



C.M.A.No.3451 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3451 of 2021
and Cros. Obj. No.100 of 2023
and C.M.P.Nos.19885 of 2021, 27859 of 2023

Cholamandalam MS General Insurance Co. Ltd.,
No.9, Rajaji Road,
State Bank of Travancore Upstairs,
Peramanur, Salem.

... Appellant

Vs.

1.A.Veronika Glory
2.A.Ashily Mariaraj
3.A.Annson Franklin
4.Minor A.Alln Regan
*(R4 declared as major by order of this Court
order dated 10.01.2024 in C.M.P.No.537 of 2024
in C.M.A.No.3451 of 2021)*
5.R.Devendran
6.S.Ramkumar
7.V.Krishnan

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 16.03.2021 in MCOP.No.177 of 2017 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) at Coimbatore.



C.M.A.No.3451 of 2021

For Appellant : Ms.R.Sree Vidhya

For Respondents : Ms.V.S.Usharani for R1 to R4

R 5 to R7 – Exparte

J U D G M E N T

This appeal filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.177 of 2017 dated 16.03.2021.

2.The claimants have also subsequently filed a cross objection for enhancement of compensation in M.C.O.P.No.177 of 2017 dated 16.03.2021.

3.The facts leading to filing of this appeal is as follows:

The claimants are the dependents of one Amalraj Joseph, who was a driver by profession. On 07.03.2016 at about 2.00 p.m., the deceased was driving a Maruthi Astar car bearing Registration No.MH-03-BJ-0453 to Aruppukkottai along with passengers. While the vehicle reached near Kamalapuram Konar Complex on the Dindigul – Madurai National Highway, a Tipper lorry bearing Registration No.TN-52-X-8328 came



behind the car in a rash and negligent manner dashed the car which resulted in capsizing the car. In the accident, the deceased sustained grievous injuries and after the treatment, he succumbed. In this regard, a criminal case was also registered in Crime No.83 of 2016 on the file of Ammayanaickanur Police Station against the driver of the Tipper lorry. The first claimant is the wife and other claimants 2 to 4 are the children of the deceased and they have come forward with a claim petition seeking compensation for a sum of Rs.51,50,000/- by invoking under Section 166 of the Motor Vehicles Act, 1988.

4.The first respondent is the driver, the third respondent is the former owner of the vehicle, the second respondent is the owner of the vehicle and the fourth respondent is the insurer of the vehicle. Except the fourth respondent, all others have remained exparte. The fourth respondent Insurance Company has contested the claim and disputed the manner in which the accident took place and also disputed the age, income and avocation of the deceased and also the dependency of the claimants.



WEB COPY

5.The Tribunal after considering the evidence placed on record has held that the driver of the Tipper lorry is a tortfeasor and the fourth respondent is liable to pay compensation. The Tribunal also quantified the compensation and awarded a sum of Rs.24,02,672/- as a compensation.

6.Aggrieved over the quantum of compensation, the Insurance Company filed the present appeal and the claimants have filed a cross objection seeking enhancement of compensation.

7.The learned counsel for the Insurance Company submits that there is no proof of income adduced before the Tribunal, however, the Tribunal by fixing the notional income and awarded compensation under the loss of income which is on the higher side. Further, the compensation awarded under other heads is also not in accordance with the settled principles of law. Hence prays to modify the same.

8.Per contra, learned counsel for the claimants submit that the compensation fixed by the Tribunal more particularly under the head loss of income is on the lower side, even though the avocation of the deceased as a



C.M.A.No.3451 of 2021

driver has been established, the Tribunal has not accepted the evidence of P.W.3 who have stated that the income of the deceased was more than Rs.15,000/- per month. Hence prays to enhance the same and he has also relied upon a judgment of this Court made in C.M.A.No.57 of 2022 dated 25.01.2022 and Apex Court judgment “Manusha Sreekumar & Ors. vs. The United India Insurance Co. Ltd. in 2022 LiveLaw (SC) 858.

9.I have considered the rival submissions made on both sides and perused the entire records.

10.The claimants have marked the driving license of the deceased to show that the deceased was a driver by profession. Further, they have also examined P.W.2 and P.W.3 who used to engage the deceased as an acting driver on temporary basis. According to P.W.2 & P.W.3, they used to engage the deceased whenever they required his services to drive the car. They used to pay Rs.1,500/- per day. However, in the cross-examination elucidated that they have not maintained any records to show that the payments were made by them. Except their oral evidence, there is no evidence placed on record to show that how many days they used to engage



WEB COPY

and what is the payment made by them. Hence, the Tribunal has held that the deceased would be engaged only for 10 days in a month and would get Rs.15,000/- per month as salary. This Court is unable to appreciate the same in the absence of any documents or any supporting evidence to corroborate the evidence of P.W.3, he paid Rs.1,500/- per day.

