BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2025

Pronounced on : 02.07.2025

CORAM:

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.330 of 2018
&
C.M.P.(MD)No.4512 of 2018
and
Cros.Obj.(MD)No.9 of 2019

ICICI Lombard General Insurance Company Ltd.,
Head Office,
Senith House,
Keshavarao Khade Marg,
Mahalakshmi,
Mumbai-34. ... Appellant/2nd respondent

Vs.

1.S.Suganya

2. Minor K.S.Sriram Sesamani

3.Minor S.Sriman

Minors respondents 2 and 3 are represented through their mother and natural guardian S.Suganya, 1st respondent herein

4.V.Dhanalakshmi .... Respondents 1 to 4 / Petitioners

5. T.Gopinath,

6. United India Insurance Company Ltd.,
12-A, Kovai Road,
PLA Buildings, Karur-2,
Rep. by its Regional Manager. ... Respondents 5 & 6/Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2017 in M.C.O.P.No.8 of 2017 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Karur.

For Appellant : Mr.V.Muthukamatchi

For Respondents : Mr.S.Sarvagan Prabhu – for R1 to R4

Mr.Jawahar Ravindran – for R6

No appearance – for R5

<u>Cros.Obj(MD)No.9 of 2019 in C.M.A.(MD)No.330 of 2018</u>

1.S.Suganya,

2. Minor K.S.Sriram Sesamani

3.Minor S.Sriman

Minors respondents 2 and 3 are represented through their mother and natural guardian S.Suganya, 1st respondent herein

4.V.Dhanalakshmi .... Cross Objectors/ Respondents 1 to 4 / Petitioners

Vs.

1.ICICI Lombard General Insurance Company Ltd.,
Head Office,
Senith House,
Keshavarao Khade Marg,
Mahalakshmi,
Mumbai-34. ... 1st Respondent/Appellant/ 2nd respondent

2. T.Gopinath,

3. United India Insurance Company Ltd.,
12-A, Kovai Road,
PLA Buildings, Karur-2,
Rep. by its Regional Manager.
... Respondents 2 & 3/ Respondents 5 &6/ Respondents 1 & 3

PRAYER: Cross Objection filed under Order 41 Rule 22 of CPC, to set aside the fair and decreetal order dated 08.09.2017 made in M.C.O.P. No.8 of 2017 on the file of Motor Accident Claims Tribunal/Principal District Judge, Karur.

For Cross Objector : Mr.S.Sarvagan Prabhu

For Respondents : Mr.V.Muthukamatchi- for R1

Mr.Jawahar Ravindran – for R3

No appearance – for R2

COMMON JUDGMENT

(Judgment of this Court was delivered by R.POORNIMA, J.)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 08.07.2017 passed in M.C.O.P.No.8 of 2017 by the Motor Accident Claims Tribunal/Principal District Judge, Karur.

The claimants have also filed a cross-objection for enhancement of award amount.

2. The Motor Accident Claim Tribunal awarded a sum of Rs.55,50,000/- towards compensation for the claimant. The learned Judge directed the appellant/Insurance company to pay the entire award amount.

3. Aggrieved by the said order, the Civil Miscellaneous Appeal has been filed by the Insurance Company who is the 2nd respondent before the Tribunal in M.C.O.P.No.8 of 2017 against the negligence and quantum.

4. The brief facts of the petition filed by the claimants before the Tribunal is as follows:

(a) On 13.06.2011 at about 05.00 p.m., the deceased Sivamani was driving his car bearing registration No.TN 01 T 4518 from West to East in Karur to Coimbatore Road. When he was nearing Saravana Mess, near Veppampalayam Branch Road, keeping to his extreme left side of the road, the offending Van bearing registration No.TN 37 AW 6376 which came in the opposite direction at a furious speed in a reckless manner, dashed against the car and the deceased Sivamani had sustained fatal injuries resulting his instantaneous death on the spot and the car of the deceased was very badly damaged.

b) The said accident was solely occurred due to the rash and negligent driving of the Van driver in the course of his employment under the first respondent in claim petition and hence, the first respondent who is the owner of the said offending Vehicle, is vicariously liable to pay compensation to the claimants. As the second respondent is the Insurer of the said Van is also liable to make good the loss occasioned by the petitioners.

