IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2974 of 2023 & C.M.P. No.28009 of 2023
and
Cros. Obj. No.17 of 2024

C.M.A. No.2974 of 2023

The Manager,
M/s. TATA AIG General Insurance Company Limited,
'Samson Tower', II Floor,
No.403, Pantheon Road,
Egmore, Chennai – 600 008. ... Appellant

vs.

1. R.Vijaya
2. R.Dharanya
3. Minor. R.Sankaraman
(minor represented by his mother and
natural guardian R.Vijaya)
4. Kasthuri
5. Kaliyamurthy ... Respondents

CROS. OBJ. NO.17 of 2024

1. R.Vijaya
2. R.Dharanya
3. Minor. R.Sankaraman
(minor represented by his mother and
natural guardian R.Vijaya)

4. Kasthuri ...Cross Objectors

Vs.

1. The Manager,
M/s. TATA AIG General Insurance Company Limited,
'Samson Tower', II Floor,
No.403, Pantheon Road,
Egmore, Chennai – 600 008.

2. Kailyamurthy ...Respondents

PRAYER in C.M.A. No.2974 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 28.06.2023 in M.C.O.P.381 of 2019 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

PRAYER in CROS.OBJ. No.17 of 2024 :
Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award dated 28.06.2023 in M.C.O.P.381 of 2019 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

Appearance In C.M.A. No.2874 of 2023

For Appellant	:	Mr. J.Michael Visuvasam
For R1 to R4	:	Mr. T.Gobinath
For R5	:	No appearance

Appearance in Cros. Obj. No. 92 of 2023

For Cross Objectors	:	Mr. T.Gobinath
For R1	:	Mr. J.Michael Visuvasam
For R2	:	No appearance.

COMMON JUDGMENT

The appellant in CMA No.2974 of 2023 is the Insurance Company while the Cross Objectors in Cross Objection No. 17 of 2024 are the claimants in M.C.O.P.381 of 2019 on the file of the Motor Accident Claims Tribunal, Mayiladuthurai.

2. The Cross Objectors / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of one Ramadas (husband of claimant 1 ; father of claimants 2 and 3 ; brother of claimant 4) in a road accident that occurred on 09.08.2019.

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

On 09.08.2019, Ramadas (since deceased) was walking along

Kaveri Nagar Bridge, Mayiladuthurai and at about 4.30 a.m., a speeding Auto bearing Registration Number TN-09-F-7754 belonging to the first respondent, hit him, as a result of which, he fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Mayiladuthurai from where he was referred to Thanjavur Medical College Hospital. However, he succumbed to injuries on the same day.

4. According to the claimants the rash and negligent driving of the driver of the Auto bearing Registration Number TN-09-F-7754, was the cause of the accident and that since the said vehicle was insured with the second respondent, the TATA AIG General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the Auto remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the Auto bearing Registration Number TN-09-F-7754 and also held that the owner of the auto and the insurer are jointly and severally liable to pay compensation of Rs.13,70,800/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 28.06.2023.

7. Questioning the quantum of compensation awarded by the Tribunal, the TATA AIG General Insurance Company Limited, Chennai, has filed CMA No.2974 of 2023, and the claimants filed Cross Objection No.17 of 2024 seeking enhancement of compensation.

8. Heard Mr. J.Michael Visuvasam, learned counsel for the appellant in C.M.A. No.2974 of 2023 and Mr. T.Gobinath, learned counsel for the respondents 1 to 4.

9. Mr. J.Michael Visuvasam, learned counsel appearing for the appellant, the TATA AIG General Insurance Company Limited, contended that the Tribunal had wrongly fixed the age of the deceased as 50 years, though in the Aadhar Card (Ex.P7) his age is mentioned as 56 years. He also contended that the driver of the Auto did not have a badge on the date of accident and despite the same the Tribunal, did not direct the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle. (Pay and Recover)

10. Per contra Mr. T.Gobinath, learned counsel for the claimants contended that the Tribunal has not awarded just compensation to the claimants and therefore, he prayed for enhancement of the same.

Negligence :

11. A perusal of the the records shows that the Tribunal had fastened negligence on the part of the driver of the Auto bearing Registration Number TN-09-F-7754. The FIR (Ex.P1) was also registered against the driver of the Auto. It is seen from the records that

the driver of the Auto did not have a badge to drive the auto. The Tribunal based on the decision of ***Mukund Dewangan Vs Oriental Insurance Company Limited*** reported in ***2017 (14) SCC 663*** held that when a person is possessing a valid driving licence to drive a light motor vehicle, he could drive in the said clause including commercial vehicle and there is no necessity to obtain endorsement to drive a commercial vehicle. In the circumstances, there is no necessity to order for 'Pay and Recover'.

Quantum :

12. According to the claimants, the deceased was aged 50 years on the date of accident. A perusal of the Aadhar Card (Ex.P7) shows that the deceased was aged 56 years. In the circumstances, the age of the deceased is fixed as 56 years. In the claim petition, it is contended that the deceased was working as a tea maker in a shop earning a sum of Rs.18,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. It is pertinent to point out that the accident took place in the year 2019. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased at

Rs.15,000/- 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,*** 10% is added towards future prospects of the deceased. Since there are four dependants 1/3rd is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 9 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.15,000/-

10% Future Prospects = Rs.16,500/-

After 1/3 deduction = Rs.11,000/-

Loss of dependency

= Rs.11,000/- x 12 x 9

= Rs.11,88,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for 'Loss of Consortium', 'Loss of Estate' and 'Funeral 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.13,78,000/- (11,88,000 + 1,60,000 + 15,000 + 15,000= 13,78,000) as shown in the following tabular column.

S.No.	*Head*	*Amount granted by this court (Rs.)*
1.	Loss of dependency	11,88,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		**13,78,000/-**

13. Thus, the compensation awarded by the Tribunal is enhanced to Rs.13,78,000/- which would carry interest at the rate of 7.5% per annum.

14. In the result,

i. The appeal in C.M.A. No.2974 of 2023 and the Cross Objection No.17 of 2024 are partly allowed. No costs. Consequently connected miscellaneous petition is closed.

ii. The compensation awarded by the Tribunal is enhanced to Rs.13,78,000/-.

iii. The appellant, the TATA AIG General Insurance Company Limited in C.M.A. No. 2974 of 2023 is directed to deposit the compensation amount i.e., Rs.13,78,000/- (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 / uploading of this order to the credit of M.C.O.P.381 of 2019 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

iv. Apportionment :

1st claimant / Wife	Rs.4,78,000/- (with interest and costs)
2nd claimant / Daughter	Rs.3,00,000/-
3rd claimant / Son (Minor)	Rs.5,00,000/-
4th claimant / Sister	Rs.1,00,000/-

v. The compensation amount of the minor claimant R.Sankaraman shall be deposited in any one of the Nationalised Bank till he attains majority. The claimants 1, 2 and 4 are at liberty to withdraw their respective share after following due process of law.

20.09.2024

Index : Yes/No

Speaking/Non-speaking order
mtl

To

1. The Motor Accident Claims Tribunal,
Principal Sub Court, Mayiladuthurai.

2. The Section Officer, V.R. Section, Madras High Court, Chennai.

R.HEMALATHA, J.

mtl

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