



Cros.Obj (MD)No.19 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

Cros.Obj (MD)No.19 of 2023

in

C.M.A.(MD)No.535 of 2012

1.Kaliammal,
2.Chitra.

... Cross Objectors/
respondents 2 & 3

vs.

1.Bajaj Allianz General Insurance Co. Ltd.
Represented by its Branch Manager,
P.P.Chavadi,
Madurai.

2.Ahmed Ibrahim.

... Respondents

Prayer: Cross Objection filed under Order XLI, Rule 22 of C.P.C against the judgement and decree dated 12.12.2011 passed in M.C.O.P.No.2249 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Judge/Fast Track Court-II, Madurai and the memorandum of grounds was served of the respondent 2 and 3/cross objector on 23.05.2012.

For Appellants : Mr.M.P.Senthil

For Respondent

for R1 : Mr.J.S.Murali

for R2 : Dispensed with



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with the first respondent did not have a valid licence; and that in any case, the compensation claimed was excessive.

5. Pending disposal of the claim petition, the said Palanichamy died and his legal heirs, namely, cross objectors herein were impleaded as parties *vide* order, dated 22.04.2008 in I.A.No.21 of 2008 and they had filed a petition to amend the claim petition.

6. The first respondent filed an additional statement of objections and contended that the death was not due to the injuries; and that the claimants had not established the nexus between the injuries and the death and therefore, the compensation for the death is not maintainable.

7. The cross objectors examined P.W.1 and P.W.2 and marked Exs.P1 to P5. The first respondent herein examined R.W 1 to R.W.3 and marked Exs.R1 to R3.

8. The first respondent/insurance company filed C.M.A.(MD)No. 535 of 2012 and the matter was referred to the National Lok Adalat, where the Insurance Company withdrew the appeal. In the meanwhile, the



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claimants had preferred the cross objection seeking enhancement.

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9. The learned counsel for the claimants/cross objectors would submit that there is no nexus to establish between the injuries and the death; that the victim had suffered both bone fractures in his right leg and sustained injuries in his head and therefore, the nexus can be inferred; and that in any case, the compensation awarded at Rs.50,000/- under 'no fault liability' is unsustainable; and that even assuming that the nexus between the injury and the death has not been established, the claimants are entitled to higher compensation for the injuries suffered by the said Palanichamy.

10. The learned counsel for the insurance company, per contra, submitted that though the compensation was awarded erroneously under no fault liability, the quantum of compensation is just and reasonable as the claimants had neither established the nexus between the injury and the death nor the nature of the injury and hence prayed for the dismissal of the appeal.

11. Since the second respondent remained *ex parte* before the Tribunal, notice to the second respondent is dispensed with.



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12. The only point for consideration in the instant appeal is *'whether the quantum of compensation awarded by the Tribunal is just and reasonable'*.

13. The compensation of Rs.50,000/- under no fault liability is erroneous. The fact that the rider of the two wheeler was negligent was established before the Tribunal. Therefore, this Court finds that the award of Rs.50,000/- under the head 'no fault liability' has to be set aside. It is also seen that though the injured claimant had suffered both bone fractures in his right hand, which was certified as grievous injury by the doctors, who had treated him and also injuries in the left parietal region and laceration in the right parietal region, the doctor was not examined to prove the nexus between the injuries and the death. The accident took place on 24.09.2005 and the injured died on 05.02.2006. In the absence of any medical evidence, the Tribunal was right in holding that the claimants did not establish the nexus between the injuries sustained by the said Palanichamy and his death. However, the claimants are entitled to the compensation for the injuries sustained by the said Palanichamy as stated earlier. Though no evidence has been let in to assess the disability,



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considering the wound certificate/Ex.P2 issued by the doctor, wherein it is stated that the said Palanichamy suffered grievous injuries, this Court is of the view that the disability can be assessed at 20%. Since the accident took place in the year 2005, Rs.1,500/- for a percentage of disability can be awarded. Thus, the compensation under the head 'disability' has to be Rs.30,000/-. Considering the nature of the injuries, age of the deceased, Rs.15,000/- each is awarded towards the head 'pain and sufferings', 'loss of amenities' and towards 'medical expenses'. This Court is of the view that a sum of Rs.5,000/- each can be awarded towards the head 'extra nourishment' and 'transport expenses'. Thus, the compensation awarded by the Tribunal can be enhanced as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	No fault liability	Rs. 50,000/-	---	Set aside
2	Disability	---	Rs. 30,000/-	Granted
3	Pain and sufferings	---	Rs. 15,000/-	Granted
4	Loss of amenities	---	Rs. 15,000/-	Granted
5	Medical expenses	---	Rs. 15,000/-	Granted
6	Extra nourishment	---	Rs. 5,000/-	Granted
7	Transport expenses	---	Rs. 5,000/-	Granted
Total		Rs. 50,000/-	Rs.85,000/-	Enhanced by Rs.35,000/-



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14. The first respondent/Insurance Company is directed to deposit the enhanced compensation amount of **Rs.85,000/-** (Rupees Eighty Five Thousand only) together with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

15. On such deposit, the cross objectors/claimants are permitted to withdraw their share amount with interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The cross objectors/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

16. In the result, this Cross Objection is partly allowed. No costs.

21.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:

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- 1.The Motor Accidents Claims Tribunal, Additional District Judge/Fast Track Court-II, Madurai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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