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C.M.A.No.2000 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

C.M.A. No.2000 of 2022

and

C.M.P. No.15211 of 2022

and

Cros.Obj.No.81 of 2023

Cholamandalam MS General Insurance Co Limited,
319, Old No.154, Shaw Wallance Building,
Thambu Chetty Street, Chennai – 600 001.

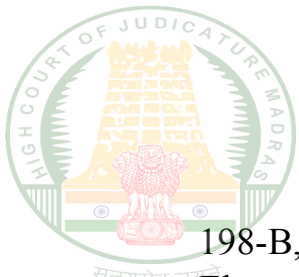
... Appellant in

CMA.No.2000 of 2022

and first respondent in
Cros.Obj.No.81 of 2023

Vs.

1. Loganathan,
Son of Rajangam,
Aged about 51 years,
198-B, Kottaikadu North,
Elangadu, Illangadu, Thanjavur – 614 903.
2. Kalaiselvi,
Wife of Loganathan,
aged about 51 years,



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198-B, Kottaikadu North,

Elangadu, Illangadu, Thanjavur – 614 903. ... Respondents 1 & 2

in CMA.No.2000 of 2022

and Appellants in Cros.

Obj.No.81 of

2023

3. U.Jeevitha,

No.7, 3R Street, Krishnanagar,

Moovarasampet, Madipakkam,

Chennai – 600 091.

... third Respondent in

CMA.No.2000 of 2022 and

second respondent in

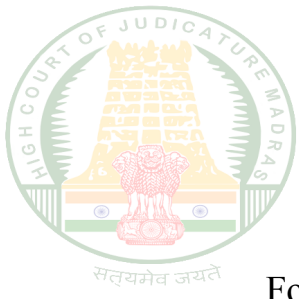
Cros.Obj.No.81 of 2023

PRAYER IN CMA.NO.2000 OF 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 25.02.2022 made in M.A.C.T.O.P.No.1592 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

PRAYER IN CROS.OBJ.NO.81 OF 2023: Cross Objection filed under Order XLI rule 22 of the CPC, against the Judgment and decree dated 25.02.2022 made in M.A.C.T.O.P.No.1592 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr. G.Harshavardhan
for Mr.K.Sharath Chandran
in CMA.No.2000 of 2022 and
first respondent in Cros.Obj.No.81 of 2023

For R1 & R2 : Mr. S.Angamuthu in CMA.No.2000 of 2022
and Appellants in Cros. Obj.No.81 of 2023



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For R3

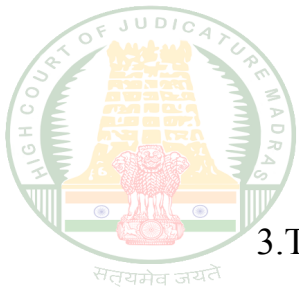
: No appearance in CMA.No.2000 of 2022
and second respondent in Cros.Obj.No.81 of 2023

COMMON JUDGMENT

(Delivered by Dr. A.D. Maria Clete, J)

This Civil Miscellaneous Appeal has been filed by the insurance company challenging the award dated 25.02.2022 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) in M.C.O.P. No. 1592 of 2019.

2.The Tribunal awarded a total compensation of Rs.22,52,000/- for the death of a 27-year-old deceased, who was working as a Teacher in Velammal Matriculation School, Madipakkam, earning a salary of Rs.18,000/- per month at the time of the accident. The Tribunal directed the insurance company to pay 75% of the awarded amount and permitted recovery of the remaining 25% from the owner of the offending vehicle. Aggrieved by the apportionment of liability, the insurance company has filed the present appeal.

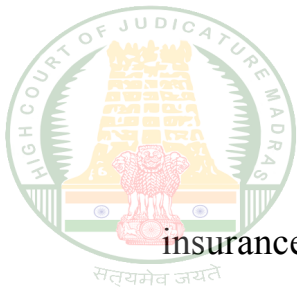


C.M.A.No.2000 of 2022

3.The claimants, on the other hand, have filed Cross-Objection No. 81 of 2023 seeking enhancement of compensation on the ground that the Tribunal erred in reducing the salary of the deceased from Rs.18,000/- to Rs.15,000/- per month without sufficient justification, despite the evidence of her appointment order and employer's testimony.