c) At the time of accident, the deceased Sivamani was only aged about 40 years old and he was hale and healthy. Had the said accident not occurred he would have normally lived for another 35 years which have been cut short by this unfortunate accident.

d) The deceased was a business man and an active partner in 1) Aakarsana Benefits, Karur, 2) Sri Vinayaga Enterprises, Karur, 3) Rajalingam Dyers, Karur, 4) Sri Ganapatheeswara Credits, Karur, 5) Vikash Steels, Karur 6) Sri Ganapatheeswara Benefits, Karur. He had invested several lakhs, received profits in all firms and he has also received salary.

e) During the financial year 2009-2010, the deceased Sivamani was earning sum of Rs.2,23,623/- as annual income. In the financial year 2010-2011, he was earning annual income of Rs.3,08,880/- and during the financial year 2011-2012, his annual income was Rs.5,57,523/-. He had been paying Income Tax regularly for all the above periods. From the above facts, it was very clear that the annual income of the deceased had been increased year by year. Had the deceased been alive, he would have earned more than Rs.10 lakhs per annum. Since the first and the fourth petitioners being the female members of the family, the other partners have removed them from the partnership.

f) The first petitioner become a widow at the age of 37 years and the said tragic accident has completely shattered her in the prime of her life and thus she had lost everything in her life i.e., the happiness of her wedded life, consortium of her loving husband, love and affection, life long support and valuable service etc.

g) He was the only earning member of his family. Due to sudden and untimely death, there was total loss of income in the family and the petitioners were deprived of the pecuniary benefits which they were deriving from the deceased till his death. The future and the education of the minor sons have become bleak, who are young saplings still need to grow with the care and affection of their father. Thus the untimely death of Sivamani has completely darkened the world of the petitioners and they are totally helpless, unsupported.

h) The fourth petitioner is the mother of the deceased, who had not only lost the sole source of support but also the son and also his life long services of her loving son.

They estimated compensation of Rs.60,00,000/- and prayed to allow the same.

5. The first respondent had not contested the claim petition.

6. The counter affidavit filed by the second respondent in the claim petition are as follows :

a) The respondents denied the entire allegation contained in the claim petition. The driver of Swaraj Mazda Van belonging to the first respondent bearing registration No.TN 37 AW 6376 and is insured with the second respondent had no driving license to drive the same on the date of accident. He drove the same without driving license thereby violating the provisions of the Motor Vehicle Act and Rules and also against the terms and conditions of the Insurance Policy. Hence, this respondent is not liable to pay compensation.

b) The deceased also had no driving license to drive the car and drove the same in violation of the provisions of the Motor Vehicle act and Traffic Rules.

c) The occupation and income of the deceased are all false and denied. The petitioners are put to strict proof of the same.

d) On the date of accident, the deceased alone drove the car in a rash and negligent manner, without adhering to the Traffic Rules and caused the accident. The negligence is on the part of the deceased. The insurance company is not liable to pay compensation. The estimated compensation is highly excessive and exaggerated one. The petitioners are not entitled to get any compensation from the Insurance company.

7. During trial, on the side of the petitioners P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P20 were marked. On the side of the respondents no witnesses was examined and no document was marked.

8. After hearing both the parties, the Tribunal allowed the petition and awarded a sum of Rs.55,50,000/- as compensation. Against which, the present Civil Miscellaneous Appeal has been preferred by the second respondent/Insurance Company on the following among other grounds :

a) As per the evidence of P.W.2, the accident occurred due to composite negligence of both the vehicles, where there was head on collision, hence fixing the entire negligence upon the Appellant / Insurance company by the Tribunal is without considering the *res ipso conquitor* principle which is legally incorrect.

b) That the Tribunal ought to have considered the evidence of P.W.2 and held that the accident occurred due to the composite negligence of both the vehicles and atleast should have applied the theory of contributory negligence considering the circumstances of the case of head on collision and ought to have fixed a portion of negligence on the deceased as well.

c) Further, in view of P.W.2 evidence, non production of sketch and non examination of driver of van, the Tribunal ought to have fixed the negligence upon the Van driver when the circumstances itself speaks about composite negligence.

d) That the Tribunal ought to have held that the presence of P.W.2 itself is not proved and he is a chance witness and ought to have held that the accident occurred due to composite negligence.

