

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. Nos. 3372, 1555 and 1556 of 2014

and M.P.Nos.1 of 2014 and

Cross Objection No. 89 of 2015 in CMA No.1555/2014

C.M.A. No.3372 of 2014

J. Prakash ... Appellant/Petitioner/ Claimant

Vs

1. V. S. Sainarayanan
S/o. V.S.Sivarajan
59, Nellukkara Street
Kanchipuram - 631 502

2. The New India Assurance Co. Ltd.
No. 1, Bharathi Road
Arcot Woodlands Building
Cuddalore. ... Respondents 1&2/Respondents 1,2/
Respondents 1,2

3. T.S. Durai Rajan

4. D. Devaki DuraiRajan ... Respondents 3,4/Petitioners 2,3/
Claimants 2,3

C.M.A. No.1555 of 2014

The New India Assurance Co. Ltd.
No. 1, Bharathi Road
Arcot Woodlands Building
Cuddalore.

...Appellant / 2nd Respondent

Vs

1. T. Raghupathy
S/o. Thulasidoss

2. R. Maithili
W/o. Raghupathy ...Respondents 1 & 2/rs

3. V. S. Sainarayanan
S/o. V.S.Sivarajan
59, Nellukkara Street
Kanchipuram - 631 502 ...3rd Respondent /1st Respondent
R3 set exparte before lower court.

C.M.A. No.1556 of 2014

The New India Assurance Co. Ltd.
No. 1, Bharathi Road
Arcot Woodlands Building
Cuddalore. ...Appellant / 2nd Respondent

1. J. Prakash
S/o. Janaki Raman सत्यमेव जयते

2. T.S. Durai Rajan
S/o. Seshachalam

3. D. Devaki Durai Rajan
W/o. Durai Rajan ...Respondents 1 to 3/Petitioners

4. V. S. Sainarayanan
S/o. V.S.Sivarajan
59, Nellukkara Street
Kanchipuram - 631 502 ...4th Respondent / 1st Respondent
(R4 set exparte in lower court)

Cross Objection 89 of 2015 against CMA No.1555 of 2014

1. T. Raghupathy
S/o. Thulasidoss
2. R. Maithili
W/o. Raghupathy ..Cross Objectors 1 & 2 /Respondents 1 & 2

Vs.

1. The New India Assurance Co.Ltd.
No. 1, Bharathi Road
Arcot Woodlands Building
Cuddalore. 1st Respondent/ Appellant

2. V. S. Sainarayanan
S/o. V.S.Sivarajan
59, Nellukkara Street
Kanchipuram - 631 5022nd Respondent / 3rd Respondent
(set Exparte in lower court)

These Civil Miscellaneous Appeals and the Cross Objection are filed against the common judgment and decree dated 14.02.2013 made in M.C.O.P.Nos. 295 and 799 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Cuddalore.

For appellant : Mr.N. Damodaran
in CMA No. 3372 of 2014

For appellant : Mr. C. Ramesh Babu
in CMA No.1555 & 1556 of 2014

For Cross Objectors : M/s. Ramya V. Rao
in Cross. Obj.No. 89 of 2015

For Respondents : R1 - Ex parte
in CMA No. 3372 of 2014 Mr. C. Ramesh Babu for R2
Mr. D. Ravichander for R3 & R4

For Respondents : M/s. Ramya V. Rao for R1 & R2
in CMA No. 1555 of 2014 R3 - Ex parte

For Respondents : Mr.N. Damodaran for R1
in CMA No. 1556 of 2014 Mr. D. Ravichander for R2 & R3
R4 - Ex parte

For Respondents : Mr. C. Ramesh Babu for R1
in Cross. Obj.No. 89 of 2015 R2- Ex parte

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.

The Claimants have filed the appeal in C.M.A. No.3372 of 2014 and Cross Objection No. 89 of 2015 against C.M.A. No.1555 of 2014 seeking enhancement of the compensation. The New India Assurance Company Limited filed the appeals in C.M.A.Nos. 1555 and 1556 of 2014, seeking reduction of the compensation granted by the Tribunal.

