

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.Nos.2814, 2839 and 2840 of 2016
and connected Miscellaneous Petitions

C.M.A.No.2814 of 2016:

M/s.Reliance General
Insurance Co. Ltd., Chennai. ... Appellant
/2nd Respondent

vs.

1. Sugarani
2. Silambarasan
3. Jothika
4. Karthi
5. Chitra
6. Rajive Gandhi
7. Settu
8. Sanjilakshmi

... Respondents 1 to 8
/Petitioners in O.P.No.7333/13

9. Anandan ... 9th Respondent
(Remained ex parte) /1st Respondent

Appeal against the fair and decretal order dated
02.06.2016, passed in M.C.O.P.No.7333 of 2013, on the file of
the Motor Accidents Claims Tribunal (V Court of Small Causes),
Chennai.

C.M.A.No.2839 of 2016:

Minor Chitra
Rep., by her mother and
natural guardian, Sugarani

... Appellant
/Petitioner in O.P.No.7270/13

vs.

1. Anandan
(Remained ex parte)

... 1st Respondent
/1st Respondent

2.M/s.Reliance General
Insurance Co. Ltd., Chennai. .. 2nd Respondent
/2nd Respondent

Appeal against the fair and decretal order dated 02.06.2016, passed in M.C.O.P.No.7270 of 2013, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai.

C.M.A.No.2840 of 2016:

1. Sugarani
2. Silambarasan (Minor)
3. Jothika
4. Karthi
5. Chitra
Rajive Gandhi-Died
6. Settu
7. Sanjilakshmi ... Appellants
/Petitioners in O.P.No.7333/13

vs.

1. Anandan ... 1st Respondent
(Remained ex parte) /1st Respondent
2.M/s.Reliance General
Insurance Co. Ltd., Chennai. ... 2nd Respondent
/2nd Respondent

Appeal against the fair and decretal order dated 02.06.2016, passed in M.C.O.P.No.7333 of 2013, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant in CMA.2814/16 ... Ms.C.Harini
/2nd Respondent in for Mr.N.Vijayaraghavan
CMAs.2839 & 2840/16

For Appellant in CMA.2839/16 .. Mr.F.Terry Chellaraja
For Appellants in CMA.2840/16
For Respondents in CMA.2814/16

COMMON JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

Challenge made in C.M.A.No.2814 of 2016, filed by M/s.Reliance General Insurance Co. Ltd., Chennai, is to the quantum of compensation of Rs.22,71,000/-, awarded in respect of M.C.O.P.No.7333 of 2013, with interest, at the rate of 7.5% per annum and costs.

2. Not satisfied with the quantum of compensation of Rs.22,71,000/-, awarded in M.C.O.P.No.7333 of 2013 and Rs.1,06,000/- awarded in M.C.O.P.No.7270 of 2013, two appeals in C.M.A.Nos.2839 and 2840 of 2016, have been preferred, seeking enhancement.

3. Material on record discloses that on 27.09.2013, about 04.15 P.M., when the minor respondents/claimants and their father, deceased Raji @ Rajan, were travelling in a TVS XL Motorcycle, bearing Registration No.TN 73 W 6367, a lorry, bearing Registration No.TN 73 X 2898, driven by its driver, in a rash and negligent manner, insured with the appellant-Insurance Company, dashed against the motorcycle. Due to the impact, they fell down and sustained grievous injuries.

4. Immediately, minor respondents/claimants and the motorcyclist were taken to the Government Hospital, Walajapet and given first-aid treatment. Thereafter, they were admitted in Government Hospital, Vellore. Though husband of the 1st respondent/motorcyclist was given intensive treatment, he succumbed to the injuries on 01.10.2013. In this regard, a case in Cr.No.944 of 2013, under Sections 279 and 377 IPC, has been registered, against the driver of the lorry, bearing Registration No.TN 73 X 2898, on the file of Dharmapuri Police Station. For the death, legal representatives of the deceased have filed M.C.O.P.No.7333 of 2013, claiming compensation of Rs.25,00,000/-, under various heads. Minor respondents 2 and 5/claimants have filed separate claim petitions in M.C.O.P.Nos.7161 and 7270 of 2013 respectively.

