



C.M.A.No.481 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.481 of 2020

And

C.M.P.No.2716 of 2020

And

Cross Objection No.44 of 2022

C.M.A.No.481 of 2020:

The Branch Manager,
The Oriental Insurance Company Ltd.,
Mettu Street, Thiruthuraipoondi Taluk & Munsipi
Thiruvarur District. ... Appellant

Vs.

1.Shanthi
2.Manimaran
3.Prabhu
4.Muruganandham ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by the Chief Judicial Magistrate (Motor Accident Claims Tribunal) Thiruvarur in M.C.O.P.No.99 of 2016 dated 16.03.2017 with cost throughout.

For Appellant : Mr.R.Ganesan
For Respondents : Mr.Ma.Pa.Thangavel for R1 to R3
R4 – No Appearance



C.M.A.No.481 of 2020

Cross Objection No.44 of 2022:

1.Shanthi
2.Manimaran
3.Prabhu

... Cross Objectors

Vs.

1.The Branch Manager,
The Oriental Insurance Company Ltd.,
Thiruthuraipoondi.

2.Muruganandham

{The Respondent-2 is remained
ex parte before the tribunal, hence
notice may be Dispense with for R-2
in this Cross Appeal}

... Respondents

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the award amount in the decree and judgment made in M.C.O.P.No.99 of 2016 on the file of MACT/ Chief Judicial Magistrate Court at Thiruvavarur, dated 16.03.2017.

For Cross Objectors : Mr.Ma.Pa.Thangavel
for M/s.M.Lokesh
For Respondents : Mr.R.Ganesan for R1

COMMON JUDGMENT

The civil miscellaneous appeal as well as the cross objection have



C.M.A.No.481 of 2020

been filed against the judgment and decree dated 16.03.2017 in M.C.O.P.No.99 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvavarur.

2.The second respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeal and the petitioners 1 to 3 before the Motor Accident Claims Tribunal are the cross objectors in the cross objection.

3.The brief facts of the case is that on 08.07.2015 at about 2.00p.m., the deceased Silambarasan was riding his motorcycle bearing Registration No.TN 50 D 4059 in Thiruthuraipoondi – Vedharanyam Road in South to North direction near Thiruthuraipoondi Chathiram School. At that time, the lorry bearing Registration No.TNP 7396 which came in a rash and negligent manner in the opposite direction, dashed against the motorcycle, due to which, the deceased died on the spot.

4.Thereafter, the dependants of the deceased Silambarasan/ respondents 1 to 3 in the civil miscellaneous appeal/ cross objectors in cross objection (hereinafter referred to as 'claimants') filed claim



C.M.A.No.481 of 2020

petition before the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Thiruvarur, claiming compensation of Rs.50 Lakhs.

5.After adjudication, the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Thiruvarur, awarded a sum of Rs.15,92,000/- as compensation to the claimants and directed the Oriental Insurance Company (hereinafter referred to as 'Insurance Company') to pay the compensation amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realization with costs.

6.The learned counsel appearing for the Insurance Company submitted that the deceased is a bachealor and hence, the Tribunal ought to have deducted $\frac{1}{2}$ of the monthly income towards personal expenses, however, the Tribunal deducted $\frac{1}{3}$ towards personal expenses and awarded compensation which is highly excessive. The learned counsel further submitted that the age of the deceased at the time of accident was 29 years and the correct multiplier to be adopted is 17, whereas, the Tribunal adopted the multiplier 18 and awarded compensation, which is not sustainable one.

7.The learned counsel appearing for the Insurance Company



C.M.A.No.481 of 2020

further submitted that the deceased drove the vehicle in a rash and negligent manner under the influence of alcohol and dashed against the lorry insured with the Insurance Company. The Tribunal ought to have visualised the F.I.R. and fastened some liability as against the deceased, however, fastened the entire liability on the lorry insured with the Insurance Company, which is not sustainable one.

8.Per contra, the learned counsel appearing for the Cross Objectors submitted that in order to prove the case the claimants examined P.W.1 to P.W.4 and marked exhibits Ex.P.1 to Ex.P.12, however, the Insurance Company neither examined any witness nor marked any exhibit and further submitted that after elaborately discussing the factual aspects, the Tribunal fixed the entire liability on the part of the driver of the vehicle insured with the Insurance Company, which warrants no interference.

