IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.910 of 2022
and Cross Objection No.3 of 2024
and C.M.P.No.6766 of 2022

C.M.A.No.910 of 2022:

The Manager
ICICI Lombard General Insurance
Company Limited
Lombard House
No.414, Veer Savarkar Marg
Next: Sidhi Vinayak Temple
Prabhadevi
Mumbai-400 024. ... Appellant

vs.

1.Narayanan

2.Kalavathi

3.A.Venkatesh

4.Massod Pasha ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.10.2021 in

M.C.O.P.No.1110 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri.

For Appellant : M/s.R.Sree Vidhya

For R1 and R2 : Mr.S.P.Yuaraj

For R3 and R4 : Notice Returned (insufficient address)

Cross Objection No.3 of 2024:

1.Narayanan

2.Kalavathi ... Cross Objectors

vs.

1.The Manager
ICICI Lombard General Insurance Company Limited,
Lombard House, No.414, Veer Savarkar Marg,
Next: Sidhi Vinayak Temple, Prabhadevi,
Mumbai-400 024.

2.A.Venkatesh

3.Massod Pasha ... Respondents

PRAYER: Cross Objection is filed under Order 41 Rule 22 of the Civil Procedure Code, to enhance the compensation amount awarded in the Judgment and Decree dated 01.10.2021 made in M.C.O.P.No.1110 of 2018 on the file of the Motor Accident Claims Tribunal / Special District Judge, Krishnagiri.

For Cross Objectors : Mr.S.P.Yuaraj

For R1 : M/s.R.Sree Vidhya

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Appellant/Insurance Company challenging the award passed by the Tribunal fixing compensation payable to the dependants of the victim at Rs.19,24,400/-.

2. According to the respondents 1 and 2/claimants, on 10.02.2016, the son of the claimants namely Hari was riding a two wheeler bearing Registration No.TN-24-S-9281 from Krishnagiri to Bangalore. When he was riding his two wheeler slowly and steadily on the left side of the road, the lorry bearing Registration No.HR-55-G-0783 belonged to the 4th respondent and insured with the Appellant-Insurance Company was Driven by the 3rd respondent herein in a rash and negligent manner. According to the claimants, the 3rd respondent applied sudden brake without giving any signal and as a result of which, the deceased, who was driving the two

wheeler behind the lorry dashed against the back side of the lorry. As a result of the accident, he sustained grievous injuries and died on the spot. Therefore, the claim petition was filed by the claimants seeking compensation of Rs.50,00,000/- against the appellant-insurance company and other respondents.

3. The respondents 3 and 4 remained *exparte* before the Tribunal. The appellant-Insurance Company alone contested the claim petition denying the negligence on the part of the driver of the 4th respondent's lorry and it also claimed that the accident had occurred only due to the negligence on the part of the deceased.

4. Before the Tribunal, the 2nd respondent /2nd claimant was examined as PW.1 and one eye-witness was examined as PW.2. On behalf of claimants, 16 documents were marked as Exs.P1 to P16. On behalf of the Appellant-Insurance Company, one Karthika, Junior Assistant, RTO Office, Harur was examined as RW.1 and one Boopathi Ramaraj, Sub-Inspector of Police, Shoolagiri Police Station was examined as RW.2 and 4 documents

were marked as Exs.R1 to R4. On behalf of the respondents 3 and 4 herein no witnesses were examined and no document was marked.

5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the lorry and quantified the compensation payable to the claimants at Rs.19,24,400/-. Aggrieved by the said award, the appellant/Insurance Company has come before this Court questioning the findings of the Tribunal with regard to negligence as well as quantum.

6. On the part of the respondents 1 and 2/claimants, a cross objection has been filed in Cross Objection No.3 of 2024 seeking enhancement of compensation.

7. Heard the arguments of learned counsel appearing for the appellant/Insurance Company and learned counsel appearing for the respondents 1 and 2/claimants.

8. The learned counsel appearing for the Appellant-Insurance Company would submit that the deceased, who was driving the two wheeler behind the lorry without observing traffic rules in a rash and negligent manner, dashed against the lorry on back side and hence, the Tribunal committed an error in fixing negligence on the part of the driver of the lorry. The learned counsel further submits that the notional income of Rs.12,000/- per month fixed by the Tribunal is without any evidence and the same is very much on higher side.

9. The learned counsel appearing for the contesting respondents 1 and 2/claimants would submit that the Tribunal based on the evidence of PW.2 came to the conclusion the entire negligence was on the part of the driver of the lorry and the same requires no interference. He further submits that deceased was a Engineering Degree Holder and hence, the amount of Rs.12,000/- as notional income fixed by the Tribunal needs enhancement.