(e) The Income Tax returns filed by the petitioners are fabricated one. P.W.1 did not speak about the income of the deceased. But the trial Court erroneously fixed a sum of Rs.40,000/- as income of the deceased on the basis of the Income Tax statement for the financial year 2011-2012 which was filed only after his death, but the trial Court erroneously fixed the income on the higher side which is improper.

(f) That the Tribunal ought not to have granted Rs.1,00,000/- to each claimant under the head of lose of love and affection against the Judgement of Hon'ble Supreme Court.

(g) That the Tribunal ought not to have granted Rs.1,00,000/- under the head of loss of Consortium to the first petitioner which is against the Judgement of Hon'ble Supreme Court.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

9. Aggrieved by the impugned award, the respondents 1 to 4 / claimants have come forward with the cross objection for enhancement of compensation on the following grounds :

(i) That the award of the Tribunal is meagre and inadequate and against the settled proposition of judgment passed by the Hon'ble Supreme Court.

(ii) That the Tribunal failed to consider the documents on the side of the claimants to prove various businesses run by the deceased.

Therefore, they prayed to enhance the award amount by modifying the order of the trial Court.

10. The learned counsel for the respondents 1 to 4 /claimants argued that on the date of the accident, the deceased drove the vehicle at a nominal speed on his extreme left side, but the van bearing Registration No.TN 37 AW 6376 belonging to the first respondent came in the opposite direction at a high speed, negligently collided with the vehicle in which the deceased was travelling. Due to the accident, deceased Sivamani sustained fatal injuries and died on the spot.

11. On the side of the respondents 1 to 4 / claimants it was argued that FIR was registered against the driver of the first respondent and it has been marked as Ex.P.1. The Motor Vehicle Inspection report was marked as Ex.P4, and the final report was also marked as Ex.P5, to establish that the driver of the first respondent was solely responsible for the rash and negligent driving that caused the accident.

12. To disprove the same, the appellant / 2nd respondent Insurance Company have not filed any supporting document and therefore, it is not proved that the accident occurred due composite/contributory negligence on the part of deceased. During cross-examination he had obtained a favourable answer from P.W.2, but

without any proof, he cannot claim that the deceased also contributed to the accident.

13. He further argued that the income tax receipts produced on the side of the claimants clearly proved the income that was derived from the business of the deceased. The Tribunal instead of awarding higher compensation, fixed the monthly income at Rs.40,000/- which is meagre and inadequate.

14. Further, under the head of future prospects, the Tribunal failed to consider the document and the quantum of compensation is liable to be enhanced in favour of the claimants. He further submitted that the claimants also filed a cross objection seeking further compensation of Rs.4,50,000/-. Therefore, he prayed to enhance the award amount by modifying the order of the trial Court.

15. Heard the learned counsel on either side and perused the material available on records.

16. Now this Court has to decide the following points for

consideration :

1. Whether the accident occurred due to composite or contributory negligence on either side ?

2. Whether the quantum of compensation awarded by the trial Court is on the higher side ?

17. Point No.1:

As per the appellant/Insurance company, who is the second respondent, the accident occurred due to composite negligence of both the vehicles. The eye witness to the occurrence admitted during cross-examination that;

> "காருக்கு முன்னும் பின்னும் வாகனம் எதுவும் வரவில்லை. நேருக்கு நேர் இரு வாகனங்களும் இடிப்பதை நான் நேரடியாக பார்த்தேன்."

He further stated that the claimants failed to produce the rough sketch to prove that the driver of the first respondent was solely responsible for the accident and prayed to set aside the finding of the trial Court.

18. Composite negligence means, when the injury is caused by the combined negligence of two or more parties for the harm suffered

by the petitioner and they can be held liable for total damages. If it is proved that the accident occurred due to composite negligence, each party whose negligence contributed to the accident can be held liable for the entire amount of damages. This is known as joint and several liability.