2. The Motor Accident which occurred on 29.07.2007 at 00.30 a.m., on the Palar River bridge at Veppancherry, from Pondicherry to Chennai, resulted in two fatal cases. As per the claim petitions filed before the Tribunal, it is stated that

while the deceased Prasanna Vadhani Prakash was driving her car bearing Registration No. TN 09 U 5792 along with the deceased R. Balaji, the bus bearing Registration No. TN 21 J 8956, belonging to one Mr.V.s. Sainarayanan, insured with the New India Assurance Company, came in a rash and negligent manner and dashed against the car. In the impact, the car was completely damaged and both of them were crushed to death. The following table gives the details of the deceased persons, their name, age, occupation, the relationship with the claimants and the amount of compensation claimed by them.

Sl. No.	MCOP No.	Nature of case	Name, age of the deceased	Relationship of between the deceased and the claimants	Amount of compensation claimed.
1	295/2008	Fatal	R. Balaji, 24 years, Manager of PrancCafe, Chennai.	Claimant -Parentsof the deceased	Rs.25,00,000/-
2	799/2008	Fatal	Prasanna Vadhani Prakash, 34years, Lawyer/ Hotelier.	Claimants- Husband, father and mother of the deceased	Rs.1,50,00,000/

3. Before the Tribunal on behalf of the claimants PWs 1 to 7 were examined as witnesses, the details of which are as follows :-

- P.W.1 - The 1st claimant Thiru T. Raghupathy in MCOP No.295/2008
P.W.2 - The 1st claimant Thiru Prakash in MCOP No.799/2008
P.W.3 - Thiru K. Manzoor (Eye Witness)
P.W.4 - Tmt. Devaki Durairajan, 3rd claimant in MCOP No.799/2008
P.W.5 - Thiru R. Vijayaraghavan
P.W.6 - Thiru M. Balathandayutham, Advocate, Cuddalore.
P.W.7 - Thiru T. Rajaraman, Advocate, Cuddalore.

Ex.P-1 to Ex.P.137 were marked as exhibits, the details of which are as follows:-

Ex.No.	Details
P1	Copy of F.I.R
P2	Copy of R.C of offending vehicle
P3	Copy of R.C of deceased Prasanna Vadhani Prakash vehicle
P4	Copy of M.V.I report of offending vehicle
P5	Copy of M.V.I report of deceased Prasanna Vadhani Prakash vehicle
P6	Insurance policy of the offending vehicle
P7	Copy of driving licence of the offending vehicle
P8	Copy of post mortem certificate of deceased R.Balaji
P9	Legal heirs Certificate of deceased R. Balaji
P10	Copy of post mortem certificate of deceased Prasanna Vadhani Prakash
P11	Legal Heir Certificate of deceased Prasanna Vadhani Prakash
P12	Driving Licence of deceased Prasanna Vadhani Prakash
P13	School Certificate of deceased Prasanna Vadhani Prakash
P14	Sports Certificate of deceased Prasanna Vadhani Prakash
P15	Sports Certificate of deceased Prasanna Vadhani Prakash
P16	Sports Certificate of deceased Prasanna Vadhani Prakash
P17	Sports Certificate of deceased Prasanna Vadhani Prakash
P18 to 28	Sports Certificate of deceased Prasanna Vadhani Prakash
P29 to 36	Sports Certificate of deceased Prasanna Vadhani Prakash
P37 to 45	Sports Certificate of deceased Prasanna Vadhani Prakash
P46	Sports Certificate of deceased Prasanna Vadhani Prakash
P47	Sports Certificate of deceased Prasanna Vadhani Prakash
P48	Sports Certificate of deceased Prasanna Vadhani Prakash
P49	Computer Training Certificate of deceased Prasanna Vadhani Prakash
P50	Certificate of National Service Scheme of deceased Prasanna Vadhani Prakash
P51	Sports Certificate of deceased Prasanna Vadhani Prakash

