

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2015
DATED : 08.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

C.M.A.Nos.713 to 715 of 2015
and
M.P.Nos.1 to 1 of 2015
& M.P.No.2 of 2015

National Insurance Co. Ltd.,
1754/1756, Manojappa Street,
No.751, Anna Salai,
Chennai-2.

... Appellant in all the
Appeals/2nd Respondent

Vs.

1.R.Vimala

...I Respondent in CMA.
713/15 / 1st Petitioner

2.Minor.Achuma
(R2 minor rep. his mother
and next friend R.Vimala/R1)

...2nd Respondent in CMA.
713/15 / 2nd Petitioner

3.Chinnakannu

...3rd Respondent in CMA.
713/2015 / 3rd Petitioner

4.Chinnakuzhanthai

...4th Respondent in CMA.
713/2015 / 4th Petitioner

5.A.Jagadeeshwaran

...I Respondent in CMA.
714/2015 / 1st Petitioner

6.J.Kasthuri

...2nd Respondent in CMA.
714/2015 / 2nd Petitioner

7.C.Ramu @ Raman

...I Respondent in CMA.
715/2015 / 1st Petitioner

8.R.Sivasakthi

...2nd Respondent in CMA.
715/2015 / 2nd Petitioner

9.G.Vasanthakumar

...5th Respondent in CMA.713/15,
3rd Respondent in
CMA.Nos714 & 715/15 / 1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.03.2014 made in M.C.O.P.Nos.1205,1530 & 1307 of 2013 respectively on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar
for all the Appeals

For Respondents : Mr.F.Terry Chelliah Raja
1 to 8 for M/s.V.Velu

COMMON JUDGMENT

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Second Respondent/Insurance Company has focused the instant Civil Miscellaneous Appeals as against the award dated 28.03.2014 in M.C.O.P.Nos.1205, 1530 & 1307 of 2013 respectively passed by the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

2.The Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) in M.C.O.P.No.1205,1530 & 1307 of 2013 respectively (filed by the Respondents 1 to 8 herein as Petitioners/Claimants respectively) on 28.03.2014 passed the common award by allowing the petitions with proportionate costs against the Appellant/Second Respondent/Insurance Company and First Respondent therein by awarding a compensation of Rs.27,47,700/-, Rs.8,64,000/- and Rs.6,30,000/- respectively (including interim awards passed if any) payable with interest at the rate of 7.5% p.a. from the date of petitions i.e., on 17.01.2013 & 23.01.2013 respectively till the date of deposit within two months from this date and to be paid by the Appellant/Second Respondent/Insurance Company on behalf of the First Respondent therein to the Respondents 1 to 8/Petitioners/Claimants. Further, in respect of M.C.O.P.No.1205 of 2013, the Tribunal held that from out of the award amount, the First

Respondent/First Petitioner (wife of the deceased) was entitled to receive a sum of Rs.10 lakhs, the Second Respondent/Minor Petitioner was awarded with a sum of Rs.10 lakhs and the Respondents 3 and 4/Petitioners (parents of the deceased) were awarded a sum of Rs.3,37,850/- each. Furthermore, the Tribunal ordered the share amount of the Petitioners 1, 3, 4 were to be deposited in a nationalised bank for a period of three years in cumulative deposit and the share amount of the Second Respondent/Minor Petitioner was directed to be deposited in a nationalised bank in fixed deposit till she attains majority and the mother of the Minor Petitioner viz., R.Vimala (the First Respondent/First Petitioner) was permitted to withdraw the accrued interest once in three months directly from the Bank etc. Insofar the other petitions are concerned, the Respondents 5 & 6/Petitioners 1 & 2 in M.C.O.P.No.1530 of 2013 and Respondents 7 & 8/ Petitioners in M.C.O.P.No.1307 of 2013 are directed to share the award amounts equally among them and further, directed them to deposit their share amounts in a nationalised Bank for a period of three years in cumulative deposit.

3. According to the Learned counsel for the Appellant/Insurance Company, the award dated 28.03.2014 in M.C.O.P.Nos.1205, 1530 & 1307 of 2013 respectively passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) are irrational, contrary to Law, weight of evidence and probabilities of the case.

4. The Learned counsel for the Appellant submits that Claims Tribunal having apportioned the negligence on the part of four persons travelling in two wheeler should have held the rider of the two wheeler responsible for the occurrence in toto.

