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CMA NO.1626 OF 2022 & CROSS. OBJ.45 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 25 / 07 / 2024

JUDGMENT DELIVERED ON: 19 / 09 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.1626 OF 2022

AND

CMP NO.12059 OF 2022 IN CMA NO.1626 OF 2022

AND

CROSS OBJ. NO.45 OF 2023

CMA NO.1626 OF 2022

The Branch Manager,
National Insurance Co. Ltd.,
Sankaridurg Branch Office,
Door No.19/B, S.R.Complex,
Rajamani Thottam, Bhavani – Main Road,
NH 47, Sankagiri, Salem District – 637 301.

Now at: Motor 3rd Party Claim Cell
No.66, Greams Road,
Chennai – 600 006.

... Appellant /
2nd Respondent

Vs.

1.Lakshmi W/o. Late Ramesh
2.Aarthi D/o. Late Ramesh
3.Saroja W/o. Sugumar

... 1st to 3rd Respondents /
Petitioners



CMANO.1626 OF 2022 & CROSS. OBJ.45 OF 2023

4.M.Tamilselvi W/o. Mani

... 4th Respondent /
1st Respondent

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated January 28, 2022 in M.C.O.P.No.212 of 2021 passed by the Special District Court, MACT - Krishnagiri and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.P.Sankaranarayanan
For Respondents 1-3: Mr.S.P.Yuaraj
For Respondent – 4: Served – No appearance

CROSS OBJ. NO.45 OF 2023

1.Lakshmi W/o. Late Ramesh
2.Aarthi D/o. Late Ramesh
3.Saroja W/o. Sugumar

... Cross Objectors 1 to 3 /
Respondents 1 to 3

Vs.

1.The Branch Manager,
National Insurance Co. Ltd.,
Sankaridurg Branch Office,
Door No.19/B, S.R.Complex,
Rajamani Thottam, Bhavani – Main Road,
NH 47, Sankagiri, Salem District – 637 301.

Now at: Motor 3rd Party Claim Cell
No.66, Greams Road,
Chennai – 600 006.

... 1st Respondent /
Appellant

2.M.Tamilselvi W/o. Mani

... 2nd Respondent /
4th Respondent



PRAYER: Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code, 1908, to enhance the compensation amount awarded vide Award dated January 28, 2022 made in M.C.O.P.No.212 of 2021 on the file of Motor Accidents Claims Tribunal / Special District Judge, Krishnagiri, and fix the entire liability on the appellant / 2nd respondent, by allowing this Cross Appeal in C.M.A.No.1626 of 2022.

For Appellants : Mr.S.P.Yuaraj
For Respondent-1 : Mr.P.Sankaranarayanan
For Respondent-2 : No appearance

COMMON JUDGMENT

Feeling aggrieved with the Award dated January 28, 2022 passed by the 'Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri' ('Tribunal' for short) in M.C.O.P.No.212 of 2021, the second respondent therein - Insurance Company has preferred C.M.A.No.1626 of 2022 praying to set aside the Award, while the petitioners therein namely Lakshmi, Aarthi and Saroja, have preferred Cross Objection No.45 of 2023 praying to enhance the compensation.

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



Petitioners' case:

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3.First petitioner is the mother of the deceased - Arunkumar; second petitioner is his sister and third petitioner is his grandmother.

3.1.On October 2, 2018, at about 14.00 hours, the deceased - Arunkumar, son of late Ramesh, was riding a TVS Jupiter Scooty bearing Registration No.TN-70-X-2675 from Zuzuvadi towards Bederapalli, with one Vinoth as a pillion. While passing near S.V.S. Granite Company on the Sipcot to Bederapalli Road, the driver of the Ashok Leyland Trailer Lorry bearing Registration No. TN-52-F-5244, without giving any signal, warning, or indication of his approach, and without honking or following traffic regulations, suddenly pulled the Trailer Lorry out from the company premises onto the main road in a rash and negligent manner, thereby obstructing the road. As a result, Arunkumar lost control and crashed into the lorry. Consequently, Arunkumar sustained grievous injuries on his face and other vital organs and passed away on the spot. Post-mortem was conducted at the Government Hospital, Hosur.

3.2.Since, the accident occurred due to the rash and negligent driving of the Driver of the said Trailer Lorry, the Sipcot Police registered



a case in Crime No.383/2018 under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860 against the Driver of the Trailer Lorry. At the time of accident, the deceased was aged about 20 years. He worked as a Cable Operator, earning not less than Rs.20,000/- per month and was contributing his earnings towards the welfare of his family. The Trailer Lorry bearing Registration No.TN-52-F-5244 belongs to the first respondent and is insured with the second respondent. Hence, both the respondents are liable to pay compensation to the petitioners. Accordingly, the petitioners sought for a compensation of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) with interest and costs.

