

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

C.M.A.Nos.1065 and 1066 of 2015
& M.P.Nos.1, 1 of 2015
and 2 of 2015

The New India Assurance Co. Ltd.,
No.45, Moore Street, Chennai-1. ... Appellant in both CMAs./
2nd Respondent in both MCOP

.. Vs ..

1. Govindammal
2. Radhika
3. Ravikumar (Minor)
(Minor is represented by his mother, ... Respondents 1 to 3 in
as Natural Guardian, 1st respondent C.M.A.No.1065 of 2015/
herein) Claimants in M.C.O.P.No
1739 of 2012
4. Gowri
5. Rajini
6. Nithya ... Respondents 1 to 3 CMA No.
C.M.A.No.1066 of 2015/
Claimant in M.C.O.P.No.1635
of 2012.
7. N.Dhamodharan ... 4th Respondent in both CMAs./
1st Respondent in both MCOPs

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the M.V.Act, 1988, against the judgment and decree, passed in M.C.O.P.Nos.1739 and 1635 of 2012 respectively dated 11.11.2014, on the file of the learned Motor Accident Claims Tribunal (IV Judge, Small Causes Court), at Chennai.

For Appellants in both CMAs.: Mr.J.Chandran

For Respondents 1 to 3 : Mr.F.Terry Chellaraja
in both CMAs for Mr.V.Velu

For 4th Respondent in : No appearance
both CMAs

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Accident, which occurred on 07.03.2012, between a bicycle and a lorry, bearing Registration No.TN 28 M 6877, has given rise to motor accident claims in M.C.O.P.Nos.1635 and 1739 of 2012, by the legal representatives of the deceased. As facts pleaded and evidence adduced, are similar, in both the claim petitions, after adjudication of the issues raised, the Claims Tribunal, by a common judgment and decree in M.C.O.P.Nos.1635 and 1739 of 2012 respectively, dated 11.11.2014, fixed negligence on the driver of the lorry, insured with the appellant-Insurance Company and quantified the compensation, in both the claim petitions.

2. Being aggrieved by the above, New India Assurance Co. Ltd., Chennai, has filed two appeals in C.M.A.Nos.1065 and 1066 of 2015 respectively, mainly challenging the quantum of compensation, more or less, on the same grounds. Negligence fixed on the driver of the lorry, insured with the appellant-Insurance Company, is also disputed. Caveator is on record. Therefore, both the appeals are heard, and disposed of, by a common order.

3. Facts deduced from the materials available on record are as follows:

On 07.03.2012, about 11.40 Hours, when the cyclist, Adhi, was travelling with his pillion rider, Paneerselvam, on Kancheepuram-Vandavasi road, Lakshmipuram, opposite to Veeramani Rice Shop, a lorry, bearing Registration No.TN 28M 6877, driven in a rash and negligent manner, by its driver, dashed against the bicycle, due to which, both the cyclist and pillion rider, sustained fatal injuries and died on the spot. In this regard, a case in Cr.No.136 of 2012, has been registered against the driver of the lorry, on the file of Dusi Police Station, Thiruvannamalai District.

4. Mother and sisters of the deceased, Adhi, cyclist, have filed M.C.O.P.No.1635 of 2012, claiming compensation of Rs.20,00,000/-, under various heads. According to them, at the time of accident, the deceased was aged about 24 years, a graduate and after completion of the teaching training course, was working in a private school and in addition to the same, by taking private tuition, earned Rs.20,000/- per month.

5. Insofar as the deceased, Panneerselvam, pillion rider, is concerned, mother, sister and minor brother, have joined together and filed M.C.O.P.No.1739 of 2012, claiming compensation of Rs.15,00,000/-, under various heads. According to them, the deceased was aged about 21 years and a graduate. As a carpenter, he earned Rs.20,000/- per month.