5. Appellant's Contentions raised in CMA.713 of 2015 (arising out the award passed in M.C.O.P.No.1205 of 2013):

i) The main grievance is that the Tribunal had failed to take note of the fact that had the deceased earned Rs.19,500/- per month as mason, if so, P.W.5 would have produced some documentary evidence before the Tribunal in this regard. Unfortunately, there was no evidence in this regard before the Tribunal.

ii) The stand of the Appellant is that the Claims Tribunal ought not to have applied the multiplier of 16 inasmuch as the Respondents 1 to 4/Petitioners had withheld the correct age proof of the deceased such as Voter ID, Ration Card, Driving License etc.

iii)The Learned counsel for the Appellant brings it to the notice of this Court that the Fourth Respondent/Fourth Petitioner had not established his dependency on the deceased and hence, the deduction towards personal expenses shall not exceed 1/3rd.

iv)Added further, the Learned counsel for the Appellant strenuously projects an argument that the Claims Tribunal had committed an error in assuming Rs.28,08,000/- as loss of income on surmises without taking into consideration the uncertainties of life and preponderance.

v)Finally, it is the contention of the Learned counsel for the Appellant that the Tribunal had wrongly awarded a sum of Rs.50,000/- towards 'Loss of Consortium', Rs.70,000/- towards 'Loss of Love and Affection', Rs.50,000/- towards Loss of Life Expectancy and Rs.50,000/- towards Loss of Estate.

6.Appellant's submissions in CMA.No.714 of 2015 (arising out of the award passed in M.C.O.P.No.1530 of 2013):

The Tribunal had failed to appreciate that the deceased was a school student depending on the Petitioners/Claimants and that earning sum of Rs.7500/- per month through part time job was unbelievable, impractical and much less without iota of proof towards payment of the said amount. The Tribunal ought to have assumed more than Rs.15,000/- per annum and capitalized the loss more than 15 years. Also that, the Tribunal had apparently erred in assuming 30% future prospects, contrary to the well settled principles. Furthermore, the Tribunal had erroneously granted a sum of Rs.25,000/- towards 'Funeral Expenses', Rs.75,000/- towards 'Loss of Love and Affection' and Rs.50,000/- towards 'Loss of Estate' without any basis.

7.Appellant's Contentions in CMA.715 of 2015 (arising out of the award passed in M.C.O.P.No.1307 of 2013):

The Tribunal ought not to have assumed Rs.30,000/- per annum as notional income since the deceased was a school student depending on the Respondents 1 and 2/Petitioners and apparently committed an error in awarding the compensation of Rs.6,30,000/- without any basis. Also that, the Claims Tribunal had erroneously granted a sum of Rs.25,000/- towards 'funeral expenses', Rs.75,000/- towards 'Loss of Love and Affection', Rs.50,000/- towards 'Loss of Estate' and Rs.1,00,000/- towards 'Loss of Life Expectancy' without any basis.

Appellant's citation:

8.The Learned counsel for the Appellant/Second Respondent/Insurance Company cites the Division Bench Judgment of this Court in Rajeswari and Abishegam Vs. N.Palani and The Divisional Manager, The New India Assurance Company Ltd., Pondicherry reported in 2010 (2) TNMAC 94 (DB) and at special pages 97 and 98 wherein at paragraphs 9 to 12, it is observed and held as follows:

"9.Before dealing with the first point for consideration, we take up the second point for consideration framed in this appeal. At the outset, it is to be mentioned that the claimants/appellants have marked xerox copies of the documents to prove the age, occupation and earning of the deceased. Be that as it may, it is for the claimants/appellants to prove the income and occupation of the deceased to get the compensation. Though the claimants have contended that the deceased was employed in Singapore, they have neither produced the passport, work permit or salary certificate issued by the employer in original and what was produced before the Tribunal was only the photocopy. Such documents produced by the claimants have no evidentiary value and therefore, the Tribunal rightly refused to consider the same. In other words, the claimants have not proved that the deceased was employed in Singapore and earning Rs.30,000/- per month equivalent to Indian Rupee. Under those circumstance, we answer the second point for consideration against the claimants/Appellants.

10.The claimants have filed Ex.A12, the Diploma Certificate issued to the deceased which indicates that the deceased had completed his Diploma in Welder from D'Silva Engineering Works, Chennai. Ex.A13 is the Certificate issued by a private organisation in favour of the deceased which would indicate that the deceased had successfully completed a course in basic Fire-Fighting and Rescue Operation conducted by Safety and Fire Department. The deceased, at the time of his death, was 27 years. Therefore, if we assume

that the deceased was in employment at India, befitting to his qualification, he could have earned not less than Rs.10,000/- per month. In this context, we are fortified by the decision of the Hon'ble Supreme Court reported in Reshma Kumari V. Madan Mohan, 2009 (2) TN MAC 36 (SC): 2009 AIR SCW 6999, wherein it was held that while determining the quantum of compensation, the future prospects of the deceased also has to be taken in relation to his qualification and income. Therefore, in the light of the above decision of the Hon'ble Supreme Court and having regard to the age and qualification possessed by the deceased, we notionally take a sum of Rs.10,000/- as income of the deceased as the sum of Rs.3000/- per month fixed by the Tribunal is very less. If 1/3rd amount is deducted towards Personal Expenses of the deceased, it works out to Rs.6,666/- and we round it off to Rs.7000/-.

