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C.M.A.No.2469 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2469 of 2023

and

C.M.P.No.28792 of 2023

1. Saroja

2.Kasilingam

..

Appellants

Vs.

1. Devaraj

2.ICICI Lombard General Insurance Company Limited,
Motor Third Party Claims Office,
No.84 & 52, Second Floor,
Arihant Plaza, Waltax Road,
Chennai-600 003.

(Amended as per Order

in M.P.No.1/2021 dated 11.04.2022)

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the common Judgment and Decree dated 24.11.2022 made in M.C.O.P.No.798 of 2017 on the file of the Motor Accident Claims Tribunal, (III Judge, Court of Small Causes), Chennai.



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For Appellants : Mr.K.Sivakumar

For Respondents : Mr.A.Salomi (R2)

J U D G M E N T

Challenging the fixation of liability against the rider/owner of the two wheeler and exonerating the 2nd Respondent/Insurance Company from payment of compensation vide award dated 24.11.2022 made in M.C.O.P.No.798 of 2017 on the file of the Motor Accident Claims Tribunal, (III Judge, Court of Small Causes), Chennai as well as quantum of compensation awarded by the Tribunal, the Appellants have filed the present Civil Miscellaneous Petition.

2. The Appellants are the Claimants in M.C.O.P.No.798 of 2017 on the file of *Motor Accidents Claims Tribunal, (III Judge, Court of Small Causes), Chennai*. They filed the above said claim petition, claiming a sum of **Rs.50,00,000/-** as compensation for the death of one Manikandan, who died in an accident that took place on 29.11.2016.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by



the rider of the Motor Cycle bearing Registration No.TN-18-13-B-4082, belonging to the 1st respondent, in which the deceased travelled as a pillion rider and directed the 1st Respondent-Owner of the two wheeler to pay a sum of **Rs.19,24,400/-** as compensation to the Appellants, thereby exonerating the 2nd Respondent/Insurance Company to pay the aforesaid compensation.

4. Not being satisfied with the quantum of compensation and being aggrieved against the fixation of liability on the 1st Respondent/owner of the two wheeler and exonerating the 2nd Respondent/Insurance Company from payment of compensation, this Civil Miscellaneous Appeal has been filed by the Appellants.

5. The learned counsel for the Appellants contended that there is no dispute with regard to the factum of accident as well as the fixation of negligence on the part of the 1st Respondent/Owner of the two wheeler and the challenge is with regard to the fastening of liability on the 1st Respondent to pay the compensation, on the ground that the two wheeler was insured under a comprehensive policy, as per which there is coverage to the pillion rider. He further submitted that the quantum of compensation awarded by the



Tribunal is very low and prays for enhancement of compensation.

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6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the present case on hand, the Insurance Policy issued was an comprehensive policy and the same would cover the pillion rider also. She fairly submits that the Tribunal erroneously came to the conclusion that the policy insured was an Act Policy and thereby exonerated the Insurance Company from payment of compensation. She further submits that the Tribunal has fixed the notional income of the deceased at Rs.12,000/- per month, which is on the higher side and therefore submits that reasonable amount may be fixed as notional income. She further submitted that the compensation under other heads are reasonable and the same does not warrant interference.

7.Heard the learned counsel appearing for the Appellants as well as the learned counsel appearing for the 2nd Respondent-Insurance Company and perused the entire materials on record.



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8. As far as fixation of liability is concerned, the Tribunal while fixing the negligence on the owner of the two wheeler was under the impression that the vehicle was insured under an Act Only policy and thereby erroneously exonerrated the Insurance Company from payment of compensation. Today, the learned counsel for the 2nd Respondent/Insurance Company has clarified that the policy issued with respect to the 1st Respondent's two wheeler is a comprehensive policy and the same would cover the pillion rider also. The Insurance policy is marked along with R.C.book as Ex.P5. Therefore, this Court is of the view that fastening of liability on the owner of the vehicle is liable to be set aside and accordingly the same is set aside and liability to pay the compensation is fixed on the insurance company.

9. As far as quantum of compensation is concerned, the accident occurred in the year 2016 and at the time of accident, the deceased was a Mason and was earning a sum of Rs.900/- per day, but the Tribunal has fixed the notional income of the deceased as Rs.12,000/- which in the opinion of this Court is on the higher side and therefore the same stands reduced to



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Rs.11,000/- and the same was agreed by the appellant and by adding 40% towards future prospects, a sum of Rs.15,400/-(11000+4400) is arrived and by deducting 50% towards personal expenses and adopting multiplier '18' as per Judgment of the Hon'ble Supreme Court in the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in (2009) 4 MLJ 997, a sum of **Rs.16,63,200/-** (15,400x12x18x1/2) is arrived and the same is awarded towards **Loss of Dependency** and hence the compensation towards Loss of Dependency is reduced from Rs.18,14,400/- to Rs.16,63,200/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is redetermined as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	18,14,400/-	16,63,200/-	Reduced
2.	Loss of love and affection	80,000/-	80,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.19,24,400/-	Rs.17,73,200/-	Reduced by Rs.1,51,200 /-



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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,24,400/- is hereby reduced to Rs.17,73,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Appellants/Claimants are entitled for equal apportionment. The liability fastened on the 1st Respondent/Owner of the vehicle is set aside. The 2nd Respondent-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.798 of 2017** on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the respective shares of the Appellants, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of **three weeks**. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for



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the purpose of granting interest. No costs. Consequently, connected

Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

To

1. The ICICI Lombard General Insurance Company Limited,
Motor Third Party Claims Office,
No.84 & 52, Second Floor,
Arihant Plaza, Waltax Road,
Chennai-600 003.
2. The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.
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C.M.A.No.1838 of 2022

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