6. Averments made in the counter affidavits filed in both the claim petitions, are similar. The appellant-Insurance Company has denied the allegations levelled against the driver of the lorry, bearing Registration No.TN 28M 6877. They put the respondents/claimants in the claim petitions, to strict proof, as regards the manner of accident. Before the Claims Tribunal, they have also submitted that the respondents/claimants have to prove that the driver of the offending vehicle, had a valid and effective driving licence. Without prejudice to the above, they have also disputed the age, avocation and income of the deceased, in each claim and the compensation claimed under various heads.

7. Before the Claims Tribunal, mother of both the deceased examined themselves as Pws.1 and 2 respectively and reiterated the manner of accident. PW.3, Rajini, is stated to be the eye-witness. PW.4 is stated to be the employer of the deceased, Panneerselvam. Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, pertaining to Adhi (M.C.O.P.No.1635 of 2012), Ex.P3 - Charge Sheet, Ex.P4 - Legal Heir Certificate (M.C.O.P.No.1635 of 2012, pertaining to Adhi), Ex.P5 - School Transfer Certificate, pertaining to Adhi (M.C.O.P.No.1635 of 2012), Ex.P6 - Mark Sheets in Teacher Training Course, pertaining to Adhi (M.C.O.P.No.1635 of 2012), Ex.P7 - 10th and 12th Mark Sheets, pertaining to Adhi (M.C.O.P.No.1635 of 2012), Ex.P8 - Teacher Training Transfer Certificate, pertaining to Adhi (M.C.O.P.No.1635 of 2012), Ex.P9 - Sketch, Ex.P10 - Post-Mortem Certificate, pertaining to Mr.Panneerselvam (M.C.O.P.No.1739 of 2012), Ex.P11 - Legal Heir Certificate, pertaining to Mr.Panneerselvam (M.C.O.P.No.1739 of 2012), Ex.P12 - 10th and 12th Mark Sheets, pertaining to Mr.Panneerselvam (M.C.O.P.No.1739 of 2012), Ex.P13 - School Transfer Certificate, pertaining to Mr.Panneerselvam (M.C.O.P.No.1739 of 2012), Ex.P14 - Identity Card issued by Directorate of Distance Education, pertaining to Mr.Panneerselvam (M.C.O.P.No.1739 of 2012), Ex.P15 - Pan Card of PW.3 and Ex.P16 - Family Card of PW.4, have been marked. No oral or documentary evidence has been adduced, on behalf of the appellant-Insurance Company.

8. Evaluating the oral and documentary evidence, the Claims Tribunal fixed negligence on the driver of the lorry, bearing Registration No.TN 28 M 6877, insured with the appellant-Insurance Company. In respect of M.C.O.P.No.1635 of 2012 (deceased Adhi), the Claims Tribunal has awarded compensation of Rs.31,33,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation. For the claimants in M.C.O.P.No.1739 of 2012 (deceased Panneerselvam), the Claims Tribunal has awarded Rs.36,94,600/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

9. Being aggrieved by the finding, fixing negligence on the driver of the lorry, insured with the appellant-Insurance Company and the quantum of compensation awarded, the present appeals have been filed.

10. Assailing the correctness of the finding, fixing negligence on the driver of the lorry, insured with the appellant-Insurance Company, Mr.J.Chandran, learned counsel for the appellant-Insurance Company, submitted that the Claims Tribunal ought to have held that the accident has occurred solely, due to the negligence of the cyclist and pillion rider.

11. On the aspect of quantum of compensation of Rs.31,33,000/-, awarded to the legal representatives of the deceased Adhi in M.C.O.P.No.1635 of 2012, learned counsel for the appellant-Insurance Company submitted that in the absence of any documentary evidence to prove that the deceased was a teacher in a private school and earned Rs.20,000/- per month, the Claims Tribunal has committed a gross illegality, in fixing the notional income of the deceased at Rs.15,000/-, when employment of the deceased was not substantiated and then, went on to the extent of adding up 30%, under the head, future prospects, for computing the loss of dependency to the legal representatives of the deceased, Adhi.