11. In the decision reported in Ramesh Singh V. Satbir Singh, 2008 (1) TN MAC 157 (SC):2008 (2) SCC 667, the Hon'ble Supreme Court that choice the multiplier depends upon the age of the deceased or claimants, whichever is higher. In this case, the claimants are parents of the deceased. At the time of filing the claim Petition, they are aged 60 & 65 and now they may be aged 67 and 72 respectively. Therefore, adopting multiplier 7 for determining the Loss of Income will be reasonable. Therefore, the compensation under the head Loss of Earning payable to the claimants can safely be arrived at (Rs.7000 x 12 x 7) Rs.5,88,000/- by adopting multiplier 7. Accordingly, we enhance the compensation awarded by the Tribunal under the head 'Loss of Income' from Rs.1,68,000/- to Rs.5,88,000/-. we answer the first point for consideration and the claimants are entitled to enhanced compensation, as mentioned above.

12. The Tribunal has awarded a sum of Rs.10,000/- towards Loss of Love and Affection; Rs.4000/- towards Funeral Expenses

and we feel that the compensation awarded under these heads are justifiable. However, we find that the Tribunal has awarded a sum of Rs.10,000/- towards Mental Agony and Pain and Suffering without regard to the fact that the deceased succumbed to injuries and the parents of the deceased alone have filed the Claim Petition. Therefore, we set aside the award passed by the Tribunal in so far as it relates to compensation of Rs.10,000/- towards Mental Agony and Pain and Suffering. Thus, the Appellants/claimants are entitled to a Total Compensation of Rs.6,02,000/-"

Respondents/Claimants' Contentions:

9. Per contra, the Learned counsel appearing for the Respondents 1 to 8/Petitioners/Claimants in all the Appeals supported the common award passed by the Motor Accident Claims Tribunal and submits that the compensation so awarded to the claimants is fair, just and a reasonable one. Under such circumstance, the same does not require interference at the hands of this Court sitting in Appellate Jurisdiction.

Respondents/Claimants' Citations:

10. The Learned counsel for the Respondents/claimants cites the decision of the Hon'ble Supreme Court in Kishan Gopal & another Vs. Lala & others reported in 2013 (5) CTC 212 and at special page 214 whereby and where under it is observed and held as follows:

"In our considered view, the aforesaid legal principle laid down in Lata Wadhwa & ors. V. State of Bihar & ors., 2001 (8) SCC 197, with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the Appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the Appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/-

and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC):2009 (6) SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, Rs.30,000/- x 15 = Rs.4,50,000/- and Rs.50,000/- under Conventional heads towards Loss of Love and Affection, Funeral Expenses, Last Rites as held in Kerala SRTC V. Susamma Thomas, 1994 (2) SCC 176, which is referred to in Lata Wadhwa's case and the said amount under the Conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under Conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the Appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi Vs. Association of Victims of Uphar Tragedy, 2011 (14) SCC 481, for the reason that the Insurance Company has been contesting the claim of the Appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the Appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this Appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the Appellants is legally justified."

11. He also relies on the decision of the Hon'ble Supreme Court in Kala Devi & others V. Bhagwan Das Chauhan & others reported in 2014 (2) TNMAC at page 680 and at special page 683 whereby and where under in paragraphs 9 to 12 it is observed and held as follows:

"9. We have heard the learned counsel for the parties. The deceased was 25 years of age at the time of death and was a matriculate,

working as a driver with a valid license for driving heavy motor vehicles. A driver in Himachal Pradesh on an average earns Rs.9,000/- p.m. as per Minimum Wages Act. Therefore, the courts below have failed to take judicial notice of the same and the fact that the post of a driver is a skilled job. Thus, considering the facts and circumstances of the case, we take the gross monthly income of the deceased at Rs.9,000/- p.m., i.e. Rs.1,08,000/- p.a. On deduction of 20% towards income tax, the net income comes to Rs.86,400/- p.a. Further, deducting 1/3rd towards personal expenses and applying the appropriate multiplier of 18, the loss of dependency is calculated at Rs.10,36,800/-.

10. Further, the High Court has failed in not following the principles laid down by this Court in *Rajesh & Ors. v. Rajbir Singh & Ors.* [1] and erred in awarding a meagre sum of just Rs.30,000/- under the head of loss of consortium, Rs.40,000/- towards loss of love and affection. Accordingly, we award Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- to each minor child of the deceased (i.e. Rs.2,00,000/-) towards loss of love and affection as per the guidelines laid down by this Court in *Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.*[2].

11. The High Court has further erred by not awarding compensation towards loss of estate to the appellant-wife. We accordingly award Rs.1,00,000/- towards the same, as per the principles laid down by this Court in *Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation*[3].