5. Before the Claims Tribunal, wife of the deceased examined herself as PW.1, and deposed about the manner of accident. PW.2 is the eye-witness of the deceased. PW.3 is the Doctor, who examined the minor respondents/claimants. She has marked Ex.P1 - FIR, Ex.P2 - Motor Vehicles Inspection Report, Ex.P3 Post-Mortem Certificate, Ex.P4 - Death Certificate, Ex.P5 - Death Report, Ex.P6 - Legal Heirs Certificate, Exs.P7 & P8 - Accident Registers, Ex.P9 - Photographs with C.D., Ex.P10 - Payment Slip and C.T.Scan, Exs.P11, P12, P14 and P15 - X-Rays and Ex.P13 - Disability Certificate. On behalf of the appellant-Insurance Company, one Manikandan has been examined as RW.1 and documents, Insurance Policy and Accident Register, have been marked as Exs.R1 and R2 respectively. Evaluating the same, the Claims Tribunal fixed negligence on the driver of the lorry, insured with the appellant-Insurance Company.

6. In M.C.O.P.No.7333 of 2013, having regard to the age of the deceased, 35 years, avocation pleaded, Plastic Goods vendor and stated to have earned Rs.20,000/- per month and considering the decision made in Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 ACJ 627, the Claims Tribunal fixed the monthly income of the deceased as Rs.10,000/-. Since the deceased is survived by

eight family members, the Tribunal deducted 1/5th of the income towards the personal and living expenses of the deceased and after applying '16' multiplier, to the age of the deceased, determined a sum of Rs.15,36,000/- (Rs.10,000 x 12 x 16 x 1/5th), as loss of contribution to the family. That apart, the Claims Tribunal has awarded Rs.6,00,000/- for loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.10,000/- towards transportation and miscellaneous expenditure and Rs.25,000/- for Funeral Expenses. Altogether, Claims Tribunal has awarded Rs.22,71,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

7. Though Ms.C.Harini, learned counsel for M/s.Reliance General Insurance Co. Ltd., contended that the income determined is excessive, as no document has been filed to substantiate avocation, considering the number of dependants and the year of the accident, we are of the view that the Claims Tribunal has rightly fixed the monthly income of the deceased as Rs.10,000/-, following Syed Sadiq's case (cited supra).

8. However, the Claims Tribunal has failed to award any amount towards future prospects. On the aspect of adding certain sum under the head 'future prospects', in a decision in C.M.A.No.3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila], this Court observed as follows :

"56. As tabulated in the foregoing paragraphs, it should be noted that Consumer Price Index, Gross Domestic Product and Per Capita Income, have increased. One cannot disown the fact that the percentage of those in unorganized sectors is more than the organised sectors. While that be so, would it be appropriate for the Insurance Companies and Transport Corporations, to contend that there is absolutely no chance of any upward revision in wages or salary of those, employed in unorganised sectors or for that matter in the earnings of self-employed. If the contentions of the Insurance Companies and Transport Corporations have to be accepted, whether the self-employed or those engaged in unorganised sectors, can never have any expectation of an event in future, ie., increase in earnings or wages? With the basic study of the statistics, we are of the considered view that the answer should be a clear 'No'. When the Consumer Price Index is applicable uniformly to rich or raff, it cannot be contended that those who are engaged in unorganized sectors or self-employed, would continue to earn the same income, for years together.

57. For the abovesaid reasons, we are of the considered view that the word, "prospects" should not be read and understood, only in plural sense, meaning thereby, its prospects or an apparent probability of advancement in employment, in organised sectors alone. Narrowing down the meaning of the words, "future prospects" only to the employment prospects and consequently, more possibility of earning income, only in the case of organised sector and not in unorganised sector or self-employed, would affect the majority and therefore, the meaning of the word, "prospect" used in singular, meaning thereby, expectation, possibility or probability, chances of earning more income in future, depending upon the factors, stated supra, should also be considered.

58. Thus, from the above particulars, extracted supra, it is evident that both the Central and State Governments have periodically revised the minimum wages across the country. It has been raised taking into consideration the Consumer Price Index. In respect of scheduled employments, for skilled, semi-skilled, unskilled, construction workers, labourers, etc., wages, are fixed in various scheduled employments, right from Agarbathi Industry to Woolen Carpet and Shawl wearing machinery.