19. On perusal of the records, it reveals that Ex.P1 is the Iirst Information Report dated 13.6.2011 registered in Crime no.788 of 2011, by the Town Police Station, Karur, for the offence punishable under Sections 279, 337, 304(A) IPC against the driver of the first respondents. The complaint was lodged by P.W.2, Thirumoorthi, who alleged to be an eyewitness to the occurrence. As per the contention in the FIR, the deceased Sivamani had gone to attend a marriage at Kangeyam with his friend, Palaniswamy in his Fiat car bearing Registration No.TN 01 T 4518. While returning from West to East on the Kovai-Karur Road, he drove the vehicle on the left side of the road slowly, at that time, a vehicle bearing Registration No.TN 37 AW 6376 which was being driven from west to east in a rash and negligent manner, collided with the right side of the car. The occupants of the car sustained injuries. When he raised alarm, the driver of the offending vehicle fled away from the scene of occurrence. Sivamani and another injured were taken to Karur

Amaravati Hospital where the Doctor, who examined Sivamani declared him brought dead.

20. The Postmortem Certificate was marked as Ex.P2 issued by the Civil Assistant Surgeon, Government Headquarters Hospital, Karur, supported the FIR and describes the injury sustained by the deceased Sivamani. The Doctor who had conducted the postmortem opined that the deceased appeared to have died of shock and hemorrhage due to head injury.

21. Ex.P4 Motor Vehicles Inspection report issued by the Inspector Grade-I, who had inspected the vehicle bearing Registration No.TN 37 AW 6376 belonging to the first respondent, stated that the damages happened to the Swaraj mazda on its right side, he certified that the accident had not occurred due to any mechanical error. If the accident had occurred due to composite negligence, as argued by the appellant, the front side of both the vehicles would have been damaged badly, whereas damages are only on the right side of the vehicle that itself disproves the theory of composite negligence. Furthermore the 2nd respondent failed to produce any rough sketch to show that the accident

was due to composite negligence. Ex.P5 is the final report filed by the Inspector of Police, Karur Town Police Station before the Judicial Magistrate No.I, Karur against the driver Subramani for the offence under Sections 304 (A) (2 counts), 279 IPC holding that the first respondent's driver was solely responsible for the accident.

22. The second respondent in his counter contended that the deceased Sivamani was the sole reason for the accident and the accident not occurred due to the negligence of the first respondent's driver. He did not plead that, the accident occurred due to the composite negligence of both the vehicles or contributory negligence of the deceased. However by taking advantage of the admission made by the witness P.W.2, Thirumoorthi during cross examination, the appellant has now raised a ground in the appeal that both vehicles collided due to composite negligence.

23. In the absence of any documentary proof or supporting evidence, to corroborate statement of eyewitness, the appellant cannot solely rely on the answer obtained from P.W.2 during cross examination and this Court cannot hold that the accident occurred due to composite

negligence or contributory negligence. P.W.2 in the chief examination, categorically stated that it was the first respondent's driver alone dashed against the car driven by the deceased. Further no complaint was filed by the driver of the Swaraj Mazda (the first respondent's driver) against deceased Sivamani, by complaining that he alone drove the vehicle in a rash and negligent manner. It is pertinent to note that the driver of the vehicle fled away from the scene of occurrence.

24. The investigating agency after conducting an elaborate investigation and examining witness, filed a final report holding that the driver of the first respondent was the sole reason for the accident. Therefore, the argument advanced by the learned counsel for the appellant / Insurance company is not sustainable. The trial Court rightly fixed the negligence on the driver of the 1st respondent. We do not wish to interfere with the finding of the trial Court. The Point No.1 is answered accordingly.

25. Point No.2:

The appellant / Insurance Company disputed the income of the deceased as fixed by the Tribunal based upon Ex.P16, income tax return for the year 2011-2012. It is the contention of the appellant that the accident occurred on 13.06.2011, but the Income Tax returns for the year 2011-2012 was submitted on 22.12.2011, six months after his death. The learned counsel for the appellant argued that the income tax return might have been fabricated by the claimants to get higher compensation.

26. Per contra, the learned counsel for the respondents 1 to 4/ claimants submitted that the claimants filed the Income Tax returns for the years 2007-2008 to 2011-2012 which was marked under Ex.P7 to Ex.P11, to prove that the income of the deceased was increased each year and there was no need to fabricate any records as alleged by the appellant.

