IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24-02-2025**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

CMA No.1389 of 2023 & CMP No.13861 of 2023
and Cross Objection No.69 of 2024

Manager, The New India Assurance Co.Ltd,
No.46 , Moore St, Chennai 1.

.... Appellant

Vs

Rajarajeswari (Died)
No.12/121, Mandapam St, Kottur, Chennai 85.

Bharath (minor) (Died)

Chellammal (Died)

1.Vijay
No.12/121, Mandapam St, Kottur, Chennai 85.

2.Shyam
No.12/121, Mandapam St, Kottur, Chennai 85.

3.N.Muthu
Door No.11A, Mariyur Post, Karikudi Taluk.

4.Anand Subramanian
Door No.68, Vanniyar Street, Choolaimedu
Chennai 600 094.

5.The Manager
National Insurance Co., Ltd
751, Anna Salai, Chennai 600 002.

.... Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act to set aside the decree and judgment dated 15.11.2022 made in MCOP No.4925 o 2000 on the file of Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant	**:**	Mr. S.Dhakshnamoorthy
For Respondents	**:**	Ms.Ramya Saravanan for Mr.J.Mahalingam For R1 And R2 Mr.P.Sankaranarayanan – for R5 R3- Insufficient Address

Cross Objection No.69 of 2024

Rajarajeswari (Died)
Bharath (minor) (Died)
Chellammal (Died)

1.Vijay
2.Shyam .... Appellants

-vs-

1. The Manager, The New India Assurance Co.Ltd,
No.46 , Moore St, Chennai 1.

2.N.Muthu
Door No.11A, Mariyur Post, Karikudi Taluk.

3.Anand Subramanian
Door No.68, Vanniyar Street, Choolaimedu
Chennai 600 094.

4.The Manager, National Insurance Company Ltd
751, Anna Salai, Chennai 600 002. .... Respondents

Prayer : Cross Objection under Order XLI Rule 22 of CPC against the decree and award dated 15.11.2022 made in M.C.O.P.No.4925 of 2000 on the file of the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes at Chennai.

For Appellants : Ms.Ramya Saravanan for Mr.J.Mahalingam

For Respondents : Mr. S.Dhakshnamoorthy – For R1
Mr.P.Sankaranarayanan – for R4

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.Suresh Kumar J.**)

This Civil Miscellaneous Appeal as well as the Cross Objection filed by the Insurance Company and the Claimants respectively arises out of the Award passed by the Motor Accidents Claims Tribunal, Chennai (VI Court of Small Causes), Chennai in M.C.O.P.No.4925 of 2000 dated 15.11.2022.

2. Due to a road accident which occurred on 14.04.2000, where two vehicles – one lorry and a van were involved, one of the passengers travelled in the van viz., one Mohan died. He was an LIC agent at the time of accident. The legal heirs of the deceased Mohan ie., the wife, children as well as mother of the deceased joined together and filed the said claim petition.

3. During the pendency of the claim petition, wife of the deceased one Rajarajeswari, one minor son Bharath and mother Chellammal died. The other two sons viz., one Vijay and one Shyam, who are respondents 1 and 2 in the CMA and appellants in the Cross Objection are the surviving legal heirs of the deceased.

4. The Tribunal, having considered the evidence adduced before it, has fixed the monthly income of the deceased Mohan at Rs.20,000/- and by applying the multiplier 14 and by taking the future prospects at 25%, has come to the conclusion that the loss of earning including future prospects of the deceased was Rs.28,00,000/-. By awarding Rs.80,000/- towards loss of consortium, Rs.15,000/- for loss of estate Rs.15,000/-, and Rs.15,000 for funeral expenses, a total compensation of Rs.29,10,000/- was awarded by the Tribunal, which is challenged in the present appeal.

5. Questioning the quantum of compensation, the Insurance Company preferred the main appeal and in order to have enhancement of the Award, the claimants have filed the Cross Objection.

6. We have heard Mr.S.Dhakshanamoorthy for the appellant Insurance Company in the civil miscellaneous appeal, Ms.Ramya Saravanan for Mr.J.Mahalingam appearing for the claimants and Mr.P.Sankaranarayanan for the 5th respondent in the appeal and 4th respondent in the Cross Objection.

7. Learned counsel for the appellant Insurance Company would point out that the deceased Mohan was an LIC agent at the time of accident and he might not have earned any constant income, however based on Ex.P8, where it was claimed

on behalf of the respondents / claimants that the deceased had earned a sum of Rs.35,000/- and odd for the month of November 1999. That apart, the claim of the respondents / claimants that the deceased Mohan was also functioning as a Purohit in a temple at Chennai, where from he was earning Rs.9000/- per month as salary. To that extent, a letter was given in the letter head of the temple, which was marked as Ex.P9. These are the two documents, based on which the Tribunal came to the conclusion that the earning of the deceased could be fixed at Rs.20,000/- per month. Accordingly, the said amount fixed is questionable, he contended.