59. While that be the position in organised sectors, it cannot be contended that insofar as unorganised sectors or self-employed, is concerned, there would not be any revision in the wages or salary or earning. When the minimum wages of an employee in the organised sector, is revised periodically, taking into consideration the Consumer Price Index and Variable Dearness Allowance, the living conditions, then the others, in a unorganised sector may expect more or less the same wage, and if there are more number of persons, there may be chances of lesser wage, on account of surplus human resources and in such cases, the bargaining power of certain class of employees, depending upon the field, for revision of wages or earning, may be less.

60. If a non-salaried domestic worker sells a piece of any article, which he or she manufacturers and if the customer bargains the rate, he or she would immediately reply, as to how much amount, he/she has to spend for buying the basic materials, other materials used, compare the erstwhile travel expenses and the cost of labour. Can anyone in this Country can say that the electricity charges, water charges, rent, fee received by the Government, cost

of education, price of commodities, etc., have remained the same, without any change. Cost of tea sold in a ordinary tea stall is the same for any person, whether engaged in organised or unorganised. Contenting inter alia that there would not be any increase in wages or earning for those engaged in unorganised sectors, for years to come, can it be said that he would never take a cup of tea, outside?

61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what "Dearness Allowance" means? "Dearness Allowance" is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU) and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Price Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field.

63. In the light of what we have tabulated above, judicial notice can also be taken that the cost of labour, whether it is in agricultural field

or manufacturing or services, has increased. Thus, focusing on the increase in wages or earning, in almost all the fields of operation, right from agricultural or industrial or manual labourers, tea shop or road side vendor, the Consumer Price Index, being the same to rich or raff and therefore, correspondingly to meet out the living conditions, atleast for providing the basic amenities, like food, shelter and clothing, and not to add up the expenditure towards health, education, certainly, there would be revision of wages or earning, even in unorganised sectors also. Future is the period of time that will come after the present or things that will happen. Having regard to the consistent and periodical revision of wages by the Governments, it cannot be contended by the Insurers or Transport Corporations that a person in unorganised sector, has no future at all, in the matter of revision of wages or earning.

64. In R.K.Malik's case (cited supra), the Hon'ble Supreme Court considered the quantum of compensation, payable to the legal representatives of the deceased children, aged between 10 and 18 years. Referring to the inflation, price rise, etc., the Hon'ble Supreme Court, by observing that there would be a future prospects, for the children also, granted a sum of Rs.75,000/- under the head, future prospects, though as on the date of accident, they were children, studying in a school. In V.Mekala's case (cited supra), the injured was a student studying in 11th Standard. While determining the monthly income of the injured as Rs.10,000/-, the Hon'ble Supreme Court added 50% of the income, under the head, future prospects. In the recent decision in Munna Lal Jain's case (cited supra), the Hon'ble Supreme Court added 50% under the head, future prospects.

65. Thus, from the line of judgments, it could be noticed that the Hon'ble Supreme Court has considered the addition of a quantified sum, under the head, future prospects, in effect, indicating that there is a prospect or chance or possibility of earning more income, after a passage of time, though not periodically, as done in the case of Government or Public Sector Undertakings or Boards or Corporations, Companies owned and controlled by the Government or Limited Companies.

66. We have already extracted the orders of the Chief Labour Commissioner, Ministry of Labour and Employment, Government of India, New Delhi and taken into consideration a sample case, City of Chennai. Wage revision may vary in rural or urban

areas or metropolitan cities. At the risk of repetition, as observed earlier, the number of persons, engaged in unorganized sectors, agriculture or industrial, or home based or self-employment, etc., are more in number, than those employed in organised sectors.

67. Income from the organised sector alone, is not the deciding factor, for determining Gross Domestic Product, Consumer Price Index or Per Capita Income. Thus, from a basic study of the factors, taken into consideration by the Governments for revision of wages, to the enumerated categories of employees, one cannot lose sight of the fact that the said factors, would also have an indelible effect on those, engaged in unorganized sectors also. In the light of our discussion and the details considered, we are of the considered view that addition of certain percentage of income under the head, future prospects, has to be done in the case of those engaged in unorganized sector or self-employed also, otherwise, they would be deprived of just compensation. Addition of income under the head, future prospects, should not be restricted to only salaried persons, with stable jobs.