12. By inviting the attention of this Court to the averments made in M.C.O.P.No.1739 of 2012, pertaining to the deceased, Panneerselvam and the documents, filed by the claimants, learned counsel for the appellant-Insurance Company further submitted that when the respondents/claimants had only produced Exs.P12 and P13 -10th and 12th Mark Sheets and School Transfer Certificate, the Claims Tribunal has grossly erred in arriving at the conclusion that the deceased was a graduate, and as a Carpenter, earned Rs.20,000/- per month. Here again, it is his contention that 30% towards future prospects, ought not to have been added.

13. Common contention in both the appeals, by the learned counsel for the appellant-Insurance Company is that in both the claim petitions, father of the deceased has been deliberately omitted to be included in the respective Legal Heir Certificates, Exs.P4 and P11, produced by the respondents/claimants, in order to give an impression to the Tribunal that, widows and children, have been put to irreparable loss, so that the deduction towards the personal and living expenses of the deceased, would be less and thereby, to gain unjust compensation.

14. Learned counsel for the appellant-Insurance Company further submitted that as the deceased in both the claim

petitions are bachelors, the Claims Tribunal ought to have deducted 50% towards the personal and living expenses of the deceased. He also submitted that compensation of Rs.3,00,000/-, under the head, loss of love and affection, awarded in each of the claim petitions, is on the higher side.

15. Learned counsel for the appellant-Insurance Company further submitted that this particular claims Tribunal has been consistently awarding compensation, more than the amount claimed, contrary to pleadings and evidence, and also against the principles of just compensation.

16. Per contra, Mr.F.Terry Chellaraja, learned counsel appearing for the respondents/claimants in both the appeals, submitted that the finding, fixing negligence on the driver of the lorry, bearing Registration No.TN 28 M 6877, insured with the appellant-Insurance Company, cannot be said to be perverse, warranting interference.

17. In respect of C.M.A.No.1066 of 2015 (M.C.O.P.No.1635 of 2012 - deceased Adhi), learned counsel appearing for the respondents/claimants submitted that the deceased had completed Standard 12th and with the Teacher Training Certificate, he was engaged as a teacher in a private school. Besides, he was taking tuition and from his avocation as teacher, earned Rs.20,000/- per month. According to him, had the deceased been alive, he would have had a bright future and considering the above, no illegality is committed by the Claims Tribunal, in fixing the monthly income of the deceased as Rs.15,000/-. As the deceased was aged 24 years, addition of 30% under the head, future prospects and thereby, determining, a sum of Rs.19,500/- for the purpose of computing the loss of dependency, cannot be said to be erroneous.

18. In respect of C.M.A.No.1065 of 2015 (M.C.O.P.No.1739 of 2012 - Deceased Panneerselvam), learned counsel appearing for the respondents/claimants submitted that prior to death, the deceased was a Carpenter, engaged by PW.4, and whose evidence is duly corroborated the version of PW.2, mother. He further submitted that the deceased was a graduate and Ex.P14 - Identity Card, issued by the Director of Distance Education, supports the case of the respondents/claimants. Here again, he contended that the Tribunal has not committed any error, in fixing the notional income of the deceased as Rs.15,000/-, with addition of 30% towards future prospects, for the purpose of computing the loss of dependency.

19. Learned counsel appearing for the respondents/claimants in both the appeals further submitted that there is no error in deducting 1/3rd towards the personal and living expenses of the deceased, for computing the loss of dependency, compensation, as mothers of the deceased, in both

the appeals, are widows. According to him, a sum of Rs.1,00,000/- each, awarded to the legal representatives of the deceased, in both the claim petitions, under the head, loss of love and affection, is reasonable.

We have heard the learned counsel appearing for the parties and perused the materials available on record.

