcycle and dashed against the motorcycle, due to which, the deceased died on the spot.

4. Thereafter, the parents of the deceased Ishan Noufal/ respondents 1 and 2 in the civil miscellaneous appeal/ cross objectors in cross objection (hereinafter referred to as 'claimants') filed claim petition before the Motor Accident Claims Tribunal, V Additional District Court, Coimbatore, claiming compensation of Rs.30 Lakhs.

5. After adjudication, the Motor Accident Claims Tribunal, fixed 30% composite negligence on the rider of the motorcycle/ second claimant and 70% composite negligence on the driver of the School bus and arrived at a total compensation of Rs.9,10,000/- and directed that the claimants are entitled to Rs.6,37,000/- [70% of Rs.9,10,000/-] with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and proportionate costs and directed the Bajaj Allianz General Insurance Company Limited (hereinafter referred to as 'Insurance Company') to deposit the award amount.

6. The learned counsel appearing for the Insurance Company submitted that the Mother of the deceased drove the vehicle along



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with her two sons including the deceased, which itself is violation of policy. Only one passenger is permissible in motorcycle, whereas, she

carried one child in front and another child as pillion rider and since she applied sudden brake, the deceased fell down and lost his life and hence, directing the Insurance Company to deposit 70% of the total compensation is not sustainable one. The learned counsel further submitted that the deceased was only 7 years at the time of accident, however, the Tribunal fixed a sum of Rs.50,000/- per annum as the income of the deceased and awarded compensation which is onerous and further submitted that if at all the claimants are entitled to any amount, they are entitled to only a sum of Rs.50,000/-.

7.Per contra, the learned counsel appearing for the Cross Objectors submitted that the second claimant drove the vehicle along with her two sons, one in the front side and one in the rear side, very cautiously. At the time, suddenly a car took reverse and in order to avoid head on collision, the second claimant applied brake. At that time, the vehicle insured with the Insurance Company came from back in a rash and negligent manner and dashed against the motorcycle, due to which, the elder son of the claimants who was travelling as



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pillion rider, lost his life.

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8.The learned counsel appearing for the Cross Objectors further submitted that in order to prove the case, the second claimant examined herself as P.W.1 and marked exhibits Ex.P.1 to Ex.P.17 before the Tribunal including F.I.R., rough sketch, M.V.I. Report, observation mahazar and to disprove the same, the Insurance Company though examined R.W.1 and marked Ex.R1 to Ex.R3 did not examine any independent witness. In the absence of any independent contra evidence, the Tribunal fastening 30% negligence on the second claimant is not sustainable one.

9.The learned counsel appearing for the Cross Objectors further submitted that this Court in the case of ***M/s.Reliance General Insurance Company Limited Vs. H.Mallika Bee and others [C.M.A.No.1625 of 2020 dated 10.11.2020]*** fixed a sum of Rs.42,000/- per annum as the notional income of deceased boy aged about 13 years who died in an accident on 18.07.2013. In the present case, the accident is of the year 2017 and the deceased was 7 years at the time of accident, however, the Tribunal fixed a sum of Rs.50,000/-



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per annum as the income of the deceased and the correct multiplier to be adopted is 18, however, the Tribunal adopted the multiplier of 16

and awarded a meagre compensation. Hence, the claimants are entitled for enhancement in compensation.

10. Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross Objectors and perused the materials available on record.

11. The accident is not disputed. In order to prove the case, the second claimant examined herself as P.W.1 and marked exhibits Ex.P.1 to Ex.P.17 before the Tribunal and to disprove the same, the Insurance Company has not examined any independent eye witness. In the absence of any independent contra evidence, the Tribunal fastening 30% negligence on the second claimant/ rider of the motorcycle in which the deceased travelled is not sustainable one. Hence, the 30% negligence fixed on the second claimant is set aside and this Court fix 100% negligence on the driver of the vehicle insured with the Insurance Company.



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12. Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum

of Rs.8,00,000/- for loss of dependency, Rs.15,000/- for funeral expenses, Rs.80,000/- for loss of parental consortium to each of the children, Rs.15,000/- for loss of estate and arrived at a total compensation of Rs.9,10,000/- and directed that the claimants are entitled to Rs.6,37,000/- [70% of Rs.9,10,000/-] with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

13. This Court in the case of ***M/s. Reliance General Insurance Company Limited Vs. H. Mallika Bee and others [C.M.A.No.1625 of 2020 dated 10.11.2020]*** fixed a sum of Rs.42,000/- per annum as the notional income of deceased boy aged about 13 years who died in an accident on 18.07.2013. In the present case, the accident is of the year 2017 and the deceased was 7 years at the time of accident. Applying the ratio laid down in the decision cited supra, this Court fix a sum of Rs.60,000/- per annum as the notional income of the deceased. At the time of death, the deceased was aged 7 years and hence the correct multiplier to be adopted is 18. Accordingly, the amount awarded for loss of dependency works out to Rs.10,80,000/-



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[Rs.60,000/- X 18 = Rs.10,80,000/-].

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14.This Court is of the opinion that some amount has to be awarded for loss love and affection. Accordingly, this Court awards a sum of Rs.80,000/- for loss of love and affection. The amount awarded under the head loss of parental consortium to each of the children, in the opinion of this Court is not necessary and the same is deleted. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.

15.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of dependency	Rs.8,00,000/-	Rs.10,80,000/-
2.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3.	Loss of Love and affection	---	Rs. 80,000/-
4.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-
5.	Loss of parental consortium to each of the children	Rs. 80,000/-	---
	Total	Rs.9,10,000/-	Rs.11,90,000/-

16.The claimants are entitled to total compensation of



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Rs.11,90,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

17.The civil miscellaneous appeal stands dismissed and the cross objection stands partly allowed. The decree and judgment dated 01.12.2020 in M.C.O.P.No.1870 of 2018 on the file of the Motor Accident Claims Tribunal, V Additional District Court, Coimbatore, is modified to the above extent.

18.The Insurance Company is directed to deposit the modified/enhanced award amount before the Motor Accident Claims Tribunal, V Additional District Court, Coimbatore, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimants/respondents 1 and 2 in the civil miscellaneous petition/ cross objectors in the cross objection are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The cross objectors are not entitled to any interest for the period of delay, if any, in filing the cross objection. The cross objectors are directed to pay the requisite Court fee for the

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enhanced compensation amount, if required. The Motor Accident Claims Tribunal, V Additional District Court, Coimbatore, shall disburse

the enhanced amount upon production of certified copy showing proof of payment of Court fee by the cross objectors.

19.The civil miscellaneous appeal is dismissed. The cross objection is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

19.12.2024

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Motor Accident Claims Tribunal,
V Additional District Court, Coimbatore.



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M.DHANDAPANI,J.
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