1st Respondent's case:

4.The first respondent did not appear and contest the petition. Hence, she was set *ex-parte* before the Tribunal on August 17, 2021.

2nd Respondent's case:

5.The second respondent – Insurance Company filed a counter stating that the first respondent's Trailer Lorry bearing Registration No.TN52-F-5244 was not insured with them at the time of accident; that the Driver of the Trailer Lorry did not possess a valid driving license to drive the vehicle; that the deceased who had pre-existing injury in legs



drove the vehicle without a proper Driving License and without wearing a Helmet; that the Driver of the Trailer Lorry had exited onto the road while following the traffic rules and regulations and taking due care and caution; that it was the deceased who was solely responsible for the accident, as he rode his Scooty rashly and negligently at over speed and caused the accident; that the police officials without conducting proper enquiry and also in order to support the petitioners, registered false First Information Report (FIR) against the Driver of the Trailer Lorry; that the age, income and occupation of the deceased are denied; that, hence, the second respondent is not liable to pay any compensation to the petitioners. Accordingly, the second respondent-Insurance Company prayed to dismiss the Original Petition.

Trial and Findings:

6.At trial, on the side of the petitioner, the first petitioner - Lakshmi was examined as P.W.1 and one Vinoth, eye-witness, was examined as P.W.2 and Ex-P.1 to Ex-P.12 were marked. On the side of the second respondent, J.Santhoshkumar, Record Clerk, Regional Transport Office (RTO Office) Hosur was examined as R.W.1 and C.Sankar, Special Sub Inspector of Police, Sipcot Police Station, Hosur was examined as



R.W.2 and Ex-R.1 to Ex-R.5 were marked.

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7.The Tribunal, after analysing the oral and documentary evidence adduced before it, concluded that the accident occurred due to the negligent act of the Driver of the first respondent's Trailer Lorry and hence, both the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners. The Tribunal further held that since the second respondent is the insurer of the first respondent's vehicle, the second respondent – Insurer is liable to indemnify the first respondent and the second respondent shall deposit the award amount. Accordingly, it awarded compensation as hereunder:

S.No.	Head	Amount
1	Loss of Dependency	Rs.18,14,400.00
2	Loss of Estate	Rs.15,000.00
3	Funeral Expenses	Rs.15,000.00
4	Loss of Consortium (P1 – Rs.40,000/- P2&P3 – Rs.20,000/- X 2 = Rs.40,000)	Rs.80,000.00
	Total	Rs.19,24,400.00

7.1.Further the Tribunal held that, the respondents 1 and 2 are liable to pay a sum of Rs.17,31,960/- (90%) out of the total award amount



of Rs.19,24,400/- as compensation to the petitioners with proportionate interest and cost, and the petitioners were directed to bear upon Rs.1,92,440/- (10%) out of the total award amount of Rs.19,24,400/- for contributory negligence.

8. Feeling aggrieved with the said Award, the second respondent – Insurance Company has preferred the Civil Miscellaneous Appeal, praying to set aside the same.

9. Dissatisfied with the Award amount, the petitioners have preferred the Cross Objection praying to enhance the Award amount as well as to fix the negligence entirely on the second respondent – Insurance Company.

Arguments

10. The learned Counsel for the appellant / second respondent has argued that the appellant has proved the fact that the deceased - Arunkumar did not possess a valid driving license at the time of accident to drive the motorcycle; that the Lorry driver could not have driven the Lorry in a rash and negligent manner, since the accident happened when the Lorry drove onto the road from company premises; that it is the deceased who rode the motorcycle in a rash and negligent manner and collided



with the Lorry and thus, invited the accident; that the deceased's mother entered into a remarriage and hence, cannot be considered a dependant; that the sister of the deceased was not residing with him; that only the third respondent / third petitioner – Saroja (Grandmother of the deceased) could be considered as a dependant of the deceased; that the Tribunal failed to consider the said facts and thereby, erred in deducting 1/3rd from the notional income while awarding compensation; and that the Tribunal wrongly fastened the liability on the appellant / second respondent – Insurance Company. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award.