12. In the result, the appellants shall be entitled to compensation under the following heads:

1.Loss of dependency	Rs. 10,36,800/-
2.Loss of Consortium	Rs. 1,00,000/-
3.Loss of Estate	Rs. 1,00,000/-
4.Loss of love and affection	Rs. 2,00,000/-
5.Funeral expenses	Rs. 25,000/-

TOTAL	Rs. 14,61,800/-
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Thus, the total compensation payable to the appellants by the respondent- Insurance Company will be Rs.14,61,800/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment. Accordingly, we allow this appeal in awarding Rs.14,61,800/- with interest @9% p.a. The compensation awarded shall be apportioned between the appellants equally with proportionate interest. The respondent-Insurance Company shall either pay by way of demand draft in favour of the appellants or deposit the same with interest as awarded by this Court, before the Motor Accidents Claims Tribunal, after deducting the amount already paid to the appellants pursuant to the impugned Judgment and Award, if any, within six weeks from the date of receipt of the copy of this judgment. No Costs."

12.He also invites the attention of this Court to the decision of the Hon'ble Supre Court in Radhakrishna and another V. Gokul and others reported in 2013 (2) TNMAC at page 724 (SC) and at special page 733 whereby and where under at paragraphs 13 to 15 it is observed and held as follows:

13. In Lata Wadhwa's case, the accident had occurred on 03.03.1989 and this Court awarded compensation of Rs.4,10,000 to the parents of the deceased children who were students of Classes VI to X. In M.S. Grewal's case, the accident had occurred on 28.5.1995. This Court awarded compensation of Rs.5,00,000 to the parents of the children who were students of IV, V and VI classes. In Anil Kumar Mishra's case, the accident had occurred on 23.6.1993 and the victim of accident, who was a student of final year Engineering was awarded compensation of Rs.9,06,000.

14. In the present case, the accident occurred on 20.1.2003. The deceased was 19 years old and was a student of Engineering course. The Tribunal determined the compensation by taking his annual income to be Rs.15,000 and deducted 1/3rd towards personal expenses. In Arvind Kumar Mishra's case, the Bench proceeded on the assumption that after completion of the Engineering course, the appellant could have been appointed as Assistant Engineer and earn

Rs.60,000 per annum. However, keeping in view the degree of disability, his estimated earning was taken as Rs.42,000 per annum and accordingly the amount of compensation was awarded. By applying the same yardstick and having regard to the age of the parents of the deceased, i.e., 45 and 42 respectively, we feel that ends of justice will be served by awarding a lump sum compensation of Rs.7,00,000 to the appellants.

15. In the result, the appeal is partly allowed. The impugned judgment is modified and it is declared that the appellants shall be entitled to compensation of Rs.7,00,000 with interest at the rate of 6% per annum on the enhanced amount with effect from the date of filing petition under Section 166 of the Act.

Analysis:

13. Insofar as the point whether the Ninth Respondent/First Respondent's car driver was responsible for causing the accident and the same had occurred due to his rash and negligent driving, the Claims Tribunal had relied on the evidence of eye witness P.W.4, who had deposed that on 14.01.2013 at 1.30 p.m. while he was speaking along with his friend at ECR Road near Manamai Bus Stop, at that point of time, a motor-cycle bearing registration No.TN-07-AT-3897 proceeding in the direction from Chennai to Pondicherry and a Tata Vica car bearing registration No.PY-01-AK-0986 came in the direction from Pondicherry to Chennai in a rash and negligent manner and dashed against the motor cycle, as a result of which, the rider of the motor-cycle and pillion riders were thrown out and that the rider of the motor cycle died on the spot. Further, the pillion riders viz., Maheswari and Vinod expired at the hospital. Furthermore, on the basis of the complaint of one K.Alagiri, the First Information Report was registered on 14.01.2013 at 7.00 p.m.

14. At this stage, it is to be pertinently pointed out that on perusal of Ex.P1 FIR, it is quite clear that at the time of accident, the rider together with three pillion riders had travelled in the motor-cycle bearing No.TN-07-AT-3897. In view of the clear cut evidence of eye witness P.W.4 to the effect that the accident occurred due to the rash and negligent driving of the driver of the Ninth Respondent/First Respondent's Tata Vica car bearing registration No.PY-01-AK-0986 and also taking note of yet another fact that Ex.P1 FIR was registered under Sections 279, 337 and 304(A) of the

Indian Penal Code against the driver of the offending vehicle bearing registration No.PY-01-AK-0986, this Court unhesitatingly holds that the accident had occurred due to the rash and negligent driving of the driver of the Ninth Respondent/First Respondent's Tata Vica car, offending vehicle bearing registration No.PY-01-AK-0986 and the point so answered.

15.At this juncture, this Court opines that the finding of the Claims Tribunal in the common award to the effect that the motor-cycle riders were contributorily negligent for the accident was without any basis and materials on record. In view of the fact that P.W.4 (eye-witness) had in a crystalline fashion deposed that the accident in question had occurred because of the negligent driving of the driver of the offending vehicle of the Ninth Respondent/First Respondent's Tata Vica car and therefore, this Court to prevent an aberration of justice, sets aside the finding of the Tribunal on 10% contributory negligence on the part of the rider and three pillion riders of the motor cycle.