Ex.No.	Details
P52	Sports Certificate of deceased Prasanna Vadhani Prakash
P53 to 65	Sports Certificate of deceased Prasanna Vadhani Prakash
P66 to 69	Sports Certificate of deceased Prasanna Vadhani Prakash
P70	Sports Certificate of deceased Prasanna Vadhani Prakash
P71	Sports Certificate of deceased Prasanna Vadhani Prakash
P72 to 78	Sports Certificate of deceased Prasanna Vadhani Prakash
P79 to 85	Sports Certificate of deceased Prasanna Vadhani Prakash
P86	Sports Certificate of deceased Prasanna Vadhani Prakash
P87 to 90	Sports Certificate of deceased Prasanna Vadhani Prakash
P91	International Womens day Seminar Certificate of deceased Prasanna Vadhani Prakash
P92	Kolam competition Certificate of deceased Prasanna Vadhani Prakash
P93	Drawing Competition Certificate of deceased Prasanna Vadhani Prakash
P94 to 101	Sports Certificate of deceased Prasanna Vadhani Prakash
P102	Dumb Charades Certificate of deceased Prasanna Vadhani Prakash
P103	Rangoli Kolam Certificate of deceased Prasanna Vadhani Prakash
P104	College Volley Ball Certificate of deceased Prasanna Vadhani Prakash
P105	Provisional Certificate of deceased Prasanna Vadhani Prakash
P106	Transfer Certificate of deceased Prasanna Vadhani Prakash
P107	Convocation Certificate of deceased Prasanna Vadhani Prakash
P108	Registration Certificate of deceased Prasanna Vadhani Prakash issued by Tamil Nadu Bar Council
P109	Certificate of deceased Prasanna Vadhani Prakash issued by National Institute of Human resources Development
P110	Certificate of deceased Prasanna Vadhani Prakash issued by Singapore.

Ex.No.	Details
P111	Entry permit issued by Singapore in favour of deceased Prasanna Vadhani Prakash
P112	Notice of Assessment of Income Tax stands in the name of deceased Prasanna Vadhani Prakash
P113	Notice of Assessment of Income Tax stands in the name of deceased Prasanna Vadhani Prakash
P114	Notice of Assessment of Income Tax stands in the name of deceased Prasanna Vadhani Prakash
P115	Notice of Assessment of Income Tax stands in the name of deceased Prasanna Vadhani Prakash
P116	Notice of Assessment of Income Tax stands in the name of deceased Prasanna Vadhani Prakash
P117	Certificate of Registration stands in the name of deceased Prasanna Vadhani Prakash
P118	Xerox copy of agreement for Take Away Food counters
P119	Letter issued by Hindustan Petroleum Corporation Limited to deceased Prasanna Vadhani Prakash
P120	Salary Certificate of deceased Prasanna Vadhani Prakash
P121	Certificate of Incorporation stands in the name of deceased Prasanna Vadhani Prakash
P122	Xerox copy of Revenue Licence stands in the name of deceased Prasanna Vadhani Prakash
P123	Lease Agreement entered into between Latha Priyakumar and Prana Cafe Private Limited, Chennai
P124	Xerox copy of Evidence of distinctiveness of deceased Prasanna Vadhani Prakash
P125	News of Singai Express
P126	Photos of competition of Pattimandram stands in the name of deceased Prasanna Vadhani Prakash and others
P127	News published in Kumutha Vaara Naalithazh
P128	Xerox copy of Passport stands in the name of deceased Prasanna Vadhani Prakash
P129	Salary certificate of Deceased Balaji

Ex.No.	Details
P130	Xerox copy of Passport stands in the name of deceased Prasanna Vadhani Prakash
P131	Xerox copy of Registration Certificate of Ghaangothree Vegetarian Restaurant Singapore Pvt. Ltd.
P132	The Sunday Times Vara Ithazh
P133	Xerox copy of licence stands in the name of deceased Prasanna Vadhani Prakash
P134	Xerox copy of Renewal licence stands in the name of deceased Prasanna Vadhani Prakash
P135	Xerox copy of passport stands in the name of mother of the deceased Prasanna Vadhani Prakash
P136	Xerox copy of Bank Passbook stands in the name of father of the deceased Prasanna Vadhani Prakash
P137	Xerox copy of Bank Accounts report pertaining to the salary of deceased Prasanna Vadhani Prakash