4.The brief facts leading to the filing of this case is that the accident occurred on 10.07.2018, when the deceased was riding as a pillion on a motorcycle, a tipper lorry, driven in a rash and negligent manner, collided with the motorcycle, causing the deceased to fall and sustain fatal injuries. Accordingly, the petitioners filed the Claim Petition before the Tribunal seeking compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with interest and costs.

5.Before the Tribunal, it was proved through the Motor Vehicle Inspector's Report (Ex.R2) and evidence of the insurance company's officer (RW1) that the driver of the tipper lorry held only a Light Motor Vehicle licence and did not possess an endorsement to drive a Heavy Goods Vehicle, thereby constituting a breach of policy conditions. Despite finding breach, the Tribunal held that the



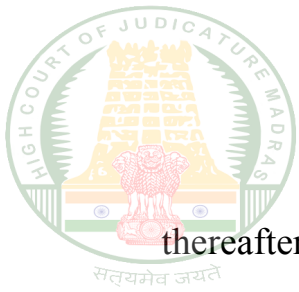
C.M.A.No.2000 of 2022

insurance company should bear 75% of the compensation, attributing part of the responsibility to systemic failures in enforcement of motor vehicle regulations, and permitted only 25% recovery from the owner. Aggrieved by the said finding, the Insurance company has come before this Court by way of this appeal.

6.Heard the parties and perused the materials available on record.

7.As regards C.M.A.No.2000 of 2022, it is seen that on facts, there is no dispute regarding the occurrence of the accident, the negligence of the tipper lorry driver, or the quantum of compensation awarded by the Tribunal at Rs.22,52,000/-. However, in our considered view, the Tribunal erred in apportioning liability between the insurer and the insured after having recorded a clear breach of the terms of insurance policy.

8.The Hon'ble Supreme Court in **Shamanna v. Divisional Manager, United India Insurance Co. Ltd., (2018) 9 SCC 650**, has categorically held that where there is breach of policy conditions (such as absence of a valid driving licence), the insurer is entitled to pay the compensation to third parties and



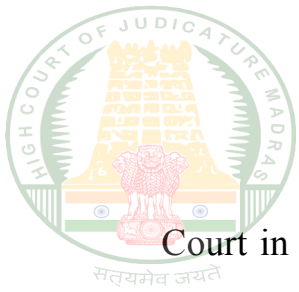
C.M.A.No.2000 of 2022

thereafter recover the entire compensation amount from the owner of the offending

vehicle. The principle of “pay and recover” fully applies in this case. Once breach is proved, the insurer’s liability to indemnify the insured ceases, but in order to protect third party victims, the insurer must first satisfy the award and is granted the right of recovery from the owner. The Tribunal’s direction restricting recovery to only 25% is thus contrary to settled law and cannot be sustained.

9.As regards Cross Obj.No.81 of 2023 is concerned, the deceased had only recently joined employment when the accident occurred. Though her appointment order fixed her salary at Rs.18,000/-, she had worked barely for 15 days before her untimely death. The Tribunal, taking into account the short duration of service and absence of confirmation of employment, notionally fixed her income at Rs.15,000/- per month. We do not find this reasoning to be either perverse or unreasonable.

10.In terms of future prospects and other heads of compensation, the Tribunal has correctly applied the principles laid down by the Hon’ble Supreme



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Court in **Pranay Sethi**, and **Satinder Kaur's** cases. Therefore, no interference is

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11.In the result, the Civil Miscellaneous Appeal filed by the appellant is disposed of and the cross objection filed by the petitioners is dismissed. The appellant is directed to deposit the award amount now determined by this Court, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (less the default period, if any) along with interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent in full. On such deposit, the petitioners are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.K., J) (A.D.M.C., J)
24.04.2025



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av/ay

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

R.SURESH KUMAR, J
and
DR. A.D. MARIA CLETE, J

ay

To

1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai.

C.M.A. No.2000 of 2022
and
C.M.P. No.15211 of 2022
and



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