



C.M.A.(MD)No.1067 of 2018
Cross Obj.(MD)No.3 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.(MD)No.1067 of 2018
and
C.M.P.(MD)No.11058 of 2018
and
Cross Obj.(MD)No.3 of 2019

C.M.A.(MD)No.1067 of 2018:-

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Plot No.HIG 55, I Floor, Meenakshi Plaza,
Anna Nagar 80 Feet Road,
Madurai.

... Appellant

vs.

- 1.Vinotha, W/o.Late.Chandran
- 2.Minor Sanjana, D/o.Late.Chandran
- 3.Ayyappan, S/o.Late.Palani
- 4.Lalitha, W/o.Ayyappan



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5.The Proprietor,
Solaimalai Enterprise,
No.7, Mangayarkarasi College Road,
Vadipatti, Paravai, Madurai.

6.Sharfuddin

7.The Branch Manager,
The New India Assurance Co. Ltd.,
Kannara Street, Madappuram,
Tiruvarur.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 28.06.2017, made in M.C.O.P.No.188 of 2015, on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Thanjavur at Kumbakonam.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R4 : Mr.A.S.Mathialagan

For R5 and R6 : No Appearance

For R7 : Mr.J.S.Murali

Cross Obj.(MD)No.3 of 2019:-

1.Vinotha, W/o.Late.Chandran

2.Minor Sanjana, D/o.Late.Chandran

3.Ayyappan, S/o.Late.Palani



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4.Lalitha, W/o.Ayyappan

... Cross Appellants

vs.

1.The Branch Manager,
Reliance General Insurance Co. Ltd.,
Plot No.HIG 55, I Floor, Meenakshi Plaza,
Anna Nagar 80 Feet Road,
Madurai.

2.The Proprietor,
Solaimalai Enterprise,
No.7, Mangayarkarasi College Road,
Vadipatti, Paravai, Madurai.

3.Sharfuddin

4.The Branch Manager,
The New India Assurance Co. Ltd.,
Kannara Street, Madappuram,
Tiruvarur.

... Respondents

Prayer :- Cross Objection filed under Order 41 Rule 22 of C.P.C. read with Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2017, made in M.C.O.P.No.188 of 2015, on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Thanjavur at Kumbakonam.



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For Appellants	: Mr.A.S.Mathialagan
For R1	: Mr.S.Srinivasa Raghavan
For R2 and R3	: No Appearance
For R4	: Mr.J.S.Murali

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

The Civil Miscellaneous Appeal is preferred by the Insurance Company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal on the claim petition filed by the dependants of the deceased Chandran. While the Insurance Company has preferred the above Appeal on the ground of contributory negligence and excessive quantum, the claimants have preferred Cross Objection, seeking enhancement of compensation on the ground that the Tribunal has failed to take note of future prospects of the accident victim.



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2. The brief facts leading to the Civil Miscellaneous Appeal

and the Cross Objection are as below:-

On 12.04.2014 at about 01.00 p.m. on the Manancheri Main Road, opposite to Lotus Pond, a Mahindra Van bearing Registration No.TN-50-F-0813, owned by Royal Distributor, carrying groceries, driven by the said Chandran, was hit by Eicher Lorry bearing Registration No.TN-59-ASB-5106 driven by one Santhanam. According to the F.I.R., the accident occurred while the deceased Chandran took his right side to avoid hitting goats crossing the road. In the said accident, Chandran sustained severe injuries and he was taken to the Kumbakonam Government Hospital in an Ambulance. After first aid, he was shifted to Meenakshi Mission Hospital, Thanjavur. After a couple of days, Chandran succumbed to injuries. Claim Petition was filed by his wife, minor daughter and parents against the insurers of both the vehicles and the owner of the Eicher Lorry. Though the claimants have sought for Rs.40,00,000/- with 12% interest as compensation, the Tribunal after considering the evidence, has awarded a sum of Rs.25,46,797/- with 7.5% interest and also apportioned the award amount among the



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claimants as under:-

Rank before the Tribunal	Relationship with the deceased	Amount
1 st petitioner	Wife	Rs.9,96,797/- with 7.5% interest
2 nd petitioner	Minor daughter	Rs.8,50,000/- with 7.5% interest
3 rd and 4 th petitioners	Father and mother	Rs.3,50,000/- each with 7.5% interest
Total		Rs.25,46,797/- with 7.5% interest

3. The Branch Manager of the Insurance Company, which has insured the Eicher Lorry, has preferred C.M.A.(MD)No.1067 of 2018 on the ground that the accident took place solely on account of the negligence on the part of the deceased driver and admittedly, he had turned to the right side without noticing the upcoming Eicher Lorry in order to avoid hitting goats crossing the road. Therefore, when the victim is the cause for the accident, the dependants of the victim are not entitled for compensation. That apart, the monthly income of the deceased has been fixed by the Tribunal as Rs.13,000/- without any proof of income.



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4. Per contra, the Cross Objection has been filed by the claimants stating that the Tribunal ought to have awarded 40% towards future prospects and the compensation for the medical expenses has to be enhanced.