10. In order to prove negligence, the claimants examined one eyewitness as PW.2-Venugopal. In his evidence, he clearly deposed that

lorry which was proceeding in front of the two wheeler driven by the deceased, suddenly applied brake and consequently, the deceased dashed against the lorry on it's back side. The evidence of PW.2 has not been shattered in cross examination. Therefore, based on the evidence of PW.2, the Tribunal came to the conclusion that the entire negligence was on the part of the driver of the lorry.

11. A perusal of the Ex.P1-FIR would suggest that father of the deceased gave a police complaint and based on the said complaint, FIR was registered against the deceased. It is also seen from the evidence of RW.2-Sub-Inspector of Police and Ex.R3-Charge Sheet filed by the police, after investigation, the criminal case was closed as abated against the deceased. Based on these documents, the learned counsel for the appellant vehemently contended that the negligence was on the part of the deceased.

12. A close scrutiny of Ex.P1-FIR would indicate that nowhere in the said document, it was stated that deceased was rash and negligent while driving the vehicle. It only talks about fact of collision between the lorry

and the two wheeler. Therefore, based on Ex.P1 and charge sheet filed by the police, we cannot come to a conclusion that entire negligence was on the part of the deceased. However, from the evidence available on record, it is clear the lorry was proceeding in front of the two wheeler driven by the deceased and the deceased dashed against the back side of the lorry. Therefore, this Court feels it would be appropriate to fix 20% negligence on the part of the deceased.

13. As far as the question of quantum is concerned, it was stated by the claimants that at the time of accident, the deceased was employed in E-Info Media Private Limited, Bangalore as BPO. However, in order to substantiate the same, the claimants have not produced any documentary evidence. Exs.P6 and P7 would indicate that the deceased was a BE Degree Holder. Even if there is no document to prove the avocation and income, taking into consideration the year of accident, this Court feels it would be appropriate to fix Rs.15,000/- for the accident occurred in the year 2016. In the case on hand, the deceased was a BE-Mechanical Engineering Graduate, in such circumstances, this Court feels it would be appropriate to fix

Rs.17,000/- as notional income for the deceased even though there is no evidence to prove his income.

14. A perusal of Driving License of the deceased-Ex.P5 would indicate that he was born on 15.07.1993. Accident had occurred on 10.02.2016. Therefore, at the time of accident he was only 22 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier would be 18. In that case, the loss of dependency would be Rs.25,70,400/- (Rs.17,000 x 1.4 x 12 x 18 x 1/2). Since the deceased died as a bachelor, 50% of the amount is deducted towards personal expenses.

15. The amount awarded under the heads loss of estate, funeral expenses and loss of consortium etc., are affirmed as it is in accordance with law settled by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. Therefore, the total amount payable to the claimants after deducting 20% contributory negligence would be at Rs.21,44,320/-. Accordingly, the award passed by

the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.18,14,400/-	Rs.25,70,400/-	**Enhanced**
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	**Confirmed**
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	**Confirmed**
4.	Loss of consortium	Rs.80,000/-	Rs.80,000/-	**Confirmed**
Total		**Rs.19,24,400/-**	**Rs.26,80,400/-**	**Enhanced**
Less 20% Contributory Negligence		**-**	**Rs.5,36,080/-**	
Total		**Rs.19,24,400/-**	**Rs.21,44,320/-**	**Enhanced by Rs.2,19,920/-**

16. In view of the discussions made earlier, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed and the Cross Objection No.3 of 2024 filed by the respondents 1 and 2/claimants is partly allowed by enhancing the compensation amount to Rs.21,44,320/-.

17. The Appellant/Insurance Company is directed to deposit the enhanced award amount of Rs.21,44,320/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of

M.C.O.P.No.1110 of 2018 on the file of the The Motor Accident Claims Tribunal (Special District Judge), Krishnagiri, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the respondents 1 and 2/claimants are entitled to withdraw the award amount by making formal application before the Tribunal. No costs. Consequently, the connected civil miscellaneous petition is closed.

14.03.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm

To

1.The Motor Accident Claims Tribunal (Special District Judge),
Krishnagiri.

2.The Manager,
ICICI Lombard General Insurance Company Limited
Lombard House, No.414, Veer Savarkar Marg
Next: Sidhi Vinayak Temple, Prabhadevi
Mumbai-400 024.

3.The Section Officer,
VR Section,
High Court, Madras.

S.SOUNTHAR, J.

dm

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