11.It is the case of the claimants that he has engaged throughout the month and restricting 10 days per month is also not proper.

12.Whenever there is no income proof for fixing the compensation for the loss of income for the driver, this Court consistently follows a Division Bench judgment of this Court in *Andal and Others vs. Avinav Kannan and Others* reported in **2019 (1) TN MAC 54 (DB)** has been followed by a learned Single Judge of this Court in the judgment cited supra by the claimants in C.M.A.No.57 of 2022 wherein by following the Division Bench of this Court in Andal's case and other fixed the monthly income of the deceased therein as Rs.14,562/- for the accident taken place in the year 2019.

13.A judgment of the Hon'ble Apex Court in the case of *Manusha*



Sreekumar & Ors. vs. The United India Insurance Co. Ltd., reported in **2022 LiveLaw (SC) 582**, the Hon'ble Apex Court while deciding the notional income fixed for the driver from Kerala by following the Kerala Wages Act and the notification issued for fixing the minimum wages as fixed Rs.15,600/- as a monthly income for the year 2015.

14.The Hon'ble Apex Court has fixed the above income based on the notification issued by the Government of Kerala whereas in our State is consistently following a Division Bench judgment in Andal and Others case cited supra, considering the date of accident, this Court is of the view that the applicable proper income of the deceased herein is Rs.12,798/- for the year 2015-2016. Further, the claimant herein has died at the age of 49 years. Hence, he is also entitled for future prospects 25% and multiplier is 13% and 1/4 is deducted for personal expenses. Accordingly, loss of income is summed up as follows: Rs.12,798 + Rs.3,199 (25%) =Rs.15,997 – 1/4th of Rs.15,997 is Rs.11,998 (Rs.15,997 – Rs.3,999 = Rs.11,998). Rs.11,998 x 12 x 13 = Rs.18,71,688/.

15.It is also pointed by the learned counsel for the Insurance Company that the accident was taken place prior to the passing of the



WEB COPY

judgment of the Hon'ble Apex Court in National Insurance Company Ltd., Vs. Pranay Sethi, wherein, the Hon'ble Apex Court has held that the applicable consortium to the claimants is Rs.40,000/-. But the Tribunal has wrongly added another 10% consortium to the claimant which is not proper. The Tribunal has held that every 3 years, the consortium has to be increased to 10% of Rs.40,000/- fixed by him. In this case, the accident itself took place in the year 2016. Accordingly, the same is modified. As far as the functional heads of loss of estate and funeral expenses are concerned, the claimants are entitled to Rs.15,000/- each.

16.Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. N o.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	Rs.21,93,672/-	Rs.18,71,688/-	Reduced
2.	Funeral Expenses	Rs.16,500/-	Rs.15,000/-	Reduced
3.	Loss of Estate	Rs.16,500/-	Rs.15,000/-	Reduced
4.	Loss of consortium to each Rs.40,000/-	Rs.1,76,000/-	Rs.1,60,000/-	Reduced
	Total	Rs.24,02,672/-	Rs.20,61,688/-	Reduced by Rs.3,40,984/-



C.M.A.No.3451 of 2021

WEB COPY

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.24,02,672/- is hereby reduced to Rs.20,61,688/- [Rupees Twenty Lakhs Sixty One Thousand and Six Hundred and Eighty Eight only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.177 of 2017 on the file of the Motor Accidents Claims Tribunal, III Addl. District Judge, Coimbatore. On such deposit, the claimants are permitted to withdraw equally among themselves of such compensation amount now determined by this Court along with proportionate interest and costs, less the amount, if any, already withdrawn. In view of the orders passed in C.M.P.No.537 of 2024 in C.M.A.No.3451 of 2021 dated 10.01.2024, the fourth respondent/claimant is declared as major. The Tribunal shall disburse the amount now determined by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The



C.M.A.No.3451 of 2021

Appellant-Insurance Company is permitted to withdraw the excess amount, which was lying in the credit of M.C.O.P.No.177 of 2017, already deposited, if any. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. The Cross Objection filed by the respondents is dismissed. Consequently, the connected miscellaneous petitions stands closed.

10.01.2024

Index : Yes / No
Speaking Order: Yes / No
Neutral Citation Case : Yes/No
pam



C.M.A.No.3451 of 2021

To

WEB COPY

- 1.The Motor Accident Claims Tribunal
(III Additional District Judge) at Coimbatore.
- 2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.3451 of 2021

K.RAJASEKAR, J.

pam

C.M.A.No.3451 of 2021

10.01.2024

(1/2)