8. Learned counsel for the appellant would also point out that the accident had taken place in the year 2000 and prior to the year 2000 that much of earning could not have been possible to be earned by the deceased. Therefore, such a fixation per month was exorbitant and interference is called for on that count. This is the main contention of the learned counsel for the appellant.

9. Per contra, learned counsel for the claimants, who filed the Cross Objection would submit that Ex.P9 is the salary certificate given by the Temple, where it has been mentioned that the deceased Mohan was earning a sum of Rs.9,000/- as salary as Purohit in the temple and that apart, he was earning commission as LIC agent. She further submits that lot of documents pertaining to the commission paid to the deceased since has been destroyed in the office of the Insurance Company, which guttered in a fire accident during the relevant point of time, the claimants could not

produce any other document except Ex.P.8, which shows that a sum of Rs.35,083/- was paid as commission to the deceased Mohan for the month of November 1999. Therefore, even if average commission is taken into account, definitely the earning would have been more than Rs.20,000/- per month and hence the fixation of Rs.20,000/- by the Tribunal is on the lower side. Hence, it has to be enhanced reasonably and therefore the learned counsel for the respondents / claimants seeks for enhancement of the compensation.

10. If we look at the award passed by the Tribunal, it is seen that the Tribunal has taken Ex.P8 ie., the document showing the commission earned by the deceased in a particular month ie., November 1999. Insofar as the oral evidence adduced on behalf of the claimants, P.W.2 who is a co-worker of the deceased Mohan was examined and he has deposed that he was also working as as an LIC agent and during the year of accident, he earned a commission of Rs.1,50,000/- per year. These are all the evidences mainly placed before the Tribunal on the side of the claimants.

11. If we look at these evidences, both documentary as well as oral evidence, we can easily come to the conclusion that insofar as the earning that has been made by the deceased Mohan by way of commission as LIC agent would not have been more than Rs.12,000/- per month, as it is recorded by the evidence of P.W.2.

12. Insofar as the claim that has been made on behalf of the claimants with regard to the salary he had received from the temple for his Purohit job, though it was stated as Rs.9,000/-, there has been no substantiated documents to establish the same and no one has been examined on behalf of the temple. Assuming that he might have earned some amount every month by functioning as Purohit in the temple, he might not have earned Rs.9000/- prior to the year 2000 in a temple. Therefore, we take Rs.5000/- per month as his monthly earning from the temple as Purohit and a commission of Rs.12,000/- per month from LIC. Together, the deceased would have earned a sum of Rs.17,000/-. Therefore, we come to the conclusion that his earning could be fixed at Rs.17,000/- per month at the time of accident.

13. As per the judgment of the Hon'ble Supreme Court in **Pranay Sethi's case**, the future prospects of 25% of his earnings can be taken into account because he was more than 40 years old at the time of accident and he was working as agent for LIC, which is a public sector undertaking. Accordingly, a sum of Rs.4,250/- (25% of Rs.17,000/-) can be added and the monthly earning can be fixed at Rs.21,250/-.

14. The multiplier adopted is 14, which being the correct multiplier, the total loss of earnings comes to Rs.35,70,000/-. Out of the said amount, 1/3rd must be

deducted for his personal expenses. 1/3rd of the said amount of Rs.35,70,000/- comes to Rs.11,90,000/-. If that is deducted, the remaining amount would be Rs.23,80,000/-. Therefore, a sum of Rs.23,80,000/- is fixed under the head 'loss of earning'. The amounts fixed by the Tribunal under the other heads are reasonable and need not be interfered with. Accordingly, the award of the Tribunal is modified as follows:

Head	***Amount in Rs.***
Loss of Earning	*23,80,000*
Loss of consortium	*80,000*
Loss of estate	*15,000*
Funeral expenses	*15,000*
Total	***24,90,000***

15. Hence, the award passed by the Tribunal dated 15.11.2022 in M.C.O.P.No.4925 of 2000 is modified to Rs.24,90,000/- (Rupees Twenty Four Lakhs Ninety Thousand Only), which shall be paid by the insurance company to the respondents / claimants. It is stated that the appellant insurance company has already deposited 50% of the award amount before the Tribunal. Therefore, the remaining amount of Rs.10,35,000/- (Rs.24,90,000 – Rs.14,55,000) shall be deposited by the appellant insurance company within a period of four weeks from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum. On such deposit being made, the claimants are entitled to withdraw the same without any further proceedings. The impugned award is modified to the aforesaid effect.

16. In result, the Civil Miscellaneous Appeal filed by the insurance company is partly allowed and the Cross Objection filed by the claimants is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(A.D.M.C., J.)**
24-02-2025

Index : Yes/No
Neutral Citation : Yes/No
KST

To

The Motor Accidents Claims Tribunal /
Tiruppur.

R.SURESH KUMAR, J.

AND

A.D.MARIA CLETE, J.

KST

C.M.A.No.1389 of 2023
and Cross.Obj.No.69 of 2024

24.02.2025