11.Per contra, the learned Counsel for the respondents 1 to 3 / petitioners has contended that the accident occurred only due to the rash and negligent driving of the Driver of the Lorry bearing Registration No.TN52-F-5244; that P.W.2, who was the pillion rider on the motorcycle, has deposed that the accident occurred only due to the negligent driving of the first respondent's Lorry Driver; that Ex-P.4 - Motor Vehicles Report pertaining to the first respondent's Lorry and Ex-R.4 – Motor Vehicles Report pertaining to the motorcycle bearing Registration No.TN70-X-2675, establish that the accident took place only due to the rash and negligent driving of the first respondent's Driver; that the second



respondent – Insurance Company failed to prove their case; that they neither examined the first respondent *i.e.*, owner of the Lorry nor examined the Driver of the first respondent's Lorry; that FIR was registered against the Driver of the Lorry and after investigation, final report was laid against the first respondent's Driver; that under such circumstances, the respondents 1 to 3 / petitioners proved that the accident occurred only on the negligence of the first respondent's Driver.

11.1.The learned Counsel further submitted that while awarding compensation in favour of the petitioners, the Tribunal failed to consider the fact that at the time of the accident, the deceased was 22 years old and passed away leaving behind his mother, unmarried sister and grandmother as his dependants. Further that, though the petitioners were unable to produce documents to substantiate the monthly income of the deceased, considering the age of the deceased and the year of the accident, the Tribunal ought to have taken at least a sum of Rs.15,000/- per month as notional income; but the Tribunal miserably failed to do so. Accordingly, he prayed to allow his Cross Objection and thereby, enhance the Award amount.

Discussion:



12.This Court has considered the rival submissions and perused the materials available on record.

13.Admittedly, FIR was registered against the Driver of the first respondent's Lorry and a charge sheet was also filed against the Driver of the first respondent's Lorry. However, neither the first respondent nor the driver of the first respondent was examined by the second respondent – Insurance Company. Petitioner side examined one Vinodh (P.W.2) as an eye-witness. He was a pillion rider at the time of accident. His evidence establishes the negligent on the part of the first respondent's driver. By considering the oral and documentary evidence available on record, the Tribunal rightly came to the conclusion that the accident occurred primarily due to the rash and negligent driving of the Driver of the first respondent's Lorry. Hence, this Court is of the view that there is no need to interfere with the finding of the Tribunal with respect to the cause of accident.

14.As far as the quantum of compensation is concerned, the Tribunal relied upon Ex-P.8 to fix the age of the deceased at the time of accident as 22 years. Though the petitioners averred that at the time of



accident, the deceased was a Cable Operator, the petitioners were not able to prove the monthly income of the deceased. Hence, the Tribunal, considering the age of the deceased, fixed a sum of Rs.9,000/- as notional income, which in the opinion of this Court is on the lower side. Considering that the accident occurred in the year 2018; that the deceased was aged 22 years at that time; that he had three dependants (1st and 2nd petitioners are also dependants for reasons to be stated in Paragraph No.16 *infra*, this Court is of the opinion that he would have earned at least a sum of Rs.12,000/- per month in order to maintain his family. Accordingly, this Court fixes the notional income at Rs.12,000/- per month.

15.The Tribunal adopted the multiplier of 18, and applied 40% future prospects which is in line with the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi & Others [(2017) 16 SCC 680]***. This Court does not find any irregularity with it.

16.Then, since the deceased was a Bachelor at the time of accident, the Tribunal deducted 1/3rd towards his personal expenses. The deceased's father passed away about 15 years ago. According to the



appellant/second respondent – Insurance Company, the first petitioner (mother of the deceased) remarried one Sreenivasan after the demise of her husband. However, the said statement has been denied by the first petitioner. Therefore, this Court is of the considered view that burden is upon the appellant to prove his assertion that the first petitioner entered into a re-marriage. But the appellant has not adduced any evidence to prove his assertion and hence, has failed to prove the said fact. Further, the deceased's sister is admittedly unmarried, and Ex-P.9 would show that the deceased's sister is a physically differently abled. Furthermore, admittedly, the deceased was residing with his grandmother (third petitioner). Hence, naturally, all three of them would have been primarily dependant on the income generated by the deceased. In other words, the deceased left behind him a widowed mother, unmarried and physically differently abled sister, and age old grandmother as his dependants.

16.1. In this regard, it is opposite to mention here that the Hon'ble Supreme Court in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another [(2009) 6 SCC 121]***, in Paragraph No.32 has held as follows:

“32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the



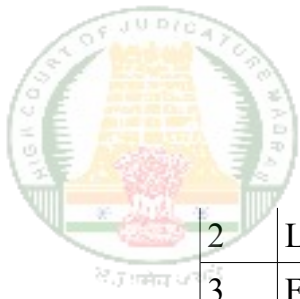
bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

16.2.Following the dictum laid down by the Hon’ble Supreme Court in ***Sarla Verma’s case*** (*supra*), this Court is of the view that the appropriate deduction towards personal expenses would be 1/3rd. The Tribunal has rightly applied 1/3rd deduction towards personal expenses.

