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CMA.No.536 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.536 of 2024 & C.M.P. No.5329 of 2024

&

Cros. Obj. No.35 of 2024

C.M.A. No.536 of 2024

The Reliance General Insurance Company Limited,
Sakthi Super Market,
3rd Floor, 408 Perundurai Road,
Erode - 638 011.

... Appellant

VS.

1. Periyammal
2. Appusamy
3. Shankar
4. Vijay
5. Meenatchi
6. Moorthi

... Respondents

CROS. OBJ. NO.35 of 2024

Periyammal

... Cross Objector

Vs.

1. The Reliance General Insurance Company Limited,
Sakthi Super Market,
3rd Floor, 408 Perundurai Road,
Erode - 638 011.
2. Appusamy



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3. Shankar

4. Vijay

5. Meenatchi

6. Moorthi

... Respondents

PRAYER in C.M.A. No.536 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.12.2022 in M.C.O.P.220/2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Judge, Erode at Bhavani.

PRAYER in CROS.OBJ. No.35 of 2024

Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award dated 21.12.2022 in M.C.O.P.220/2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Judge, Erode at Bhavani.

Appearance In C.M.A. No.536 of 2024

For Appellant	:	Mr.P.Suresh Srinivasan
For R1	:	Mr.Ma.P.Thangavel
For R2 to R6	:	No appearance

Appearance in Cros. Obj. No. 35 of 2024

For Cross Objector	:	Mr.Ma.P.Thangavel
For R1	:	Mr.P.Suresh Srinivasan
For R2 to R6	:	No appearance

COMMON JUDGMENT



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The appellant, the Reliance General Insurance Company Limited in CMA No.536 of 2024 is the 6th respondent, while the Cross Objector in Cross Objection.35 of 2024 is the claimant in M.C.O.P.220/2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Judge, Erode at Bhavani.

2. The Cross Objector / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.20,00,000/- for the death of her son Thangaraj, in a road accident that took place on 08.11.2017.

3. The case of the claimant in a nutshell is as follows:

3.1. On 08.11.2017, Thangaraj (deceased) was travelling as a Pillion rider in a two wheeler bearing Registration number TN-36-AT-4223 driven by the third respondent in MCOP.220/2018 on Coimbatore - Salem National highways. When they were nearing Kanchikoil Pirivu at Perundurai, a Maruti Omni Van bearing Registration Number TN-33-BB-6265, hit the two wheeler, as a result of which, Thangaraj fell down and sustained injuries all over his body. He was immediately rushed to KMCH Hospital, Erode, from where he was referred to Government Hospital,



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Erode. However, he succumbed to injuries the next day i.e., 09.11.2017.

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3.2. According to the claimant, the rash and negligent driving of the driver of the two wheeler bearing Registration number TN-36-AT-4223 as well as the driver of the Maruti Omni Van bearing Registration number TN-33-BB-6265 were the cause of the accident. Since the owner of the two wheeler had insured his vehicle with the Reliance General Insurance Company Limited, the owner of the two wheeler and owner of the Maruti Omni van as well as the Reliance General Insurance Company Limited (insurer of the two wheeler) are jointly and severally liable to pay compensation to her. The Maruti Omni van was not insured.

4. The Tribunal after analysing the evidence on record, fastened composite negligence on the part of the rider of the two wheeler and the driver of the Maruti Omni Van in the ratio 35:65 and awarded compensation of Rs.13,72,700/- vide its orders dated 21.12.2022.

5. Aggrieved over the same, the Reliance General Insurance



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Company Limited filed CMA No.536 of 2024 disputing the Award and the claimants filed Cross Objection.35 of 2024 seeking enhancement of compensation.

6. Heard Mr.P.Suresh Srinivasan, learned counsel appearing for the Reliance General Insurance Company Limited and Mr.Ma.P.Thangavel, learned counsel for the claimant.

