



C.M.A(MD)Nos.94 & 95/2021 and Cros Obj.(MD)No.16 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)Nos.94 & 95 of 2021

and

Cros.Obj(MD)No.16 of 2021

and

C.M.P(MD)Nos.864 & 865 of 2021

C.M.A(MD)No.94 of 2021

M/s.Reliance General Insurance Company,
Represented by its Branch Manager,
HIG-55, Meenakshi Plaza,
1st Floor, HUBD No.7-A
West Veli Street,
Madurai-625 001.

:Appellant/Respondent No.2

Vs.

1.C.Gurulakshmi

2.Minor A.Anish Kumar
Represented through his mother
The first respondent herein
Son of Arun Kumar,
71/A/B3, Mandapam Street,
Kamatchipuram,
Uthamapalayam Taluk,
Theni District.

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3.Jayanthi

4.Velmurugapandian

...Respondent No.1 to 4/
Petitioners

5.A.Siva

6.Ramani Cars (P) Ltd.,
Through its Managing Director,
H-11, SIDCO Industrial Estate,
G.S.T Road, Kappalur,
Madurai-625 008.

....Respondents 5 & 6/
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 13.07.2020 passed in M.C.O.P.No.111 of 2018 on the file of the IV Additional District Judge, Madurai.

For appellant	: Mr.V.Sakthivel
For R1 to R4	: Mr.K.Kumaravel
For R5	: No appearance
For R6	: Mr.K.Periasamy

C.M.A(MD)No.95 of 2021

M/s.Reliance General Insurance Company,
Represented by its Branch Manager,
HIG-55, Meenakshi Plaza,
1st Floor, HUBD No.7-A
West Veli Street,
Madurai-625 001.

:Appellant/Respondent No.2



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Vs.

1.C.Gurulakshmi

:Respondent No.1/Petitioner

2.A.Siva

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Through its Managing Director,
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....Respondents 2 & 3/
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 13.07.2020 passed in M.C.O.P.No.112 of 2018 on the file of the IV Additional District Judge, Madurai.

For appellant	: Mr.V.Sakthivel
For R1	: Mr.K.Kumaravel
For R2	: No appearance
For R3	: Mr.K.Periasamy

Cross Obj(MD)No.16 of 2021

1.C.Gurulakshmi

2.Minor A.Anish Kumar
Represented through his mother
The first respondent herein
Son of Arun Kumar,
71/A/B3, Mandapam Street,
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Uthamapalayam Taluk,
Theni District.

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C.M.A(MD)Nos.94 & 95/2021 and Cros Obj.(MD)No.16 of 2021

3.Jayanthi

4.Velmurugapandian

...Cross Appellants/
Respondents 1 to 4

Vs.

1.M/s.Reliance General Insurance Company,
Represented by its Branch Manager,
HIG-55, Meenakshi Plaza,
1st Floor, HUBD No.7-A
West Veli Street,
Madurai-625 001.

...1st Respondent/Appellant

2.A.Siva

3.Ramani Cars (P) Ltd.,
Through its Managing Director,
H-11, SIDCO Industrial Estate,
G.S.T Road, Kappalur,
Madurai-625 008.

....Respondents 2 & 3//
Respondents 5 & 6

PRAYER: Civil Miscellaneous Appeal has been filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree in M.C.O.P.No.111 of 2018 on the file of the Motor Accident Claims Tribunal/ IV Additional District Judge, Madurai, dated 13.07.2020.



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COMMON JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN.J.**]

C.M.A(MD)Nos.94 & 95 of 2021 have been filed by the Insurance company challenging the liability to pay the compensation and quantum of compensation awarded by the Motor Accident Claims Tribunal/IV Additional District Judge, Madurai in M.C.O.P.Nos.111 & 112 of 2018. Cross Obj.(MD)No.16 of 2021 has been filed by the claimants in M.C.O.P.No.111 of 2018 for enhancement of compensation.

2. For the sake of convenience, the parties are referred herein as per their ranking before the Tribunal in M.C.O.P.No.111 of 2021.

