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C.M.A.No.3153 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

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THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.3153 of 2021

and C.M.P.No.17838 of 2021

Cholamandalam MS General Insurance Co. Ltd.,
Tiam House, V Floor,
72, Rajaji Salai,
Chennai – 600 001

...Appellant

Vs.

1. Kavitha
2. Preetha
3. Minor Pradeep @ Manoj,
S/o. Pownraj,
Minor is represented by his Next friend,
Mother, Kavitha

4. N.Varalakshmi

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree in M.C.O.P.No.636 of 2019 dated 15.02.2021 on the file of the Motor Accidents Claims Tribunal,



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Special District Court, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for C.Harini

For Respondents

For R1 to R3 : Mr.S.Sathya Raj
For R4 : Not ready in Notice

JUDGMENT

The above Civil Miscellaneous Petition is directed against the order passed by the Motor Accident Claims Tribunal, Special District Court, Krishnagiri dated 15.02.2021 in M.C.O.P.No.636 of 2019.

2. For the sake of convenience, the parties herein are referred to as they are ranked before the Tribunal.

3. Shortly stated, on 06.05.2004 the deceased Pownraj was proceeded in Auto bearing Registration No.TN-04-L-5339 belonging to the 1st respondent and insured with the 2nd respondent, in Sivanchettypalayam to Chennai road. At about 8.30 hours, while the Auto was proceeding near GNT



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Road at Athimedu Village, at that time the said Auto suddenly dashed on the water tank lorry, which was parked in front of the Auto without any indication and due to that, the accident had taken place. The deceased had sustained head injury and various fatal injuries on his vital organs and died on the spot. The postmortem on the body of the deceased was conducted at Government Stanly Medical College and Hospital, Chennai. The ES Sholavaram Police have filed FIR in Cr.No.255 of 2004 under Sections 279, 338 and 304-A of IPC.

4. At the time of the accident, the deceased was only 34 years old. He was hale and healthy and he was an experienced hard working Auto Driver at the time of accident. As such he earned Rs.15,000/- per month and he used to contribute his entire income for the welfare of the family. The deceased was the only bread-winner of the family.

5. The petitioners are the wife and children of the deceased. The claim of the petitioners were resisted by the 2nd respondent/Insurance Company stating that the accident had taken place only due to the lorry which



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was parked in the middle of the road without any danger light and therefore, the driver of the lorry is responsible for the accident. The owner, driver and Insurance Company are the necessary parties in the claim petition. Hence, the claim petition is bad for non joinder of necessary parties. The further submission is that the amount of compensation is excessive and therefore, the petition is liable to be dismissed.

6. Based on the pleadings, the claims Tribunal formulated two points for consideration which are extracted here under:

1. Whether the Respondents are liable to pay the Compensation to the petitioners?

2. If so, what is the quantum of the compensation the petitioners are entitled to?

7. The Tribunal came to the conclusion that the accident had taken place as alleged in the claim petition and therefore, the claimants are entitled for compensation jointly and severally from the owner and insurer of the vehicle namely Auto bearing Registration No.TN 04 L 5339. The



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compensation of Rs.6,51,696/- has been awarded carrying interest at the rate of 7.5% per annum. Aggrieved by this, the 2nd respondent/Insurance Company is on appeal on the ground that the claim petition is filed under Section 163 A of the Motor Vehicles Act and the compensation has to be in accordance with the Second Schedule of the Motor Vehicles Act.

8. While so, the Tribunal having fixed the monthly income at Rs.2,800/- as per Second Schedule, erred in adding 40% towards future prospects, which is not awarded for the compensation claimed under Section 163 A of the Motor Vehicles Act. Therefore, the pecuniary loss assessed at Rs.5,01,696/- by adding future prospects is erroneous and the Tribunal further erred in awarding Rs.1,20,000 towards loss of consortium, Rs.15,000/- each towards loss of estate and funeral expenses, whereas the amount payable under Second Schedule is only Rs.5,000/- towards loss of consortium, Rs.2500/- and Rs.2000/- towards loss of estate and funeral expenses respectively. Therefore, the compensation of Rs.6,51,696/- awarded by the Tribunal calls for interference.



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9. On the other hand, the learned counsel appearing for the claimants/respondents would submit that due to the accident, the deceased sustained head injury and succumbed to the injuries sustained by him. Considering the facts and circumstances of the case, the Tribunal has rightly awarded compensation, which calls for any interference.

10. Admittedly, the petition has been filed under Section 163 A of the Motor Vehicles Act. The accident had taken place in the year 2004 and the application has been filed under Section 163 A of the Motor Vehicles Act. The compensation as pointed out by the learned counsel appearing for the appellant/Insurance Company necessarily has to be taken in accordance with the Schedule II of the Motor Accident Act. Since the Tribunal also fixed the monthly income of the deceased at Rs.2,800/- per month, 40% towards future prospects ought not to have been added by the Tribunal as per the Second Schedule of the Act.

11. The claimants are entitled to compensation as per Schedule II of Section 163 A of the Motor Vehicles Act, 1988. The deceased was working



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as Auto Driver and was earning a sum of Rs.40,000/- per annum. The deceased was aged 34 years at the time of accident and the multiplier applicable as per Schedule II is '17'. After deducting 1/3rd towards personal expenses, the compensation towards loss of dependency comes to Rs.4,53,333/- [Rs.40,000/- X 17 X 2/3]. Accordingly, award towards loss of dependency is reduced from Rs.5,01,696/- to Rs.4,53,333/-

12. Moreover, as per the Second Schedule of the Act only Rs.5,000/- towards loss of consortium and Rs.2,500 towards Loss of Estate on future expenses ought to have been awarded. But the Tribunal has awarded Rs.1,20,000/- towards loss of consortium and Rs.15,000/- towards loss of Estate and funeral expenses, which requires interference. Hence, as per the schedule II, the compensation of Rs.5,000/- towards loss of consortium, Rs.2,500/- for loss of estate and Rs.2,000/- for funeral expenses is awarded.

13. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	5,01,696/-	4,53,333/-	modified
2.	Loss of Consortium	1,20,000/-	5,000/-	modified
3.	Loss of Estate	15,000/-	2,500/-	modified
4.	Funeral Expenses	15,000/-	2,000/-	modified
	Total	Rs.6,51,696/-	Rs.4,62,833/-	Reduced by Rs.1,88,863/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,51,696/- is hereby reduced to Rs.4,62,833 /- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount, if any,



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already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2024

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

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

2. The Section Officer,
VR Section,
High Court, Madras.



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