CMA.No.713 of 2015:

16.The Claims Tribunal in M.C.O.P.No.1205 of 2013 had awarded a total compensation of Rs.27,47,700/- for the death of Ravikumar by awarding various sums under different heads and calculation of the said sums are described as under:

a)To the Second Respondent/Minor Petitioner, a sum of Rs.50,000/- and to the Respondents 3 & 4/Petitioners, sum of Rs.10,000/- each was awarded towards 'Loss of Love and Affection' (in total, a sum of Rs.70,000/- under the head 'Loss of love and Affection').

b)From and out of the aggregate compensation of Rs.30,53,000/-, the Claims Tribunal had held that the deceased Ravikumar contributed to the accident to an extent of 10% and accordingly, after deduction, granted a sum of Rs.27,47,700/- to the Respondents 1 to 4/Petitioners/Claimants.

c)Coming to the aspect of the income of the deceased Ravikumar, the Respondents 1 to 4/Petitioners in M.C.O.P.No.1205 of 2013 had claimed that the deceased worked as a Mason and earned a sum of Rs.20,000/- per month but the evidence of P.W.5 was to the effect that the deceased Ravikumar was paid a sum of Rs.700/- per day amounting to Rs.21,000/- per month. The Claims Tribunal had opined that the labourers in construction works might get a job at an average of three weeks per month and accordingly, calculated

the wages at Rs.14,700/- per month and rounded off the same to Rs.15,000/- per month.

d)The Claims Tribunal had borne in mind 'future prospects' and took into consideration 30% increase i.e., Rs.4,500/- ($15000 \times 30/100$) and determined the income at Rs.19,500/- per month. Further, the Tribunal had deducted $\frac{1}{4}$ amount towards the personal expense of the deceased and finally, fixed the take home pay as Rs.14,625/- per month. As seen from Ex.P2 Post mortem certificate, the age of the deceased Ravikumar was mentioned as 32 years and in the absence of any other evidence, this Court place reliance on Ex.P2 Post mortem certificate and determines the age of Ravikumar at the time of his death as 32 and had adopted the multiplier of 16 and arrived at a sum of Rs.28,08,000/- ($14,625 \times 12 \times 16$) towards pecuniary loss.

e)Even though P.W.5 (mason) in his evidence in cross examination had categorically deposed that the deceased Ravikumar worked under him and he paid him the weekly wages in cash for which he was not in possession of receipt and also not filed the relevant account, yet this Court fixed the monthly income of the deceased at Rs.8000/- and under the caption 'future prospects', this Court grants 50% increase to the salary which works out to Rs.4000/- and fixed the monthly income at Rs.12,000/- ($Rs.8000 + Rs.8000 \times 50/100$). After deducting $\frac{1}{4}$ sum towards the personal expenses of the deceased, accordingly, if a sum of Rs.3,000/- deducted towards personal expenses of the deceased Ravikumar then his take home pay works out to Rs.9,000/- per month and by applying multiplicand 16, the pecuniary loss is calculated as Rs.17,28,000/- ($9000 \times 12 \times 16$).

f)Since the First Respondent/First Petitioner is the wife of the deceased Ravikumar, under the head 'Loss of Consortium', this Court grants sum of Rs.50,000/-. In respect of the head 'Loss of Love and Affection', this Court grants a sum of Rs.1,00,000/- insofar the Second Respondent/Minor Second Petitioner is concerned and a total sum of Rs.50,000/- to the Respondents 3 & 4/Petitioners (parents of the deceased); towards 'Funeral Expenses' a sum of Rs.25,000/-; towards 'Loss of Estate' awards a sum of Rs.10,000/-; towards 'Transportation to hospital' a sum of Rs.10,000/-. In respect of damage to clothing and articles, a sum of Rs.2000/- is awarded by this Court. Thus, this Court awards a total compensation of Rs.19,75,000/- (inclusive of no fault liability) together with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of

realisation payable by the Appellant/Second Respondent/Insurance Company to the Respondents 1 to 4/Petitioners/Claimants for the death of Ravikumar.

g)The compensation re-assessed by this Court is as follows:

S.No.	Heads	Amount of Calculation
1	Loss of income	Rs.8000/- per month
2	50% of (1) above to be added as Future Prospects	[Rs.8000+Rs.4000]= Rs.12,000/-
3	1/4 th of (2) deducted as Personal Expenses of the deceased	[Rs.12000-Rs.3000]= Rs.9000/-
4	Compensation after multiplier of 16 is applied	[Rs.9000x12x16]= Rs.17,28,000/-
5	Loss of Consortium	Rs.50,000/-
6	Loss of Love and Affection (Rs.1,00,000/- for minor child & Rs.50,000/- for parents of the deceased)	Rs.1,50,000/-
7	Funeral Expenses	Rs.25,000/-
8	Loss of Estate	Rs.10,000/-
9	Transportation	Rs.10,000/-
10	Damage to clothing & articles	Rs. 2,000/-
Total		Rs.19,75,000/-

CMA.No.714 of 2015:

17.a)The Respondents 5 & 6 herein/Petitioners/Claimants before the Claims Tribunal in M.C.O.P.No.1530 of 2013 had claimed a total compensation of Rs.15 lakhs for the death of their daughter J.Maheswari. The Tribunal for the death of Maheswari had determined the compensation of Rs.9,60,000/- and the break-up figure of the award of compensation is mentioned as under:

Loss of Dependency	8,10,000
Funeral Expenses	25,000
Loss of Love & Affection	75,000
Loss of Estate	50,000

Total	9,60,000

b) From and out of the said quantum of compensation of Rs.9,60,000/- arrived at by the Tribunal, the Tribunal deducted 10% towards contributory negligence of the deceased for the accident caused and accordingly, determined the compensation at Rs.8,64,000/-.

c) It is not in dispute that the deceased J. Maheswari was studying in XI Std at Lady Wellington Higher Secondary School, Triplicane at the time of her death as seen from Ex.P9 School Bona-fide Certificate. It is the evidence of P.W.3 (father of the deceased Maheswari) that she was keeping a sewing machine and doing tailoring job through which she earned a monthly sum of Rs.25,000/-. Admittedly, there is no documentary proof that the deceased Maheswari was earning Rs.25,000/- through her tailoring job when she was a student of XI Std at the time of accident. As such, this Court fixed the notional income of the deceased Maheswari at Rs.2500/- per month. Considering the future prospects, this Court adds 50% of salary and this works out to Rs.3750/- (Rs.2500+Rs.1250) and in total, notional income of the deceased is determined at Rs.3750/- per month and after deducting 1/3rd towards personal expenses, the monthly income comes to Rs.2500/- which works out to Rs.30,000/- per annum and by adopting a multiplier of 15, the sum works out to Rs.4,50,000/- under the head pecuniary loss. In addition to this sum, this Court awards a sum of Rs.1,25,000/- towards Loss of Love and Affection, Rs.25,000/- towards Funeral Expenses, Rs.5,000/- towards damage to dress and watch, Rs.10,000/- each under the heads Transportation and Loss of Estate and thus, a total compensation of Rs.6,25,000/- (inclusive of no fault liability) together with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of realisation payable by the Appellant/Second respondent/Insurance Company to the Respondents 5 & 6 herein/Petitioners 1 & 2/Claimants. Since accident had taken place due to the rash and negligent driving of the driver of the Ninth Respondent herein/First Respondent offending vehicle, this Court had not deducted any percentage of amount towards the contributory negligence of the deceased.

d)The compensation re-assessed by this Court is as follows:

S.No.	Heads	Amount of Calculation
1	Loss of income	Rs.2500/- per month
2	50% of (1) above to be added as Future Prospects	[Rs.2500+Rs.1250]= Rs.3,750/-
3	1/3 rd of (2) deducted as Personal Expenses of the deceased	[Rs.3750-Rs.1250]= Rs.2500/-
4	Compensation after multiplier of 15 is applied	[Rs.2500x12x15]= Rs.4,50,000/-
5	Loss of Love and Affection	Rs.1,25,000/-
6	Funeral Expenses	Rs.25,000/-
7	Loss of Estate	Rs.10,000/-
8	Transportation	Rs.10,000/-
9	Damage to clothing & articles	Rs. 5,000/-
Total		Rs.6,25,000/-

CMA.No.715 of 2015:

18.a)The Respondents 8 & 9 herein/Petitioners 1 & 2/Claimants in M.C.O.P.1307 of 2013 had claimed a total compensation of Rs.10 lakhs for the death of their minor son Vinod aged about 9 years. However, the Tribunal had determined a total compensation of Rs.7 lakhs under various heads and they are mentioned as under:

Pecuniary Loss	Rs.4,50,000/-
Funeral Expenses	Rs. 25,000/-
Loss of Love and Affection	Rs. 75,000/-
Loss of Life Expectancy	Rs.1,00,000/-
Loss of Estate	Rs. 50,000/-
Total	Rs.7,00,000/-

The Tribunal after deducting 10% towards contributory negligence of the deceased, it awarded a compensation of Rs.6,30,000/-.

b)P.W.2 (father of the deceased minor Vinod) had deposed before the Tribunal that his son was a student studying in V Std (as per chief affidavit but in cross mentioned as III Std) and that he stood first in the class and also took part in cultural and games activities in the school. At the time of death of the minor son Vinod, he was aged 9 years (but the Tribunal mentioned in the award as 8 years) and accordingly, fixed the notional income of Rs.30,000/- per annum for the purpose of determining the compensation. After applying the multiplicand of 15, the Tribunal worked out the pecuniary loss as Rs.4,50,000/- (Rs.30,000 x 15) etc., besides awarding various sums under different heads as stated supra.

c)At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Oriental Insurance Company Limited V. Syed Ibrahim and others, (2007) 11 Supreme Court Cases 512 at page 515, wherein in paragraph 7, it is held as follows:

"7. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of stars, beyond the reach of monetary tape measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are the claimants, relevant factor would be age of parents.