3.Facts of the case:-

(i) The respondents 1 to 4 in C.M.A(MD)No.94 of 2021 have filed M.C.O.P.No.111 of 2018 stating that the deceased Arunkumar, who is the husband of the first respondent Gurulakshmi and father of the second respondent and son of the respondents 3 & 4, met with an road accident on 30.10.2017. On 30.10.2017 at about 00.30 a.m., the deceased



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Arunkumar was riding his motorcycle bearing Registration No. TN-63-U-3908 and his wife Gurulakshmi was travelling as a pillion rider and they were coming from Annanji Bye-pass road Vetri Kalyana Mandapam to Forest Road in Theni, the vehicle was coming in a normal speed from north to south direction. When the two-wheeler was nearing Palam School, a private car bearing temporary registration No. TN-58-TPAM-0683 coming from opposite direction was driven by its driver in a rash and negligent manner and dashed against the two-wheeler. He also wore the helmet at the time of accident. In the said impact, the rider as well as the pillion rider were thrown away from the motorcycle. The deceased sustained multiple injuries and he succumbed to the said injuries. The wife of the deceased, who is the pillion rider had sustained fractures including grievous injuries all over the body and succumbed to injuries. The Inspector of Police, Allinagaram Police Station has registered a case in Cr.No.444/2017 under Section 279, 337, 338 and 304(A) of IPC against the driver of the car.

4. The deceased Arunkumar had studied Diploma in Mechanical Engineering and he was appointed as Engineer in various companies.



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Finally, in the year 2013, he was appointed as Lead Engineer in FLSMIDTH (P) Ltd., a multinational company in Vizahapatnam, Andhra Pradesh. Subsequently, he was transferred to Sriperumpudur, Tamilnadu. Then he was promoted as Senior Lead Engineer and transferred to Arakonam Unit. His last drawn salary was Rs.57,948/- per month and he had the promotion avenue. Hence, the claimants filed the claim petition seeking compensation of Rs.1,20,00,000/- (Rupees One crore and Twenty Lakhs only).

5. Due to the accident, the petitioner in M.C.O.P.No.112/2018 viz., Gurulakshmi was taken to Government Hospital, Theni and she was referred to Government Rajaji Hospital, Madurai, there she took treatment as inpatient on 30.10.2017 and 31.10.2017. Then she was taken to Preethi Hospital, Madurai and she took treatment as inpatient from 31.10.2017 to 17.11.2017. She underwent two major surgeries on 30.11.2017 and one more surgery on 12.11.2017 and finally, she was discharged on 17.11.2017 and she continues her treatment as out patient. The petitioner incurred Rs.3,00,000/- towards medical expenses. She was working as Accountant and thereby, earned Rs.8,000/- per month. After



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the accident, she could not continue her above said job due to the permanent disability. She could not bend and lift any article and she could not chew, all these had caused the permanent disability. Hence, she filed the claim petition claiming compensation of Rs.8,00,000/-.

6. The insurance company has filed the counter affidavit denying the manner of accident and he took a plea that the deceased was not wearing the helmet at the time of accident. Hence, he himself invited the accident. He denied the liability and also the income of the deceased.

7. Before the Tribunal, to prove the case of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P43 were marked. On the side of the insurance company, R.W.1 was examined and Ex.R1 to Ex.R3 were marked and the Court document Ex.C1 was marked relating to the injury sustained by Gurulakshmi.

8.Finding of the Tribunal:

The Tribunal, after considering the entire evidence, held that the driver of the car was responsible for the accident, but due to non wearing



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for the helmet, the tribunal fixed 15% negligence upon the deceased on the basis of the judgement of this Court. The tribunal fixed 85% negligence on the driver of the car and fixed 15% negligence on the deceased on account of non wearing of helmet. Thereafter, he calculated the income of the deceased by taking the monthly income as Rs.48,723/- and by following the judgment of **Pranay Sethi** taking 40% future prospects, awarded a sum of Rs.88,01,162/-. Among the said amount, the tribunal deducted 15% for negligence of the deceased and directed the insurance company to pay a sum of Rs.74,80,987/- as compensation to the claimants.

9. Regarding M.C.O.P.No.112 of 2018, the Tribunal considering Ex.C1, disability certificate, by following the decision of Apex Court, fixed the disability of the injured as 72.5% and loss on account of disability is arrived at Rs.3,000/- per percentage, which comes to Rs.2,17,500/- and awarded a sum of Rs.2,17,500/- to the petitioner towards partial permanent disability. Further, though the petitioner has not produced any documentary evidence to prove her income and work, considering the age of the injured claimant ie., 24 years, the tribunal held



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that the petitioner should have earned Rs.5,000/- per month and on that ground granted a sum of Rs.15,000/- (Rs.5,000 x 3) towards loss of earning.