20. The accident, which occurred on 07.03.2012, has given rise to two claim petitions in M.C.O.P.Nos.1635 and 1739 of 2012, respectively, by the legal representatives of the deceased. Pleadings and evidence, being the same, they are considered hereunder:-

On 07.03.2012, about 11.40 Hours, when the deceased Adhi, was riding a bicycle, with Panneerselvam, as pillion rider and while proceeding on Kancheepuram-Vandavasi road, at Lakshmipuram, opposite to Veeramani Rice Shop, a lorry, bearing Registration No.TN 28M 6877, driven in a rash and negligent manner by its driver, dashed against the bicycle, due to which, both the cyclist and pillion rider, sustained fatal injuries and died on the spot. Pws.1 and 2 are mothers of the deceased. They are not the occurrence witnesses. However, PW.3, Rajini, stated to have witnessed the accident, has supported the version of Pws.1 and 2. While evaluating the testimony of Pws.1 to 3, the Claims Tribunal has observed that nothing has been culled out from their evidence, contrary to the petition averments. Ex.P1 - FIR has been registered against the lorry driver. Ex.P3 - Charge Sheet has also been filed against the driver of the lorry. In addition to the above, Ex.P9 - Sketch has also been marked. Thus, prima facie, the Claims Tribunal held that the respondents/claimants have proved the rash and negligent driving of the driver of the lorry, bearing Registration No.TN 28M 6877. On the other hand, no oral or documentary evidence has been adduced, by the appellant-Insurance Company.

21. Thus, in the absence of any strong rebuttal evidence to prove that the deceased persons were responsible for the accident and placing reliance on decisions in Tamil Nadu State Transport Corporation Ltd., Villupuram v. Kumar reported in 2007 (1) TNMAC 481 and Bimla Devi and others v. Himachal Road Transport Corporation and others reported in 2009 (1) TNMAC 700 (SC), the Claims Tribunal held that the driver of the lorry, bearing Registration No.TN 28M 6877 alone, was negligent in causing the accident. Decisions relied on by the Tribunal, for the above conclusion, support the case of the respondents/claimants.

22. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim

petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

C.M.A.No.1066 of 2015:

23. On the aspect of quantum of compensation, determined by the Claims Tribunal in M.C.O.P.No.1635 of 2012 and challenged in C.M.A.No.1066 of 2015, it is the case of the respondents/claimants that the deceased had completed teacher training course, engaged as teacher in a private school, earned Rs.12,000/- per month. He has also earned Rs.8,000/- by way of taking tuition. As per the testimony of PW.1, mother of the deceased, the deceased earned Rs.20,000/- per month. There is absolutely no document to support her contention that the deceased was employed in any private school. During cross-examination, PW.1, has deposed that her elder son, was earning Rs.3,000/- per month. But there is no document to prove his avocation and monthly earning. Apparently, her elder son has not been impleaded as a party to the claim petition. She has also deposed that her daughter, Nithya was studying.

24. Though there was no document to prove the avocation, the Claims Tribunal, by accepting the oral testimony of PW.1, regarding avocation, has fixed the monthly income at Rs.15,000/- and added up 30% of the income (Rs.4,500/-), as future prospects. Thus, for the purpose of computing the loss of dependency, the Claims Tribunal, has fixed the income, as Rs.19,500/-. Determination of the monthly income of Rs.19,500/- by the Claims Tribunal is wholly, without any basis and requires reduction.

25. As regards the age of the deceased, Adhi, in the claim petition, it is stated as 24 years. In the claim petition, age of Rajini, Sister of the deceased, is shown as 23 years. The other claimant, Nithya, was stated to be 20 years. Mother, Gowri, has filed the claim petition, stating that she is a widow. In Ex.P4 - Legal Heir Certificate, except mother, Gowri, no other person has been shown as legal heirs. As per the entry in Ex.P7 - 10th and 12th Mark Sheets and Ex.P8 - Teacher Training Transfer Certificate, issued by Kanchi Sri kamatchi Amman Teacher Training Institute, Cheyyar Taluk, Thiruvannamalai District, the date of birth of the deceased, Adhi, has been mentioned as 26.08.1990. Taking note of the same, the Tribunal has fixed the age of the deceased, as 21 years.

26. As regards application of multiplier, the Claims Tribunal, by placing reliance on a decision of this Court in Managing Director, Metropolitan Transport Corporation Ltd., Chennai v. K.Murugesan reported in 2014 (1) TNMAC 370, has applied '18' multiplier. The Tribunal has deducted 1/3rd

towards the personal and living expenses of the deceased and thus, computed the loss of dependency as Rs.28,08,000/- (Rs.19,500 x 12 x 18 x $\frac{3}{4}$).

