



C.M.A.(MD)No.1071 of 2024
& Cros. Obj(MD)No.40 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.1071 of 2024
& Cros. Obj(MD)No.40 of 2024 &
C.M.P(MD)No.11136 of 2024

C.M.A.(MD)No.1071 of 2024

1.ICICI Lombard General Insurance Co. Ltd.,
Branch Office, No.2 and 3, Nungambakkam High Road,
Chottabai Centre, Chennai - 35.
Represented by its Branch Manager.

2.ICICI Lombard General Insurance Company Ltd.,
Branch Office, Madurai Road,
Tirunelveli Junction,
The Branch Manager

...Appellants

vs.

1.M.Jeya Lakshmi

2.M.Subbhu Lakshmi

3.M.Malathi

4.M.Keerthana

5.A.Charles

6.S.Dhinakaran

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to call for the records pertaining to the fair order passed by the Motor Accidents Claims Tribunal / III Additional District Judge, Tirunelveli in M.C.O.P.No.1082 of 2022 dated 01.03.2024, set aside the same by allowing the appeal.

For Appellants : Mr.P.Pethu Rajesh

For Respondents : Mr.V.Sasi Kumar for R1 to R4

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1.M.Jeya Lakshmi

2.M.Subbhu Lakshmi

3.M.Malathi

4.M.Keerthana

...Cross Objectors

vs.

1.ICICI Lombard General Insurance Co. Ltd.,
Branch Office, No.2 and 3, Nungambakkam High Road,
Chottabai Centre, Chennai - 35.
Represented by its Branch Manager.

2.ICICI Lombard General Insurance Company Ltd.,
Branch Office, Madurai Road,
Tirunelveli Junction,
The Branch Manager

3.A.Charles

4.S.Dhinakaran

... Respondents



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Prayer: Cross Objection filed under Order 41 Rule 22(1) of the Civil Procedure Code to enhance the award amount made in M.C.O.P.No.1082 of 2022 on the file of the Motor Accident Claims Tribunal / III Additional District Judge, Tirunelveli from Rs.30,77,399/- to Rs. 36,77,399/- with proportionate interest and costs.

For Cross Objectors 1 to 4 : Mr.V.Sasikumar

For Respondents 1 and 2 : Mr.P.Pethu Rajesh

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The learned counsel appearing for the Insurance Company seeks permission of this Court to withdraw the appeal and also made an endorsement to that effect.

2. In view of the same, the Civil Miscellaneous Appeal is dismissed as withdrawn.

3. The legal heirs of Muthaiya, who died in the accident have filed the present cross objection. Since the appeal is dismissed as withdrawn, the cross objection can be treated as an independent appeal.



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4. The Insurance Company has withdrawn the appeal and hence, the manner of the accident and the liability fixed on the Insurance Company are not disputed.

5. The learned counsel appearing for the cross objectors would submit that the Tribunal ought not have fixed contributory negligence of 30% on the deceased as the Insurance Company did not produce any documentary evidence or let in any evidence to prove that the lorry was parked with necessary indicators in order to prevent the offending vehicle from hitting the lorry. He would further submit that the Tribunal has awarded Rs.40,000/- towards loss of consortium to the first cross objector who is the wife of the deceased. However, the Tribunal failed to award compensation to other cross objectors towards loss of love and affection.

6. Admittedly, the deceased Muthaiya hit the stationed vehicle. Therefore, the Tribunal rightly fixed the contributory negligence of 30%



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on his part. Hence, the contributory negligence fixed by the Tribunal need not be interfered.

7. However, the Tribunal though awarded Rs.40,000/- towards loss of consortium to the first claimant / wife, has failed to award compensation towards loss of love and affection to the daughters / claimants 2 to 4 / cross objectors 2 to 4. As per the decision laid down by the Apex Court in **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601**, the claimants 2 to 4 / cross objectors 2 to 4 are entitled to Rs.40,000/- each towards loss of love and affection. Hence, the award passed by the Tribunal is enhanced by Rs. 1,20,000/- in toto.

8. In the result, the Cross Objection is partly allowed and the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1082 of 2022 is enhanced from Rs.30,77,399/- to Rs.31,97,399/-. The appellants are directed to deposit the enhanced compensation amount (less the amount already deposited by them, if any) together with interest



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at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1082 of 2022 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants / cross objectors are at liberty to withdraw the same after following due procedure. The ratio of apportionment granted by the Tribunal shall be kept intact. No costs. Consequently, connected Miscellaneous Petition is closed.

(P.V., J.) (K.K.R.K., J.)
27.08.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Motor Accident Claims Tribunal,
III Additional District Judge, Tirunelveli
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.
and
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