d)Also, in the aforesaid decision, at page 516, in paragraph 8, it is held as follows:

"8. "11.... In case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's life-time. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of

pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. V. Jenkins (1913) AC 1, and Lord Atkinson said thus:

"..... all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See Lata Wadhwa and Ors. v. State of Bihar and Ors. (2001 (8) SCC 197)."

e) Moreover, in the aforesaid decision, at page 516, in paragraph 10, it is observed as follows:

"10. In cases of young children of tender age, in view of uncertainties abound, neither income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither is the income of the deceased child capable of assessment on estimated basis nor is the financial loss suffered by the parents capable of mathematical computation."

f)No wonder, the award of monetary compensation certainly cannot compensate a valuable, precious loss of human life and as a matter of fact, the damages/compensation awarded to the family of deceased cannot renew a physical frame that was battered and shattered.

g)While awarding Compensation, a Court of Law/Tribunal is to keep in mind an important fact that the same cannot be a 'Source of Profit nor a Bonanza'. Undoubtedly, the measure of compensation/damages cannot be arrived at by an exact arithmetical calculations. The compensation awarded by a Court/Tribunal should not be miserly or meagre or a pittance as the case may be. Little guess work, this way or that way is quite possible and permissible. However, the determination of compensation in a particular case is to be rational and not based on whims and fancies, arbitrariness, capriciousness etc.

h)Keeping in mind the aforesaid decisions, since the deceased Vinod was a student studying at V Std at the time of accident, this Court determines the notional income per month at Rs.5000/- and after deducting 1/3rd towards personal expenses, the monthly income works out to Rs.3333/- and therefore, the notional income of the deceased is determined at Rs.39,996/- per annum and then, if multiplier of 18 is adopted it works out to Rs.7,19,928/- which is rounded off to Rs.7,20,000/-being the pecuniary loss sustained by the Respondents 1 & 2/claimants for the death of their minor son. In addition to pecuniary loss, this Court awards a sum of Rs.1,25,000/- towards Loss of Love and Affection, Rs.10,000/- towards Transportation, Rs.2000/- towards damage to global damages, Rs.10,000/- towards Loss of Estate. Thus a total compensation of Rs.8,92,000/- together with interest at the rate of 7.5% p.a. (inclusive of not fault liability) payable by the Appellant/Second Respondent/Insurance Company to the Respondents 7 and 8 herein/Petitioners/Claimants for the death of Vinod. Since the deceased Vinod was a minor school student at the time of his untimely death, this Court has not awarded any sum under the head of future prospects.

i)The break-up details of the enhanced compensation awarded by this Court is as under:

S.No.	Heads	Amount of Calculation
1	Loss of income	Rs.5000/- per month

S.No.	Heads	Amount of Calculation
2	1/3 rd of (1) deducted as Personal Expenses of the deceased	[Rs.5000-Rs.1667]= Rs.3333/-
3	Compensation after multiplier of 18 is applied	[Rs.3333x12x18]= Rs.7,19,928/- rounded off to Rs.7,20,000/-
4	Loss of Love and Affection	Rs.1,25,000/-
5	Funeral Expenses	Rs. 25,000/-
6	Loss of Estate	Rs.10,000/-
7	Transportation	Rs.10,000/-
8	Global damages	Rs. 2,000/-
Total		Rs.8,92,000/-

19.Conclusion:

In the result,

a) In respect of CMA.No.713 of 2015, this Court modifies the compensation granted by the Tribunal in its award in M.C.O.P.No.1205 of 2013 dated 28.03.2014 as Rs.19,75,000/- as stated supra. The said compensation amount of Rs.19,75,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit is directed to be paid by the Appellant/Insurance Company (less the amount already deposited as per order dated 31.03.2015 in M.P.No.1 of 2015 in CMA.713 of 2015). Out of the said compensation amount, First Petitioner (wife of the deceased) is entitled to receive a sum of Rs.10 lakhs and Second Petitioner/minor daughter, Achuma is entitled to receive a sum of Rs.8 lakhs, which shall be deposited in any nationalised bank till she attains majority and the First Petitioner being the mother of the minor Second Petitioner is permitted to withdraw the accrued interest once in three months periodically from the bank. The Respondents 3 and 4 herein being the parents of the deceased are entitled to Rs.87,500/- each and they are permitted to withdraw their share amount with proportionate interest in full. Out of the said amount of Rs.10 lakhs awarded to the First Respondent/wife of the deceased is permitted to withdraw Rs.5 lakhs and the balance sum is directed to be deposited in a nationalised bank for a period

of three years by the Tribunal and from the said deposit, the First Respondent/Claimant is permitted to receive the interest once in three months periodically directly from the bank.