17.Taking the notional income as fixed by this Court at Rs. 12,000/- per month, and after deducting one-third for personal expenses, applying a 40% increase for future prospects, and using a multiplier of 18, the compensation under the head of ‘loss of dependency’ would be Rs. 24,19,200/-.

18.To sum up, this Court concludes that the petitioners are entitled to compensation in the following manner:

S.No.	Heads	Amount awarded by the Tribunal	Re-quantified by this Court	Status
1	Loss of dependency	Rs.18,14,400.00	Rs.24,19,200.00 [Rs.12,000/- (I)+ 40% (FP) X 2/3 (PD) X 12 (m) X 18 (M)]	Enhanced



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2	Loss of Estate	Rs.15,000.00	Rs.15,000.00	Confirmed
3	Funeral Expenses	Rs.15,000.00	Rs.15,000.00	Confirmed
4	Loss of Consortium	Rs.80,000.00	Rs.1,20,000.00	Enhanced
	Total	Rs.19,24,400.00	Rs.25,69,200.00	Enhanced
Note: In the above table, 'I' denotes 'Notional Income', 'FP' denotes 'Future Prospects', 'PD' denotes 'Personal Deductions', 'M' denotes 'Multiplier applied' and 'm' denotes 'months'.				

19. Further, the Tribunal held that out of the total amount of Rs.19,24,400/- awarded by it, the petitioners are entitled to 90% from the respondents 1 and 2 and that the petitioners should bear upon 10% of the award amount, as the deceased / rider of the two wheeler at the time of occurrence was driving the vehicle without having a valid driving license and there is a possibility of violating Motor Vehicles Rules and contributory negligence as well. Holding so, the Tribunal directed the second respondent – Insurance Company to deposit Rs.17,31,960/- as compensation to the petitioners and directed the petitioners to bear a sum of Rs.1,92,440/- in the total award amount.

20. This Court is of the considered view that the stand taken by the Tribunal does not warrant any interference. Accordingly, the appellant / second respondent – Insurance Company is directed to deposit 90% of the award amount now arrived at by this Court i.e., **Rs.23,12,280/-** (**Rs.25,69,200 X 90/100 = Rs.23,12,280/-**) and the petitioners are directed to bear 10% of the award amount i.e., **Rs.2,56,920/-** (Rs.25,69,200 X



10/100 = Rs.2,56,920/-) for contributory negligence.

Conclusion

21. In view of the foregoing reasons, CMA No.1626 of 2022 is to be dismissed, and Cross Objection No.45 of 2023 is to be allowed in part and the amount awarded by the Tribunal at Rs.19,24,400/- is to be enhanced to Rs.25,69,200/- (Rupees Twenty Five Lakh Sixty Nine Thousand Two Hundred Only).

22. Accordingly, the appellant / second respondent- Insurance Company is directed to deposit the modified award amount of Rs.23,12,280/- (Rupees Twenty Three Lakh Twelve Thousand Two Hundred and Eighty Only) to the credit of M.C.O.P.No.212 of 2021 on the file of the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases) Krishnagiri. with accrued interest and costs, less the amount if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / first petitioner is entitled to Rs.9,00,000/- (Rupees Nine Lakh Only) with subsequent interest and proportionate cost; the second respondent / second petitioner is entitled to Rs.10,00,000/- (Rupees Ten Lakh Only) with subsequent interest and proportionate cost; and the third



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respondent / third petitioner is entitled to Rs.4,12,280/- (Rupees Four Lakh Twelve Thousand Two Hundred and Eighty Only) with subsequent interest and proportionate cost. The respondents 1 to 3 / petitioners are permitted to withdraw their share as per the procedure, less the amount if any already withdrawn.

23.In fine,

(i)CMA No.1626 of 2022 is dismissed.

(ii)Cross Objection No.45 of 2023 is partly allowed.

(iii)There shall be no order as to costs.

(iv)Consequently, connected Civil Miscellaneous Petition is closed.

19 / 09 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK



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CMA NO.1626 OF 2022 & CROSS. OBJ.45 OF 2023

R.SAKTHIVEL, J.

TK

To

The Motor Accidents Claims Tribunal
(Special District Court for Motor Accident Claims Cases)
Krishnagiri.

PRE-DELIVERY COMMON JUDGMENT MADE IN

CMA NO.1626 OF 2022

AND

CROSS OBJ.45 OF 2023

19 / 09 / 2024