7. Mr.P.Suresh Srinivasan, learned counsel appearing for the Reliance General Insurance Company Limited contended that the Tribunal had wrongly fastened composite negligence on the part of the drivers of two wheeler and Maruti Omni Van in the ratio 35:65, when the Police after conducting investigation, laid a final report against the driver of the Maruti Omini van bearing Registration number TN-33-BB-6265. He also drew the attention of this Court to the evidence of one Chinnasamy (P.W.2) the eye witness to the occurrence and contended that the driver of the Maruti Omni van was the wrong doer and in the circumstances, fastening composite negligence on the part of the rider of the two wheeler to the extent of 35% is wrong. He therefore prayed for setting aside the



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order of the Tribunal in this regard.

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8. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the claimant drew the attention of this Court to the rough sketch (Ex.P5) and contended that Maruti Omni van was proceeding from South to North and the two wheeler which was coming from West to East on Coimbatore-Salem National highways. According to him, both the drivers while the driving their respective vehicles should have been careful and therefore, the composite negligence should be fixed as 50:50. He also relied on the decision of the Hon'ble Supreme Court in *Khenyei Vs. New India Assurance company Ltd., & Ors.* reported in **2015 (1) TN MAC 801 (SC)** and contended that in the case of composite negligence, apportionment of compensation between two tort-feasors, is not permissible and the claimant can recover at his option whole damages from any of them.

9. In the instant case, both the tort-feasors have been impleaded and the Tribunal has fastened composite negligence in the ratio 35:65. since both the drivers were in fault in driving their respective vehicle on



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the road. The scene of occurrence shown in the rough sketch (Ex.P5) goes to prove that both the vehicles were at fault. Therefore, the ratio of composite negligence is fixed as 50:50. Since the rider of the two wheeler bearing Registration number TN-36-AT-4223 did not have a valid driving licence on the date of accident, the appellant Reliance General Insurance company Limited can pay 50% of the award amount in the first instance and then recover the same from the rider of the two wheeler.

10. Quantum of Compensation:

The contention of the learned counsel for the claimant is that the deceased was aged 27 years on the date of accident. The claimant is the widowed mother of the deceased. The deceased was working as a Machine operator in Lakshmi Printing and Dying, Chithodu, Erode District, earning a sum of Rs.20,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. He therefore prayed for enhancement of the compensation.

11. It is pertinent to point out that the accident took place in the



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year 2017 and the age of the deceased is 27 years. Considering the year of the accident as well as the age and avocation of the deceased, this Court is of the opinion that fixing notional monthly income as Rs.16,000/- 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. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 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.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/3 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 17

= Rs.22,84,800/-

In addition to that, the claimants are entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- for loss of Consortium, loss of Estate and funeral



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Expenses respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra). Thus, the claimants are entitled to a total compensation of Rs.23,54,800/- (22,84,800 + 40,000 + 15,000 + 15,000= 23,54,800) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.22,84,800/-
2.	Loss of consortium	Rs.40,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.23,54,800/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,72,700/- to Rs.23,54,800/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- The Civil Miscellaneous Appeal No.536 of 2024 and the Cross Objection.35 of 2024 are partly allowed. No costs. Consequently connected civil miscellaneous petition is closed.
- The compensation awarded by the Tribunal is enhanced from Rs.13,72,700/- to Rs.23,54,800/-.



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iii. The ratio of composite negligence between the owner of the Maruti

Omni van and the owner of the two wheeler is fixed as 50:50.

iv. The liability of the driver and the owner (Respondents 2 and 3) of the Maruti Omni Van bearing Registration number TN-33-BB-6265 (owner) is joint and several and the owner of the Omni van, 3rd respondent is directed to deposit 50% of the enhanced compensation amount (less the amount already deposited) together with interest @ 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/uploading of the order to the credit of M.C.O.P.No.220/2018 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Erode District at Bhavani.

v. The appellant, Reliance General Insurance Company Limited in C.M.A. No. 536 of 2024 is directed to deposit 50% of the compensation amount (less the amount already deposited) 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.220/2018 on the file of the Motor Accident Claims



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Tribunal, IV Additional District & Sessions Judge, Erode at Bhavani in the first instance and then recover the same from the owner of the two wheeler.

vi. On such deposits being made, the claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

05.09.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
vum

To

1. The Motor Accident Claims Tribunal,
IV Additional District & Sessions Judge,
Erode at Bhavani.
2. The Section Officer, V.R. Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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