On behalf of the Insurance Company Mr. P. Dhanasekaran, the driver of the bus was examined as RW.1 but no documents were marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the driver of the bus was having valid driving licence to drive the bus came to the conclusion that the driver of the bus was responsible for the accident and consequently liability was fixed on the Insurance Company, being the Insurer of the bus. On this issue, learned counsel for the Insurance Company has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 6% per annum:-

Sl. Head	Amount granted by the Tribunal in MCOP	Amount granted by the Tribunal in MCOP
No	No.	No.
	295/2008	No.799/2008
1 Pecuniary loss to the estate of the deceased	Rs. 8,40,000.00	Rs. 24,00,000.00

Sl. Head No	Amount granted by the Tribunal in MCOP 295/2008	Amount granted by the Tribunal in MCOP No.799/2008
2 Loss of Love and affection to the claimants -Rs.10,000 each	Rs.20,000.00	Rs.30,000.00
3 Loss of consortium to the--- husband		Rs.10,000.00
4 Funeral Expenses	Rs. 2,500.00	Rs. 2,500.00
5 Transportation Expenses	Rs. 2,500.00	Rs. 2,500.00
Total	Rs.8,65,000.00	Rs.24,45,000.00

6. Learned counsel for the Insurance Company contends that in CMA No.1555/2014, the income of Rs. 10,000/- per month, fixed by the Tribunal is not based on any documentary records and that the multiplier adopted by the Tribunal is not correct since the same has been fixed based on the age of the mother and not the average age of the parents of the deceased. In C.M.A. No.1556/2014, though it is stated that the deceased was a practising Lawyer and also a hotelier, no proper evidences were produced to prove her income. However, the Tribunal has erred in fixing the income as Rs.20,000/- per month. It was further submitted that the parents of the deceased are not Class I heirs and as such they are not entitled for any compensation.

7. On the other hand, the learned counsel for the claimants submitted, in C.M.A. No.1555/2014, though the deceased was working as a Manager and was earning a sum of Rs.15,000/-, the Tribunal has fixed only Rs.10,000/- per month. The Tribunal should have adopted 18 multiplier, considering the age of the deceased, which was 24 years at the time of accident. The Tribunal has granted very meagre amount towards 'loss of love and affection' to the parents of the deceased, who was a bachelor and was the only bread winner of the family. The Tribunal has granted only a sum of Rs.8,65,000/- against a claim of Rs.25,00,000/- as compensation. So far as C.M.A. No.3372 of 2014 filed by the husband of the deceased Prasanna Vadhani Prakash is concerned, learned counsel submitted that inspite of evidences and records, the income fixed by the Tribunal is very low. The Tribunal has also applied a wrong multiplier in fixing the loss of dependency. Hence, the claimants seek for enhancement of compensation.

8. Heard learned counsel for all the parties and also perused the material available on records.

9. With regard to C.M.A. No.1555/2014, the primary contention of the learned counsel for the claimants that 14 multiplier adopted by the Tribunal is not correct, since the age of the deceased was only 24 years, is not in dispute. As we find justification in the Cross Objection filed by the claimants seeking enhancement primarily on the ground that the age of the deceased is the relevant factor to decide the multiplier and the amount granted under other heads are reasonable, which are also not seriously disputed, this Court accepts the same. Hence, the Award is modified only with regard to the multiplier adopted. [Rs. 10,000 x 12 x $\frac{1}{2}$ x 18 = Rs. 10,80,000/-]. The compensation granted under the other heads and the interest, are fair and reasonable and needs no interference. Accordingly, the Award of the Tribunal is enhanced and modified as follows :-

Sl. Head No	Amount granted by the Tribunal in MCOP NO. 295/2008	Amount granted by this Court in CMA No. 1555/2014)
1 Pecuniary loss to the estate of the deceased	Rs.8,40,000.00	Rs.10,80,000.00
2 Loss of Love and affection to the claimants -Rs.10,000 each	Rs. 20,000.00	Rs.20,000.00
4 Funeral Expenses	Rs. 2,500.00	Rs. 2,500.00
5 Transportation Expenses	Rs. 2,500.00	Rs. 2,500.00
Total	Rs.8,65,000.00	Rs.11,05,000.00

Hence, the C.M.A. No.1555 of 2014 is dismissed and the Cross Objection No. 89 of 2015 is allowed.