b) In regard to CMA.No.714 of 2015 is concerned, this Court modifies the award granted by the Tribunal in its award in MCOP.No.1530 of 2013 and awarded a compensation Rs.6,25,000/- with proportionate interest. It comes to be known that this Court in M.P.No.1 of 2015 in CMA.No.714 of 2015 dated 31.03.2015 had directed the Appellant/Insurance Company to deposit the award amount with interest as on date and costs before the Tribunal within a period of eight weeks from the date of receipt of copy of the order etc. As such, out of the compensation awarded by this Court, the Respondents 5 and 6 herein/Claimants are entitled to receive their share amount equally at Rs.3,12,500/- each. They are permitted to withdraw 50% of their share amounts and the balance amount of their share to be deposited by the Tribunal in a nationalised bank for a period of three years and from the said deposit, they are permitted to receive interest once in three months periodically, directly from the bank. Liberty is granted to the Insurance Company to receive the excess amount deposited before the Claims Tribunal to the credit of M.C.O.P.No.1530 of 2013 by filing payment out application as per Civil Rules of Practice.

c) Insofar as the CMA.715/2015 is concerned, this Court modifies the compensation granted by the Tribunal in its award in M.C.O.P.1307 of 2013 dated 28.03.2014 and awards a total of Rs.8,92,000/- as stated supra. The Appellant/Insurance Company is directed to deposit the enhanced amount with proportionate interest within a period of four weeks from the date of receipt of a copy of the order (since the entire award amount with interest etc., has been deposited to the credit of M.C.O.P.No.1307 of 2015 as per the order passed by this Court in M.P.No.1 of 2015 in CMA.715 of 2015 dated 31.03.2015). The Respondents 7 & 8 herein/Claimants are entitled to receive a sum of Rs.4,25,750/- each and from and out of their share amount, they are permitted to receive 50% and the remaining amount is directed to be deposited in a nationalised bank by the Tribunal for a period of three years and they are permitted to receive interest once in three months periodically directly from the bank from the said deposit. The Respondents are directed to pay the necessary deficit Court fee if any for enhancement of compensation ordered by this Court.

20.In fine, the Civil Miscellaneous Appeal Nos.713 and 714 of 2015 are allowed in the above terms and the Civil Miscellaneous Appeal No.715 is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

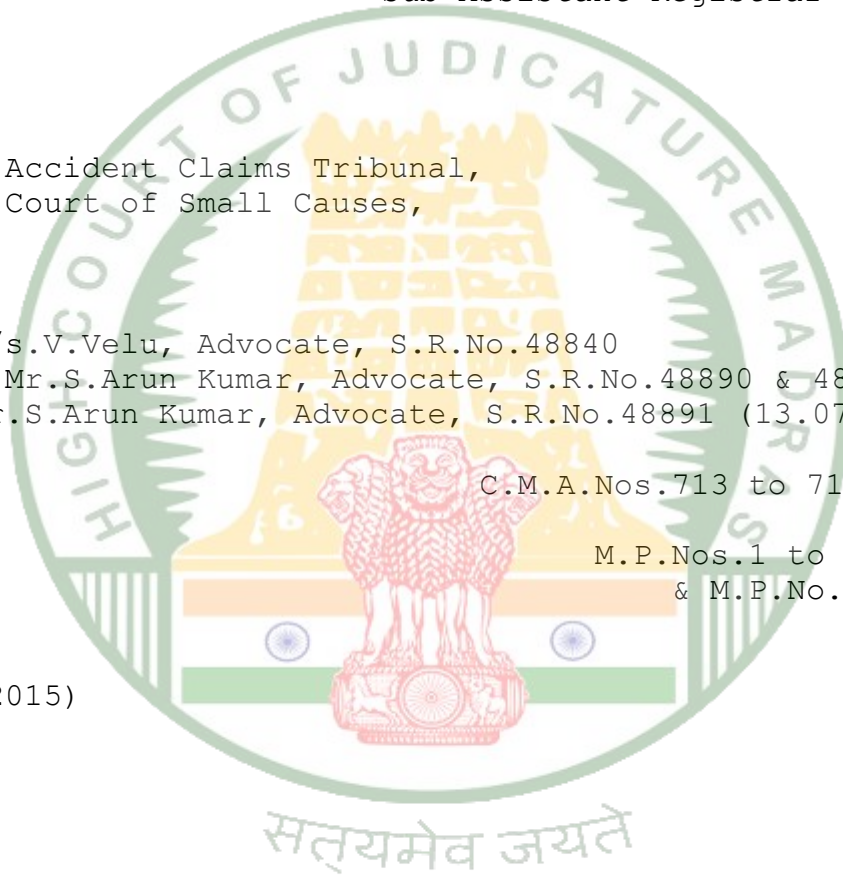
To

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

+1cc to M/s.V.Velu, Advocate, S.R.No.48840
+2cc's to Mr.S.Arun Kumar, Advocate, S.R.No.48890 & 48892
1 cc to Mr.S.Arun Kumar, Advocate, S.R.No.48891 (13.07.2016)

C.M.A.Nos.713 to 715 of 2015
and
M.P.Nos.1 to 1 of 2015
& M.P.No.2 of 2015

UG(CO)
CA(17/12/2015)



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