

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.1775 to 1777 of 2011

- 1.Sudha ... 1<sup>st</sup> appellant in CMA.No.1775 of 2011  
2.Minor Anjali ... 2<sup>nd</sup> appellant in CMA.No.1775 of 2011  
Minor Rep. N.F.by Mother Sudha  
3.Jaya ... 3<sup>rd</sup> appellant in CMA.No.1775 of 2011
- 1.Pachammal ... 1<sup>st</sup> appellant in CMA.No.1776 of 2011  
2.Chinnaraj ... 2<sup>nd</sup> appellant in CMA.No.1776 of 2011
- 1.Alamelu ... 1<sup>st</sup> appellant in CMA.No.1777 of 2011  
2.Minor Girija ... 2<sup>nd</sup> appellant in CMA.No.1777 of 2011  
3.Minor Vanaja ... 3<sup>rd</sup> appellant in CMA.No.1777 of 2011  
4.Minor Karthik ... 4<sup>th</sup> appellant in CMA.No.1777 of 2011  
Respds 1 to 4 are rep. By N.F.Mother Alamelu  
5.Seenu ... 5<sup>th</sup> appellant in CMA.No.1777 of 2011

Vs.

- 1.Chitramoorthy
- 2.The Branch Manager,  
ICICI Lombard General Insurance Co. Ltd.,  
Branch Office,  
Swarnambiga Plaza,  
S.F.No.6/5, Block No.7, Ward-C  
Omalur Main Road,  
Salem - 636 009. ... Respondents in all CMAs

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 02.02.2011 made in MCOP.No.973 of 2008, MCOP.No.974 of 2008, MCOP.No.925 of 2008 on the file of the Motor Vehicle Claims, Principal District Judge, Krishnagiri.

For Appellant : Mukund R.Pandian

For Respondents : Ms.R.Sreevidya [for R2]  
R1 - No appearance

COMMON JUDGMENT

These triple appeals are preferred against three separate awards passed in three separate claim petitions arising out of death of three persons whose lives were snatched in a road accident that took place on 09.4.2008. All the three who died in a road accident were travelling in a tractor and the accident occurred

when a lorry, owned by first respondent and insured with the second respondent, dashed against the said vehicle.

2. CMA.No.1775 of 2011 arises out of MCOP.No.973 of 2008. The age of the victim in this case was 24 years and was a painter by avocation. He was married and has left behind him surviving his young wife and two minor children. On his death, his legal representatives made a claim of Rs.10,00,000/- as compensation, whereas the Tribunal has passed an award for Rs.6,73,000/- payable with interest at 6% p.a. The substantial part of compensation constituted of compensation on the head of loss of dependency. The Tribunal has fixed the annual income of the victim notionally at Rs.48,000/- and reduced it by  $\frac{1}{4}$  as representing the personal expenses of the victim and applied a multiplier of 18 that corresponds to the age of the victim, and arrived at Rs.6,48,000/- (In the text of the award, the Tribunal has indicated that it had intended to deduct  $\frac{1}{3}$ , but had ended up deducting only  $\frac{1}{4}$ ). However, this apparent error has neither been sought to be corrected or clarified before the Tribunal, nor the insurance company of the lorry preferred any appeal or cross objection against it. Therefore, this Court considers that the Tribunal has intended to deduct only  $\frac{1}{4}$  and not  $\frac{1}{3}$  towards the personal expenses of the victim)). However, on the heads of loss of consortium, it has awarded Rs.10,000/- and for loss of love and affection for the minor children and his mother, the Tribunal has passed an award respectively for Rs.5,000/- each and for funeral expenses it had granted Rs.5,000/-.

3. CMA.No.1776 of 2011: This preferred against the award in MCOP.No.974 of 2008. Here the victim is aged 15 years and his parents have come forward with a claim of Rs.9,00,000/- and the Tribunal has passed an award for Rs.1,80,000/-, treating the victim as a non-earning member. Nothing was awarded separately on the head of loss of love and affection to the parents.

4. CMA.No.1777 of 2011: This appeal challenges the award in MCOP.No.925 of 2008. The victim here was the driver of the tractor. He was aged 32 years at that relevant time and he has left behind his widow and three minor children and his father. A claim for Rs.10,00,000/- was made by the heirs of the victim, whereas the Tribunal has passed an award for Rs.6,01,000/-. Of the said amount, the compensation payable on the head of loss of dependency was determined by the Tribunal at Rs.5,76,000/-. The Tribunal had notionally fixed the annual income of the victim at Rs.48,000/-, reduced the same by  $\frac{1}{4}^{\text{th}}$  towards his personal expenses and applied a multiplier of 16 to arrive at Rs.5,76,000/-. Here again, for the loss of consortium Rs.10,000/- was awarded and for loss of love and affection for the three minor children and his father, the Tribunal had fixed at Rs.10,000/- and Rs.5,000/- respectively.

5. The learned counsel appearing for the appellant submitted that the Tribunal ought to have been realistic in fixing the notional

income of the victims of the accident and require interference of the Court in each of the heads of the damages.

6. The learned counsel appearing for the respondent/insurance company however, submitted that the Tribunal has been more than charitable in fixing the entire liability on the driver of the offending lorry and it should also be reckoned.