9.The learned counsel appearing for the Cross Objectors further submitted that the accident is of the year 2015. At the relevant point of time, even in the absence of any income proof, the Tribunal can easily fix the notional monthly income of the deceased as Rs.14,000/-, however, in the present case, the Tribunal fixed the notional monthly



C.M.A.No.481 of 2020

income of the deceased as Rs.10,500/-, which is very meagre. The learned counsel fairly submitted that the deceased is a bachealor and hence, the Tribunal should have deducted $\frac{1}{2}$ of the monthly income towards personal expenses, however, the Tribunal deducted $\frac{1}{3}$ towards personal expenses and awarded compensation.

10.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross Objectors and perused the materials available on record.

11.The accident is not disputed. In order to prove the case, the claimants have examined P.W.1 to P.W.4 and marked exhibits Ex.P.1 to Ex.P.12 before the Tribunal, however, the Insurance Company has not examined any witness including the driver of the lorry who is the eye witness and has not marked any exhibit. Without examining any witness and without marking any exhibits, the appellant Insurance Company questioning the negligence aspect is not sustainable one.

12.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.15,12,000/- for loss of income, Rs.30,000/- for funeral expenses,



C.M.A.No.481 of 2020

Rs.50,000/- for loss of love and affection and dependency and arrived at a total compensation of Rs.15,92,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

13.The accident took place during the year 2015. The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as salary to the vegetable vendor in the year 2008. Applying the yardstick fixed by Hon'ble Apex Court, this Court fix a sum of Rs.12,000/- as the notional income of the deceased per month. The deceased is a bachelor and hence ½ of the amount has to be deducted for his personal expenses. At the time of death, the deceased was aged 29 years and hence the correct multiplier to be adopted is 17. This Court is of the opinion that some amount has to be awarded for future prospects and this Court awards 40% of notional income for future prospects. Accordingly, the amount awarded for loss of income works out to Rs.17,13,600/- [Rs.12,000/- X 40% = Rs.4,800/-; Rs.12,000/- + Rs.4,800/- = Rs.16,800/-; Rs.16,800 X 50% = Rs.8,400/-; Rs.16,800/- - Rs.8,400/- = Rs.8,400/-; Rs.8,400/- X 12 X 17 = Rs.17,13,600/-].

14.This Court is of the opinion that some amount has to be awarded for loss of estate. Accordingly, this Court awards a sum of



C.M.A.No.481 of 2020

Rs.15,000/- for loss of estate. The amount awarded under the heads love and affection and dependency, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for love and affection and dependency is enhanced to Rs.1,20,000/- from Rs.50,000/-, however, the amount awarded for funeral expenses, in the opinion of this Court is high and the same is reduced to Rs.15,000/- from Rs.30,000/-.

15. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.15,12,000/-	Rs.17,13,600/-
2.	Funeral Expenses	Rs. 30,000/-	Rs. 15,000/-
3.	Love and affection and dependency	Rs. 50,000/-	Rs. 1,20,000/-
4.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.15,92,000/-	Rs.18,63,600/-

16. The claimants are entitled to total compensation of Rs.18,63,600/- along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization.

17. The civil miscellaneous appeal stands dismissed and the cross



C.M.A.No.481 of 2020

objection stands partly allowed. The decree and judgment dated 16.03.2017 passed in M.C.O.P.No.99 of 2016 by the Chief Judicial Magistrate (Motor Accident Claims Tribunal) Thiruvarur, is modified to the above extent.

18.The Insurance Company is directed to deposit the modified/enhanced award amount before the Chief Judicial Magistrate (Motor Accident Claims Tribunal) Thiruvarur, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimants/respondents 1 to 3 in the civil miscellaneous petition/ cross objectors in the cross objection are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The cross objectors are not entitled to any interest for the period of delay, if any, in filing the cross objection. The cross objectors are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Chief Judicial Magistrate (Motor Accident Claims Tribunal) Thiruvarur, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the cross objectors.



C.M.A.No.481 of 2020

WEB COPY

19.The civil miscellaneous appeal is dismissed. The cross objection is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

14.11.2024

pri

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Chief Judicial Magistrate
(Motor Accident Claims Tribunal)
Thiruvavarur.



WEB COPY



C.M.A.No.481 of 2020

M.DHANDAPANI,J.
pri

C.M.A.No.481 of 2020
And
C.M.P.No.2716 of 2020
And
Cross Objection No.44 of 2022

14.11.2024