



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 13.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024
and C.M.P(MD)No.1729 of 2018

C.M.A(MD)No.117 of 2018:

National Insurance Company Limited,
Rep. By the Divisional Manager,
Divisional Office, Angu Vilas Building,
North Car Street, Nagercoil – 629 001
Agastheeswaram Taluk,
Kanyakumari District

... Appellant/3rd Respondent

Vs.

1.Mohamed Bashee @ M.Basheer
2.Rahmath Beevi
3.Anshad
4.Asarutheen
5.Ameer
6.Anwarshan

7. Ajitha Begam ... Respondents 1 to 7/Petitioners
(R7 is declared as major and the guardianship discharged,
vide court order dated 11.07.2018 made in
CMP(MD)No.5209 of 2018 in C.M.A(MD)No.117 of 2018)

8.Sasi ... 8th Respondent/1st Respondent

9.Charles Jeba Kumar ... 9th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.78 of 2013, dated 14.07.2017 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.



WEB COPY



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

For Appellant : Mr.J.S.Murali
For R2 to R7 : Mr.M.P.Senthil
For R8 & R9 : Mr.C.K.M.Appaji
R1 : Died

Cross Obj(MD)No.30 of 2024:

1.Mohamed Bashee @ M.Basheer
2.Rahmath Beevi
3.Anshad
4.Asarutheen
5.Ameer
6.Anwarshan
7. Ajitha Begam ...Cross Objectors/Respondents 1 - 7

Vs.

1.National Insurance Company Limited,
Rep. By the Divisional Manager,
Divisional Office, Angu Vilas Building,
North Car Street, Nagercoil – 629 001
Agastheeswaram Taluk,
Kanyakumari District ...1st Respondent/Appellant
2.Sasi .. 2nd Respondent/8th Respondent
3.Charles Jeba Kumar ...3rd Respondent/9th Respondent

PRAYER: Cross objection is filed under Order 41 Rule 22 C.P.C 1908 as amended Act 104 of 1976 against the judgment and decree in M.C.O.P. NO.78 of 2013, dated 14.07.2017 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Cross Objectors 2 to 7 : Mr.M.P.Senthil
For R1 : Mr.J.S.Murali
For R2 & R3 : Mr.C.K.M.Appaji



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

COMMON JUDGMENT

WEB COPY

C.M.A.(MD)No.117 of 2018 is filed by the Insurance Company against the fair and decreetal order made in M.C.O.P. No.78 of 2013, dated 14.07.2017 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram. Cross Obj(MD)No.30 of 2024 is filed by the claimants in M.C.O.P.No.78 of 2013 seeking enhancement of compensation.

2. The respondents filed the claim petition stating that on 14.12.2013 at about 8.40 a.m, while the deceased was travelling in his Two Wheeler, a School Van insured with the appellant came in the opposite direction in a rash and negligent manner and collided with the Two Wheeler, as a result of which, the deceased sustained fatal injuries.

3. The owner and the driver of the School Van filed a counter stating that no such accident took place and the entire claim is false.

4. The appellant/3rd respondent filed a counter reiterating the counter of the 1st and 2nd respondents before the Tribunal and submitted that the insured vehicle was implicated belatedly only to claim



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

compensation and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants had examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.13. The respondents examined R.W.1 and R.W.2 and marked Ex.R.1 and Ex.R.2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.18,08,000/- to the respondents 1 to 7/claimants after holding that the accident took place only due to the rash and negligent driving of the insured vehicle.

7. The learned counsel for the appellant submitted that the claim is false inasmuch as the insured vehicle was never involved in the accident; that the Motor Vehicle Inspector's report would suggest that there was no damage to the insured vehicle; that even in the First Information Report, vehicle's number was not specified; that the evidence of the driver of the vehicle (R.W.1) has been totally ignored by the Tribunal and hence the claim ought not to be entertained by the Tribunal. The learned counsel further submitted that in any case, the compensation awarded by the



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

Tribunal is excessive and the Tribunal ought not to have added 50% of the income towards future prospects to calculate the loss of income of the deceased; that the Tribunal ought not to have awarded Rs.3,50,000/- for loss of consortium and prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the cross objectors/ claimants submitted that the police had filed the final report after investigation, which was marked as Ex.P.7 and it shows that the accident was caused by the insured vehicle and therefore, the claim cannot be said to be false; that the deceased was an Engineering graduate and he would have earned Rs.50,000/- per month and hence, the notional income fixed by the Tribunal at Rs.9,000/- is very meagre and prayed for enhancement.