27. We also found that the income of the deceased was gradually increased every year, the deceased was a partner in various enterprises, namely, Aakarsama Benefits, Sri Vinayaka Enterprises, Rajalingam Dyers, Sri Ganapatheeswara Credits, Vikash Steels, Sree Ganaptheeswara Benefits, etc. The claimants have also filed partnership document under Ex.P6 series. Under Ex.P11 his annual income was shown as Rs.5,75,523/-. The claim Tribunal, taking into consideration

the above income, fixed his monthly income at Rs.40,000/-. We do not find any error in the determination of the deceased's monthly income

28. Though the claimants filed cross objection by stating that the award is meagre, no documents have been produced to show that the deceased derived more income. The learned counsel further argued that the trial Court failed to award future prospects. Indeed, we also note that the trial Court has not awarded the future prospects to the income of the deceased. As per the judgment rendered in ***National Insurance Ltd., Vs. Pranay Sethi [2017 (16) SCC 680]***, it was held that future prospectus in respect of a person, self-employed, in addition to the actual salary, 25% to be added if the deceased age between 40 to 50 years. But the Tribunal failed to add the same. This needs to be modified. Likewise, the trial Court awarded a sum of Rs.1,00,000/- to the petitioners for loss of love and affection and Rs.1,00,000/- to the first petitioner for loss of consortium and Rs.10,000/- towards funeral expenses. However, as per the guidelines stipulated in ***Pranay Sethi's case*** the petitioners are entitled to a sum of Rs.40,000/- towards loss of consortium Rs.15,000/- towards funeral expenses and Rs.15,000/- for loss of estate alone awarded. Therefore, we modify the compensation as follows:

The income of the deceased at the time of accident is Rs.40,000/-

Add- Future prospects 25% at Rs.10,400 (40,000+10,000) = 50,000

Deduct- 1/4th (50,000/4 = Rs.12,500/-)

for his living expenditure (50,000 – 12,500) = 37,500

The age of the deceased at the time death is 41 years

Multiplier would be 14 (Rs.37,500x12x14) = 63,00,000

Loss of love and affection/Consortium	=	1,60,000
Funeral expenses	=	15,000
Loss of estate	=	15,000
Total	=	**Rs.64,90,000/-**

29. Based on the evidence and the legal principle, the claimants would be entitled to a higher amount. Though the claimants had claimed a sum of Rs.60,00,000/- the "just compensation" exceeding the claimed amount can be awarded in Motor accidental claim case as per the judgment of the Hon'ble Supreme Court in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto*** reported in ***(2023) 1 SCC 204; 2022 LiveLaw (SC) 841***. Therefore, this Court enhancing the compensation to the tune of Rs.64,90,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Out of the said amount, the 1st Claimant is entitled to a sum of Rs.24,90,000/-, 2nd & 3rd

claimants are entitled to a sum of Rs.15,00,000/- each towards their share and the 4th claimant is entitled to a sum of Rs.10,00,000/- towards her share as compensation. The Point No.2 is answered accordingly.

30. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

31. The Cross objection is partly allowed. The award passed by the trial Court is modified and the Appellant/ Insurance Company is directed to deposit a sum of Rs.64,90,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount, less the amount if already deposited if any, to the credit of M.C.O.P.No.8 of 2017 on the file of the Principal District Court, Motor Accident Claims Tribunal, Karur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/1st claimant is entitled to a sum of Rs.24,90,000/-, 2nd & 3rd claimants are entitled to a sum of Rs.15,00,000/- each and the 4th claimant is entitled to a sum of Rs.10,00,000/- towards their share and on such deposit, the 1st & 4th respondents /1st & 4th claimants are permitted to

withdraw their shares, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. The Tribunal is directed to deposit the share of the minors 2nd & 3rd respondents/ 2nd & 3rd claimants in a nationalized bank in an interest bearing deposit scheme until they attain majority. The 1st respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months, in order to maintain and educate the minor children. No costs. The claimants are directed to pay the appropriate Court fee for the enhanced amount.

(A.D.J.C.,J .) & (R.P., J.)
02.07.2025

Index : Yes / No
NCC : Yes / No

RM

To

1. The Principal District Judge,
Motor Accident Claims Tribunal, Karur.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

C.M.A.(MD)No.330 of 2018
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