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CMA.No.1966 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1966 of 2024 and
C.M.P.No.15223 of 2024

M/s.The Cholamandalam General
Insurance Co.Ltd.,
No.2, 2nd Floor, Dare House,
NSC Bose Road, Chennai 600 001

Having branch office at
No.872, TNHB Road,
Kakkalur, Tiruvallur 602 001.

... Appellant

VS.

1. N.Ponni
2. P.Narayana Murthy
3. N.Chandrasekaran

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment, dated 27.01.2023 in M.C.O.P.No.103 of 2022 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur.



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For Appellant : Mr.K.Sharath Chandran

For R1 & R2 : Ms.A.Subadra for
Ms.M.Malar

(R3 remained absent and was set *ex parte* in the lower court and hence notice may be dispensed with)

J U D G M E N T

Challenging the quantum of compensation passed by the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur in M.C.O.P.No.103 of 2022, the present appeal is filed by the appellant / Cholamandalam General Insurance Company Limited, Kakkalur, Tiruvallur.

2. The claimants / respondents 1 and 2 filed a claim petition under Section 166 & Rule 3 of the Motor Vehicles Act, in M.C.O.P.No.103 of 2022 before the the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur, seeking compensation of Rs.50,00,000/- for the death of their son Lakshmipathy, in a road accident which happened on 11.07.2022.



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3. The brief case of the appellant / claimant is as follows :

On 11.07.2022, at about 8.30 a.m., Lakshmipathy (deceased) was standing on the road with his bicycle on the left side of the Maduravoyal bypass road bridge , Mudichor road junction. A speeding lorry bearing registration number TN-12-C-3399, hit the deceased as a result of which, he sustained injuries and died on the spot.

4. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the owner of the lorry had insured his vehicle with the appellant, the Cholamandalam General Insurance Company Limited, Kakkalur, Tiruvallur, the owner and the insurer of the Lorry are jointly and severally liable to pay compensation to them.

5. The 3rd respondent remained absent and therefore was set *ex parte* in the Tribunal. The appellant / Insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.



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6. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.19,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization under the following heads. It also held that the liability of the owner and the Insurer are joint and several:

<i>S.No.</i>	<i>Heads</i>	<i>Calculation</i>	<i>Amount</i>
1	Loss of Dependency	Notional income = Rs.12,000/- p.m. (add 40% future prospects) = 12,000+4800=16,800 = Rs.16,800/- (50% deduction) = 16,800-8400=8,400 = Rs.8,400 X 12 X 18 (Multiplier) =Rs.18,14,400/-	Rs.18,14,400/-
2	Loss of Estate	16,500/-	Rs.16,500/-
3	Loss of Consortium	44,000 X 2	Rs.88,000/-
4	Funeral expenses	16,5000	Rs.16,500/-
		Total	Rs.19,35,400/-

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, seeking for enhancement of compensation amount.



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8. Heard Mr.K.Sharath Chandran, learned counsel appearing for the appellant / Insurance Company and Mr.A.Subadra, learned counsel appearing for the respondents 1 and 2.

9. Mr.K.Sharath Chandran, learned counsel appearing for the appellant / Insurance Company contended that the deceased was studying XI standard on the date of accident but the Tribunal fixed the notional income as Rs.12,000/- per month which is on the higher side and therefore the same has to be scaled down.

10. Per contra, Mr.A.Subadra, learned counsel appearing for the respondents 1 and 2 relied on the decision of the Division Bench of this Court in ***P.Revathi & another vrs. R.Karpagavalli & another*** reported in ***CDJ 2023 MHC 7620*** and contended that the Division Bench of this Court had fixed the monthly notional income at Rs.12,600/- for a XI standard student and therefore the same analogy may be adopted in the present case also.



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11. It is seen from the records that Lakshmipathy was a student and was aged 16 years before his death. In the decision reported in P.Revethi case (cited supra), it has been held thus:

"22. Mr.S.Arun Kumar, learned counsel for the insurance company would however submit that being a 11th standard student; it will be too premature to assume a larger income for her. This Court and the Hon'ble Supreme Court have repeatedly held that this grant of compensation necessarily involves certain amount of guess work and there cannot be mathematical precision in awarding compensation. Considering the overall circumstances, we find that the notional income of Rs.9,000/- per month with an addition of 40% towards future prospects would be just and equitable in the circumstances of the case. If we are to re-work the compensation on the above basis, the monthly income of the deceased should be taken at Rs. 12,600/- and multiplier of 18 has to be applied. The total loss of income works out to Rs.12,600/- x 12 x 18 = Rs.27,21,600/-. We have to deduct 50% of the same towards personal expenses and the total loss of dependency would be Rs 13,60,800/-. The two claimants would be entitled to Rs.40,000/- each towards loss of love and affection. They would also be entitled to Rs.15,000/- towards funeral expenses and



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Rs.15,000/- towards loss of estate. Though medical bills to the tune of Rs.48,416/- were produced, the Tribunal has granted only Rs.40,000/-. No reason has been assigned by the Tribunal for reduction of the claim of medical expenses which is based on bills. We therefore find that the claimants would be entitled to the entire amount of Rs.48,416/- towards medical expenses. Thus, the total compensation works out to Rs.15,19,216/-, which we round off to Rs.15,20,000/-.

12. In the instant case, the Tribunal has rightly fixed the notional income as Rs.12,000/- per month and therefore I do not see any reason to interfere with the same.

13. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The quantum of compensation passed by the Tribunal is upheld.

(iii) The present appellant / Cholamandalam General Insurance Company Limited and the third respondent are jointly and severally liable to pay compensation of Rs.19,35,400/- as per the Award of the Tribunal



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together with interest at the rate of 7.5% per annum, (less the amount already deposited) to the credit of M.C.O.P.No.103 of 2022 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Consequently, connected miscellaneous petition is closed.

06.08.2024

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

- 1.The Motor Accident Claims Tribunal No.1,
Special District Court, Thiruvallur.
2. The Chola mandalam General
Insurance Company Limitedtd.,
No.2, 2nd Floor, Dare House,
NSC Bose Road, Chennai 600 001



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3. The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

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