9. The points for consideration in the instant appeal are as follows:

i) Whether the Tribunal was right in holding that the insured vehicle was involved in the accident, and the appellant is liable to pay compensation; and

ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

10. The claimants had examined P.W.2 to show that the insured vehicle which belong to the 9th respondent herein was involved in the accident. Per contra, the Driver of the vehicle, who was examined as R.W.1 deposed that no such accident took place. The respondent also relied upon the Motor Vehicle Inspector's report Ex.P.11 which would show that there was no damage to the School Van thereby suggesting that the School Van was not involved in any accident. In the light of the evidence of two witnesses which are contrary to each other, this Court examined Ex.P.7, final report filed by the police, which suggests that the insured vehicle was involved in the accident. Therefore, this Court is inclined to accept the evidence let-in on the side of the claimants that the insured vehicle was involved in the accident. The first point therefore, is answered accordingly.

11. As regards the quantum of compensation, the learned counsel for the cross objectors/claimants submitted that the notional income is meagre and relied upon the judgment of the Hon'ble Supreme Court in **S.Vasanthi and another Vs. Adhiparasakthi Engineering College and another** reported in **2022-15-SCC 316**. In that case, the deceased was not only an Engineering graduate but also pursued M.B.A degree and the



documents have been produced to show that two of their classmates were earning approximately Rs.40,000/-. In such circumstances, the Hon'ble Supreme Court fixed the notional income at Rs.30,000/-. However, in the instant case, no proof has been produced by the claimants as regards the income of the deceased. In such circumstances, a notional income was adopted by the Tribunal. As regards the quantum, this Court is of the view that the notional monthly income of the deceased can be fixed at Rs.10,000/- in the facts of the case considering the educational qualification, age of the deceased and the year of the accident. 40% has to be added towards future prospectus. The Tribunal had wrongly taken '15' multiplier, but the correct multiplier is '18'. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses. Therefore, the award amount under the head loss of dependency would come to $(Rs.10,000 + Rs.4,000 \times 12 \times 18 \times \frac{1}{2})$ Rs.15,12,000/-. The Tribunal has awarded Rs.3,50,000/- under the head loss of love and affection. That is excessive. The claimants, who are six in number, are each entitled to Rs. 40,000/- and hence, the amount awarded under the head loss of love and affection would have to be Rs.2,40,000/-. The Tribunal had not awarded compensation under the head loss of estate and towards funeral expenses. Hence, a sum of Rs.15,000/- is awarded under the head loss of estate and



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

Rs.20,000/- is awarded under the head of funeral expenses. Hence, the total enhanced compensation would come to Rs.17,87,000/- and the same is tabulated herein under:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of dependency	14,58,000.00	15,12,000.00	Enhanced
2.	Loss of love and affection	3,50,000.00	2,40,000.00	Reduced
3.	Loss of Estate		15,000.00	Granted
4.	Funeral expenses		20,000.00	Granted
Total :		18,08,000.00	17,87,000.00	Reduced

12. It is represented that the appellant had deposited the entire compensation amount with interest and the claimants were permitted to withdraw 50% of the said amount earlier. If not, the entire compensation amount shall be deposited by the appellant with interest at the rate of 7.5% from the date of petition till the date of realization within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the amount as per the apportionment fixed by the Tribunal. The appellant is permitted to withdraw the excess compensation amount if any deposited.



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

13. In fine, C.M.A(MD)No.117 of 2018 is partly allowed Cross
Obj(MD)No.30 of 2024 is disposed of. No costs. Consequently,
connected miscellaneous petition is closed.

13.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To
1.Motor Accident Claims Tribunal, Subordinate Court,
Padmanabhapuram.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.117 of 2018
and Cross Obj(MD)No.30 of 2024
and C.M.P(MD)No.1729 of 2018

13.08.2024