10. In so far as the other C.M.A. Nos.1556 and 3372 of 2014 are concerned, the husband, father and mother who are the claimants, question the quantum of compensation mainly on the ground that as against the income of Rs.1,00,000/- as a Lawyer and Rs.2,00,000/- as a Hotelier, the Tribunal has fixed the income as Rs.20,000/- per month. In so far as the income from two sources is concerned, there is not much discussion, but the Tribunal has determined an approximate income both from the profession as a Lawyer and the other form of business. However, as rightly pointed out by the learned counsel for the Insurance Company, there is a bar under Rules 47 and 49 of the Bar Council of India Rules. As provided under Rule 52 of the Bar Council of India Rules, in the present case no such permission has been

obtained. No proof has been filed before the Tribunal. Therefore, the income derived through the legal profession alone can be taken. As pleaded by the learned counsel for the claimants, the deceased was 36 years old at the time of accident. Therefore, 50% of the income should be added towards future prospectus. The pecuniary loss will, therefore, be Rs.36,00,000/- [Rs.20,000 x 12 = 2,40,000 + 1,20,000 = 3,60,000 - 1/3 = 2,40,000 x 15 = Rs.36,00,000]. The compensation granted under all other heads are reasonable. Accordingly, the award of the Tribunal is modified as follows:

Sl. Head No	Amount granted by the Tribunal in MCOP NO. 799/2008	Amount granted by this Court in CMA No. 1556/2014)
1 Pecuniary loss to the estate of the deceased	Rs.24,00,000.00	Rs.36,00,000.00
2 Loss of Love and affection to the claimants -Rs.10,000 each	Rs. 30,000.00	Rs.30,000.00
3 Loss of consortium to the husband	Rs. 10,000.00	Rs. 10,000.00
4 Funeral Expenses	Rs. 2,500.00	Rs. 2,500.00
5 Transportation Expenses	Rs. 2,500.00	Rs. 2,500.00
Total	Rs.24,45,000.00	Rs.36,45,000.00

Hence, the C.M.A. No.1556 of 2014 is dismissed and C.M.A.No.3372 of 2014 is allowed.

11. Accordingly, the C.M.A. Nos. 1555 and 1556 of 2014 are dismissed and C.M.A.No. 3372 of 2014 and Cross Objection No.89 of 2015 are allowed as follows:-

(i) In Cross Objection No.89 of 2015 the award of the Tribunal is enhanced to Rs.11,05,000/- from Rs.8,65,000/- and in C.M.A. No. 3372/2014 the award amount is enhanced to Rs.36,45,000/- from Rs.24,45,000/-.

(ii) The interest of 7.5% per annum granted by the Tribunal remains the same.

(iii) The Insurance company is directed to deposit the award amount, as ordered by this Court, less the amount already deposited, to the credit of M.C.O.P Nos.295 and 799 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on filing necessary application before

the Tribunal.

(vi) Consequently, the connected Miscellaneous Petition is closed. There will be no order as to costs in these appeals.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

avr

To

(The Motor Accidents Claims Tribunal)

The Principal District Judge,
Cuddalore.

1 CC to Mr.A.N.Viswanatha Rao, Advocate, sr.21910

1 cc to Mr.N.Damodaran, Advocate, sr.22080

2 ccs to Mr.C.Ramesh Babu, Advocate, sr.21845, 21844

C.M.A. Nos. 3372, 1555 and 1556 of 2014
and M.P.Nos.1 of 2014 and Cross Obj. No.
89 of 2015 in CMA No.1555/2014

rsy co

kra 12.05.2016

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