10. Aggrieved over the same, the insurance company has filed these appeals before this Court challenging the negligence and also the quantum.

11. The claimants also filed the cross-objection disputing the 15% negligence fixed on the deceased on account of non wearing of helmet and also seeking enhancement of compensation.

12. The learned counsel for the cross-objectors submitted that the tribunal has deducted 1/3rd for personal expenditure instead of 1/4th and loss of love affection has not been granted and seeks for proper compensation for conventional damages.

13. This Court considered the rival submissions and perused the records and also the impugned judgment of the tribunal clearly

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appreciated the evidence of the P.W.1, namely, the pillion rider and also the registration of the FIR against the driver of the car and other materials, came to the conclusion that the car driver rash and negligently drove the car and dashed against the motorcycle of the deceased. Considering the fact that the deceased was not wearing the helmet and hence, fixed 15% negligence upon the deceased.

14. According to the claimants, the deceased was wearing helmet, but no records has been produced he wore the helmet and hence, the learned Tribunal correctly found that the deceased was not wearing the helmet. In the said circumstances, no merit in the contention of the learned counsel for the claimants to wear the helmet at the time of accident. Hence, the Tribunal correctly fixed 15% negligence upon the deceased for not wearing of the helmet and the same is not warranting any interference.

15. The income of the deceased calculated by the tribunal after deducting allowance, as Rs.48,723/-. This Court perused the salary certificate. In the salary certificate, without any supporting materials the



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tribunal granted some allowance, for which, there was no evidence on record. Hence, the tribunal fixed the monthly income of the deceased at Rs.48,723/- and adding 40% future prospects which comes around Rs.19,489/- and the monthly income comes around Rs.68,212/-.

16. The learned counsel for the claimants would submit that the tribunal had deducted 1/3 for his personal expenses instead of 1/4th. Admittedly, in this case, claimants are 1 to 4. In the said circumstances, as per the judgment in **Sarla Verma**, deduction of personal expenditure is 1/4th. Therefore, to that extend, the amounts are calculated under loss of income as follows:

$$\text{Rs.68,212} \times \frac{3}{4} = 51,159/- \times 12 \times 16 = \text{Rs.98,22,528/-}$$

17. As per the **Pranay Sethi** case, the appellants 2 to 4 in cross objections are entitled to Rs.40,000/- each for loss of love and affection and the same was not awarded and hence, this Court accepted the arguments of the learned counsel for the cross objectors and awarded a sum of Rs.1,20,000/- towards loss of love and affection to the claimants 2 to 4. In all other heads, the award of the tribunal is confirmed. In the

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result, the appeals filed by the Insurance Company are dismissed and cross-objection filed by the claimants is partly allowed to that extended and the claimants are entitled to award amount of Rs.1,00,12,528/- X 15/100 =.

<i>S.No</i>	<i>Description</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 income	87,31,162	(Rs.68,212 x 3/4) =51,159/- x 12 x 16= Rs.98,22,528/-	enhanced
2.	For estate	15,000	15,000	confirmed
3.	For Loss of consortium to the 1 st claimant	40,000	40,000	confirmed
4.	For Loss of Love and affection to the claimants 2 to 4	----	1,20,000 (each Rs.40,000)	awarded
5.	Funeral expenses	15,000	15,000	confirmed
	Total	Rs.88,01,162 (After deducting 15% of the negligence the amount comes Rs. 74,80,987)	Rs.1,00,12,528 (After deducting 15% of the negligence the amount comes Rs.85,10,649)	By enhancing a sum of Rs.10,11,366/-

19. Accordingly, this Civil Miscellaneous Appeals are dismissed and the Cross objection filed by the claimants is partly allowed by enhancing the compensation awarded by the Tribunal from 13/16



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Rs.74,80,987/- to Rs.85,10,649/- with interest of 7.5% from the date of filing of the petition in M.C.O.P.No.111 of 2018. The insurance company is directed to deposit the award amount after deducting 15% of the amount fixed for negligence on the part of the deceased ie., Rs.85,10,649/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. The Insurance Company is directed to deposit the enhanced award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. The claimants are directed to pay the excess court fee, if any. On such deposit being made, the claimants are entitled to withdraw their share amount as per the apportionment and order of the tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

(V.B.S.J.) (K.K.R.K.J.)
04.03.2024

Index :Yes/No
Internet :Yes/No
am/sbn



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To

- 1.The Motor Accidents Claims Tribunal,
IV Additional District Judge, Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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