27. The accident has occurred on 07.03.2012. As observed earlier, determination of the monthly income of the deceased as Rs.15,000/-, is only without any basis. But the fact remains that at the time of accident, the deceased was aged 21 years and stated to have completed teacher training course. As per Ex.P4, Legal Heir Certificate, dated 14.05.2012, issued by the Tahsildar, Cheyyar, Mrs.Gowri, 4th respondent herein, alone has been shown as the only legal heir of the deceased, Adhi, S/o.Late Ellappan.

28. Judicial notice can be taken that for recruitment as a teacher, in Government/Municipal Corporation/Panchayat Schools, one has to take the process of selection, through the Tamil Nadu Teachers Recruitment Board. In the case of appointment of teachers in Private Aided Schools, recruitment is made by the School Committee, after inviting applications, by way of paper publication and from the concerned employment exchange. There is no certainty that the deceased would get a job, in any Government/Municipal Corporation/Panchayat or Private Aided School. Judicial notice can also be taken that there are many unemployed teacher training certificate holders. However, the possibility of getting some employment, with his educational qualification, cannot be completely ruled out. Educational qualifications acquired by the deceased, has to be respected. Considering the averments that the mother is a widow and that there are two sisters, the possibility of taking up some job to support the family, can always be taken note of, while fixing the monthly income. In the above of the above discussion, we deem it fit to fix the monthly income of the deceased as Rs.8,000/-.

29. Though it is the case of Mr.J.Chandran, learned counsel for the appellant-Insurance Company that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 30% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

30. Judicial notice can also be taken that the cost of

essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically electricity and water charges, on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever.

31. Thus, for the reasons, stated supra, though we are not inclined to accept the determination of monthly income as Rs.19,500/-, which we have already observed, as, it has been done, without any basis, we deem it fit to fix the same as Rs.8,000/- and add up 30% (Rs.2,400/-) towards future prospects. Income for the purpose of computing the loss of dependency works out to Rs.10,400/- (Rs.8,000/- + Rs.2,400/-).

32. Admittedly, the deceased was a bachelor. Therefore, it is the case of the appellant-Insurance Company that the Tribunal should have deducted 50% towards the personal and living expenses of the deceased. However, the Apex Court in *Sarla Verma v. Delhi Transport Corporation* reported in 2009 (2) TNMAC 1 (SC), held that where the family of bachelor is large and dependent on the income of the deceased and has a widowed mother, deduction may be restricted to 1/3rd.

33. In the case on hand, mother is stated to be a widow, wife of late Ellappan. Though Mr.J.Chandran, learned counsel appearing for the appellant-Insurance Company, has raised a doubt over the legal heir certificate issued by the Tahsildar, Cheyyar, wherein, it has been mentioned that the mother, as the only heir, perusal of the cross-examination of PW.1, does not indicate any enquiry into that aspect. Be that as it may, the other two claimants are the sisters of the deceased. Though the family is not large, yet the fact remains that the other two dependents are girls, aged about 23 and 20 years. In the abovesaid circumstances, this Court is of the view that had the deceased been alive, to provide food, shelter and clothing and to meet out other expenditure, he would have contributed more to his family, than 50% of his income, towards the personal and living expenses. For the reasons, stated supra, we are not inclined to interfere with the percentage of deduction. Thus, deducting 1/3rd towards personal and living expenses of the deceased, loss of dependency is computed as Rs.14,97,600/- (Rs.10,400 x 12 x 18 x 1/3).