5. The learned counsel for the appellant Insurance Company submitted that the negligence on the part of the deceased is seen from the F.I.R. [Ex.P.1] as well as the testimony of P.W.2 Muthukumar, who was the co-occupant in the Mahindra Van driven by the deceased.

6. The learned counsel for the claimants in response to the above submissions submitted that the Trial Court has considered this point and has found that there is no evidence to show that the accident occurred due to the negligence of the deceased and in the absence of rough sketch, it cannot be presumed that due to rash and negligent driving of the deceased, the accident occurred. That apart, P.W.2 witness to the occurrence and co-occupant, has categorically deposed that the



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offending Eicher Lorry came rashly and negligently. Therefore, negligence is not a fact for presumption. Relying upon the monthly income of the deceased fixed at Rs.13,000/-, the learned counsel for the claimants submitted that the deceased was 21 years old at the time of accident and a qualified professional driver having a valid driving licence [Ex.P.17] and had future prospects of earning more as a skilled person.

7. Heard the learned counsels and perused the records.

8. There is no dispute about the accident and the avocation of the deceased, since he sustained injuries while driving the vehicle and died two days after the accident in the hospital. The vehicle driven by the deceased as well as the offending vehicle were duly insured under the respondents 2 and 4 in the claim petition, respectively. The claimants being the wife, child and parents are dependants of the deceased and there is no dispute about the relationship. Relying upon the testimony of P.W.3 Mohamed Faizal and also the salary certificate, which is marked as Ex.P.20, the Tribunal has fixed the monthly income of the deceased as



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Rs.13,000/- . The age of the deceased was 21 years and accordingly, multiplier factor '18' applied and loss of income was fixed as Rs.28,08,000/-. After deducting 1/4th for his personal expenses, the Tribunal has awarded a sum of Rs.21,06,000/- for loss of income. Further, the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses; Rs.10,000/- towards loss of estate; Rs.1,00,000/- towards loss of love and affection; Rs.1,00,000/- towards loss of consortium; Rs.1,95,797/- towards medical expenses; and Rs.10,000/- towards transport expenses and totally, a sum of Rs.25,46,797/- with 7.5% interest from the date of claim petition till the date of realization was awarded by the Tribunal as compensation.

9. The assessment of loss of compensation by and large is in tune with the dictum laid down by the Hon'ble Supreme Court except omission to award future prospects. As pointed out by the learned counsel for the claimants, the Tribunal ought to have awarded 40% towards future prospects. To that extent, the Cross Objection filed by the claimants is allowed.



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10. Regarding the negligence, it is true that the Insurance Company has not taken any steps to produce the rough sketch. However, the testimony of P.W.2 read together with the F.I.R. [Ex.P.1], the report regarding alteration of charges [Ex.P.18] and the final report [Ex.P.8] indicates that the goods vehicle driven by the deceased, had turned to the right side of the road to avoid hitting goats crossing the road. Therefore, it is not sole negligence of the driver of the offending vehicle, namely, Eicher Lorry. The elements of negligence and rashness on the part of the deceased is spoken implicitly by P.W.2, eyewitness to the occurrence. For the said rash and negligent driving, the deceased has to be held responsible and this Court holds that for the contributory negligence, 10% of the award to be reduced. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl. No.	Head	Amount
1.	Loss of income [Rs.13,000 + Rs.5,200 (40% future prospects) x 12 x 18 (multiplier) – $\frac{1}{4}$ (personal expenses, Rs.9,82,800/-)]	Rs.29,48,400/-
2.	Funeral expenses	Rs. 25,000/-
3.	Loss of estate	Rs. 10,000/-



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4.	Loss of love and affection	Rs. 1,00,000/-
5.	Loss of consortium	Rs. 1,00,000/-
6.	Medical expenses	Rs. 1,95,797/-
7.	Transport expenses	Rs. 10,000/-
	Grand Total	Rs.33,89,197/-
	Less:- 10% towards contributory negligence of the deceased	Rs. 3,38,920/-
	Total	Rs.30,50,277/-

The above award amount is to be paid with interest at 7.5% p.a. from the date of filing the claim petition till the date of realization. The learned counsel for the appellant Insurance Company submitted that the Tribunal award amount has already been deposited and the balance amount as enhanced by this Court along with 7.5% interest will be deposited within a period of four weeks.

11. In view of the above, the appellant / Reliance General Insurance Company Limited is hereby directed to deposit the entire balance award amount with interest within a period of four weeks from the date of receipt of a copy of this judgment. From the award amount, the father and mother of the deceased are entitled to Rs.4,00,000/- each with accrued interest and the balance award amount with accrued interest



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shall be equally apportioned between the wife and the minor daughter of the deceased. The Tribunal is directed to deposit the share of the minor daughter in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until she attains majority. The mother of the minor/wife of the deceased is permitted to withdraw the interest amount once in six months, till the minor attains the majority.

12. In the result, the Civil Miscellaneous Appeal is disposed of and the Cross Objection is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[G.J., J.] [C.K., J.]
02.01.2024

To

- 1.The Motor Accident Claims Tribunal [Chief Judicial Magistrate],
Thanjavur at Kumbakonam.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
C.M.A.(MD)No.1067 of 2018 and Cross Obj.(MD)No.3 of 2019

02.01.2024