7. Heard both sides. On close reading of papers, it is evident that the accident had occasioned owing to the negligence of the offending lorry and at any rate, the insurance company have not opted to prefer any appeal, challenging the findings of the Tribunal below.

8. So far as the quantum of compensation is concerned, this Court finds that the compensation paid on the head of loss of dependency is in order. But the same cannot be stated so far as that awarded for loss of consortium for the widow and love and affection to the children or the parents, as the case may be. Therefore, this Court decides to interfere with the award only to this extent and no more.

- In so far as CMA.No.1775 of 2011 is concerned, loss of consortium is enhanced from Rs.10,000/- to Rs.1,00,000/-; for loss of love and affection towards minor child and the victim's mother, it is increased from Rs.10,000/- to Rs.50,000/- each. On the other heads of compensation, the award of the Tribunal is confirmed. It is accordingly, the award amount is thus increased from Rs.6,73,000/- to Rs.8,53,000/-
- Whereas here in CMA.No.1777 of 2011 is concerned, loss of consortium to the widow of the victim is increased from Rs.10,000/- to Rs.1,00,000/- and for the love and affection to the three minor children and his father, this Court enhances the award to Rs.50,000/- each, therefore it works out to Rs.2,00,000/- on the head of love and affection. The other heads of compensation awarded by the Tribunal remains undisturbed. Thus, in this case, the award amount is increased from Rs.6,01,000/- to Rs.8,76,000/-.
- The break-up details of the enhanced amount of compensation in CMA.Nos.1775 & 1776 of 2011 reads as under :

CMA.No.1775 of 2011 : (against MCOP.No.973/2008)

| Heads of compensation      | Amount Awarded (Rs.) | Amount Enhanced (Rs.) |
|----------------------------|----------------------|-----------------------|
| Loss of dependency         | 6,48,000.00          | 6,48,000.00           |
| Loss of consortium         | 10,000.00            | 1,00,000.00           |
| Loss of love and affection | 10,000.00            | 1,00,000.00           |

| Heads of compensation               | Amount Awarded (Rs.) | Amount Enhanced (Rs.) |
|-------------------------------------|----------------------|-----------------------|
| Transportation and funeral expenses | 5,000.00             | 5,000.00              |
| Total :                             | 6,73,000.00          | 8,53,000.00           |

CMA.No.1777 of 2011 : (against MCOP.No.925/2008)

| Heads of compensation      | Amount Awarded (Rs.) | Amount Enhanced (Rs.) |
|----------------------------|----------------------|-----------------------|
| Loss of dependency         | 5,76,000.00          | 5,76,000.00           |
| Loss of consortium         | 10,000.00            | 1,00,000.00           |
| Loss of love and affection | 15,000.00            | 2,00,000.00           |
| Total :                    | 6,01,000.00          | 8,76,000.00           |

9. In CMA.No.1776 of 2011, which arises against MCOP.No.974 of 2008, the Tribunal has passed a consolidated amount of Rs.1,80,000/- on the ground that the boy who died was not earning at that relevant time. This approach per se put premium on those whose negligence has consumed the lives of children on the road due to irresponsibility of another. No life in this country shall go value-less. Accordingly, the boy's annual income is fixed at Rs.36,000/-annually, out of which 50% should be presumed to have been diverted for his personal use. Applying the multiplier of 18, commensurate to his age, the total amount of compensation payable on the head of loss of dependency, which his parents could have obtained from their son, is determined at Rs.3,24,000/-. It is submitted in the course of argument that one of the claimants, namely, the father of the victim boy had died during the pendency of the case. The loss of compensation payable on the head of loss of love and affection is fixed at Rs.50,000/-. The total compensation is thus enhanced from Rs.1,80,000/- to Rs.3,74,000/-.

10. In the result, all the three appeals are allowed, in the manner indicated below :

(i) The compensation awarded in MCOP.No.973 of 2008 (in CMA.No.1775 of 2011) is enhanced from Rs.6,73,000/- to Rs.8,53,000/-.

(ii) The compensation awarded in MCOP.No.925 of 2008 (in CMA.No.1777 of 2011) is enhanced from Rs.6,01,000/- to Rs.8,76,000/-.

(iii) The compensation awarded in MCOP.No.974 of 2008 (in CMA.No.1776 of 2011) is enhanced from Rs.1,80,000/- to Rs.3,74,000/-.

The insurance company is directed to deposit the enhanced award of

compensation with interest at 7.5% p.a., less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order and the claimants are permitted to withdraw their apportioned share in the same ratio as was done by the Tribunal. There shall be no order as to costs and wherever the appellants are required to pay any additional Court fee, the same may be directed to be paid. Further, the claimants in all the three appeals who are major as of today are permitted to withdraw their portion of the award forthwith and for those who are minors, their share may be directed to deposit in a Nationalised Bank till they attain majority and their natural guardian/next friend is entitled to withdraw the interest once in six months to maintain the minor claimants.

Sd/-  
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

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

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

+lcc to Mr.R.Sreevidhya, Advocate SR.No.60687

+lcc to Mr.Mukund R.Pandian, Advocate SR.No.60369

CMA.Nos.1775 to 1777 of 2011

BR(CO)  
GN(29/11/2017)

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