C.M.A.No.1065 of 2015:

34. As regards C.M.A.No.1065 of 2015 (M.C.O.P.No.1739 of 2012), Govindammal, mother of the deceased, Paneerselvam, has

claimed herself to be the widow, aged 44 years. The other legal representatives are Radhika, sister of the deceased and Ravikumar, brother of the deceased, aged 21 years and 17 years respectively. They have claimed that the deceased was aged 21 years, a graduate, self-employed as a Carpenter, earned Rs.20,000/- per month. In support of avocation and income of the deceased, they have examined PW.4, stated to be the employer of the deceased. In Ex.P13 - School Transfer Certificate, the Date of Birth of the deceased has been mentioned as 25.06.1991 and on that basis, the Tribunal has fixed the age of the deceased as 20 years. On the basis of the decision made in Managing Director, Metropolitan Transport Corporation Ltd., Chennai v. K.Murugesan reported in 2014 (1) TNMAC 370, the Tribunal applied '18' multiplier.

35. For the determination of monthly income of the deceased, the Tribunal has solely relied on the oral testimony of PW.2, mother and PW.4, stated to be the employer. According to PW.4, the deceased Panneerselvam, was working with him, for two years. In his testimony, he has stated that he was not aware, as to whether, the deceased was residing in Vadapalani, Chennai. He has further deposed that he did not know the educational qualifications of the deceased, but has deposed that the deceased was studying, while working with him. PW.4, has further deposed that his own monthly income was Rs.2,00,000/-. He has also deposed that five persons were engaged by him, and he paid Rs.20,000/- each, as monthly salary. He has denied the suggestion of the appellant-Insurance Company that as the deceased was known to him, false evidence is given.

36. Based on the above evidence, the Tribunal has determined the monthly income of the deceased, as Rs.18,000/- and added up 30% to the said income, towards future prospects of the deceased, and for the purpose of computing the loss of dependency, fixed the monthly income of the deceased as Rs.23,400/- (Rs.18,000 + Rs.5,400/-). There is absolutely no evidence to prove that the deceased was engaged as a Carpenter. The Tribunal, without any basis, has observed that the deceased was a graduate.

37. When PW.4, stated to be the employer, himself did not produce any document to prove that his monthly income was Rs.2,00,000/-, nor he had produced any document to prove the engagement of five persons, as Carpenters, with a monthly salary of Rs.20,000/- each, we are constrained to state that the Tribunal, without applying its mind, has fixed the monthly income of the deceased, as Rs.18,000/- and added up 30% towards future prospects.

38. Compensation to the injured/legal representatives of the deceased, are paid out of a sum, collected from the owners of the vehicles, termed as premium, meant for disbursement to the victims of the accident and for damages. While measuring the damages under various heads, it is the duty of the

Tribunal to properly assess the evidence, on all the factors, to be taken into consideration, and award compensation on the principle of just compensation. While doing so, Courts/Tribunals should not allow unjust enrichment.

39. Often, determination of monthly income for non-salaried persons or persons engaged in unorganised sectors or self-employed, either skilled or unskilled jobs, for the purpose of computing the loss of dependency, is the subject matter of dispute raised in the appeals. Under the guise of awarding just compensation, Tribunals should not fix the monthly income of the deceased or injured, as the case may be, exorbitantly, without any basis and award compensation.

40. There may be a case, where the document required to prove employment, cannot be produced, if the injured or deceased, was engaged, as a skilled or semi-skilled person, by private contractors or he himself was self-employed. But the ground reality is that many skilled persons, do not register themselves in the respective Boards, created by the Government and still continue to carry on their avocation. If he was engaged by somebody, there must be some legally acceptable evidence, corroborating the claimants version. Any receipt for payment of salary, register maintained can be produced. Even if a private contract is taken, for construction of a house, repair works, electrical or civil, the supervisor would maintain accounts for the expenditure, including payment made to workers. In the case on hand, nothing has been produced.

41. Case on hand, is an example, as to how, the Claims Tribunal has solely relied on the evidence of PW.4, stated to be the employer, when he has not proved his monthly income of Rs.2,00,000/-. If his earning is Rs.2,00,000/- per month, then his annual income would be Rs.24,00,000/-, in which event, he must be an income-tax assessee and ought to have filed returns to the Income-Tax Department.

42. If the deceased was engaged along with four others, by PW.4 and paid Rs.20,000/- per month each, then, as per his version, a sum of Rs.1,00,000/- was the payment stated to have been made to the employees and that the annual payment works out to Rs.12,00,000/-. Absolutely, no document has been filed to prove his annual income, engagement of the deceased and others, as carpenters, receipts and registers, if any, for payment.

43. Forgetting for a moment that disbursement of public money should be done, only after proper analysis of evidence, regarding avocation and income, we are constrained to state that the Claims Tribunal has committed gross illegality in determining the monthly income as Rs.18,000/-, without any basis. However, the fact remains that the deceased had studied upto 12th standard. Had he been alive, he would have been

engaged in some avocation to support his family. In the claim petition, PW.2, Govindammal, has claimed herself to be the widow of late Jayaraman. Other two claimants are the sister and brother of the deceased. In the light of the above discussion, this Court deems it fit to fix the monthly income of the deceased as Rs.8,000/- and by adding up 30% towards future prospects, fix the monthly income for the purpose of computing the loss of dependency as Rs.10,400/- (Rs.8,000/- + Rs.2,400/-).

44. Discussion made in C.M.A.No.1066 of 2015, as regards deduction of 1/3rd towards the personal and living expenses of the deceased, would be applicable to the present appeal also. Hence, we are not inclined to interfere with the percentage of deduction. Thus, deducting 1/3rd towards the personal and living expenses of the deceased, loss of dependency works out to Rs.14,97,600/- (Rs.10,400 x 12 x 18 x 2/3).

45. In both the appeals, the Tribunal has awarded Rs.3,00,000/- as compensation for loss of love and affection. Considering the nature of award, we deem it fit to adjust the same as Rs.2,00,000/-, for loss of love and affection in both the appeals, and Rs.1,00,000/- for loss of estate, as the sisters and brothers of the deceased have lost the guidance, support and personal loss of estate. Compensation of Rs.25,000/- awarded for funeral expenses, in both the claim petitions, is sustained. The Tribunal has omitted to award any amount for transportation and damages to clothes and articles, which this Court is inclined to award Rs.10,000/- each and Rs.2,000/- each, in both the appeals.

46. In view of the above discussion, in both the appeals, compensation amount is modified as follows:

Loss of Dependency	: Rs.14,97,000/-
Loss of Love and Affection	: Rs. 2,00,000/-
Loss of Estate	: Rs. 1,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Damages to clothes	: Rs. 2,000/-
Total	: Rs.18,34,600/-

47. Record of proceedings shows that pursuant to the interim orders granted by this Court, the appellant-Insurance has deposited Rs.10,00,000/- and Rs.15,00,000/- to the credit of M.C.O.P.Nos.1739 and 1635 of 2012 respectively, on the file of the learned Motor Accident Claims Tribunal (IV Judge, Small Causes Court), Chennai.

48. In view of the re-working of compensation, there shall be a reduction of compensation of Rs.12,98,400/- (in

respect of M.C.O.P.No.1635 of 2012) and Rs.18,60,000/- (in respect of M.C.O.P.No.1739 of 2012). Hence, the appellant-Insurance Company is directed to deposit the balance amount, with proportionate accrued interest and costs, to the credit of M.C.O.P.Nos.1739 and 1635 of 2012 respectively, on the file of the learned Motor Accident Claims Tribunal (IV Judge, Small Causes Court), at Chennai, less the statutory deposit, within a period of four (4) weeks from the date of receipt of a copy of this order. In M.C.O.P.No.1739 of 2012, the 3rd respondent herein was a minor at the time of filing of the claim petition, but he has attained majority at the time of filing of the appeal in C.M.A.No.1065 of 2015. Therefore, on such deposit being made, the respondents/claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal by making necessary applications before the Tribunal.

49. Both the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

skm

To
The IV Judge, Small Causes Court,
Motor Accidents Claims Tribunal
Chennai.

+2 ccs to Mr.J.Chandran, Advocate, sr.49074 and 49075.
+1 cc to Mr.V.Velu, Advocate, sr.48861

C.M.A.Nos.1065 and 1066 of 2015

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