68. Though it is the case of the Insurance Companies and Transport Corporation that in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, "future prospects", to the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, 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 the expression "future prospects" should also be extended to the likelihood of increase in wages/salary, earned by either a skilled or semi-skilled person, clerical and others, considering the upward increase in the cost price, inflation and such other factors."

9. If the abovesaid judgment is applied, then, income for the purpose of computing the loss of contribution to the family, works out to Rs.15,000/- [Rs.10,000/- + Rs.5,000/- (50% of the monthly income) = Rs.15,000/-]. By applying '16' multiplier and deducting 1/5th towards personal and living expenses, loss of contribution works out to Rs.23,04,000/- [Rs.15,000/- x 12 x 16 x 1/5th deduction]. Compensation

awarded under other heads is just and reasonable and the same is confirmed. After adding 50% under the head, future prospects, the total compensation works out to Rs.30,39,000/-. Rate of interest and costs, awarded by the Claims Tribunal, is sustained. The said amount is apportioned hereunder:

Wife	: Rs. 6,39,000/-
Children	: Rs.20,00,000/- (Rs.5,00,000/- each)
Parents	: Rs. 4,00,000/- (Rs.2,00,000/- each)

10. In respect of M.C.O.P.No.7270 of 2013, considering the injuries sustained by minor Chitra, 5th respondent/claimant, in the head and fracture of right leg, the Claims Tribunal has awarded Rs.30,000/- for pain and suffering. PW.3, Doctor, who examined the respondent/claimant, upon perusal of Exs.P14 and P15 - X-Rays, has assessed the disability at 35% and issued Ex.P13 - Disability Certificate. However, by observing that the disability suffered by the respondent/claimant does not refer to whole body disablement, the Claims Tribunal has reduced the percentage of disability and fixed the same as 20%. Taking note of a decision of this Court in National Insurance Co. Ltd., v. G.Ramesh reported in 2013 (2) TNMAC 583, the Claims Tribunal fixed Rs.3,000/- per percentage of disability and awarded Rs.60,000/- as disability compensation. That apart, the Claims Tribunal has awarded Rs.15,000/- for transportation and extra nourishment, and Rs.750/- for attendant charges. Altogether, the Claims Tribunal has awarded Rs.1,05,750/-, which is rounded off to Rs.1,06,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

11. At the time of accident, minor Chitra was aged four years old and a student. In the accident, she has sustained grievous head injury, right leg tibia both bone fracture, skull bone fracture over superior temporal region and laceration all over body. Due to both bone fracture, over right leg below knee, she has suffered permanent disability. PW.3, Doctor, who clinically examined the respondent/claimant has assessed the disability at 35%. However, the Claims Tribunal has reduced the percentage of disability, to 20%.

12. Reduction of percentage of disability by the Tribunal, on the grounds that the Doctor, who assessed the disability, is not the doctor, who treated the respondent/claimant, cannot be countenanced, for the reason that any expert can give his opinion, on the basis of clinical examination and medical records and it is the duty of the Tribunal to scrutinize the same. Hence, while taking the percentage of disability at 35%, this Court is inclined to award Rs.1,05,000/- (Rs.3,000/- x 35) towards disability compensation.

13. Loss of amenities as per the Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, is as follows:

"deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function",

In the instant case, due to the fracture of both bones, the respondent/claimant would find it difficult to walk and stand and also to do her day to day work. Hence, this Court is inclined to award Rs.30,000/-, under the said head.

14. Initially, minor respondent, aged 4 years, was admitted in Government Hospital, Walajapet and thereafter, referred to Government Hospital, Chennai and has taken treatment. At the time of filing of the claim petition, minor was bed ridden. At the time of accident and during the period of treatment, she would have experienced severe pain and suffering. Pain is one, which is experienced momentarily, but it may continue even for a longer period, depending upon the gravity and situs of the injury, whereas, suffering is loss of happiness, on account of the same. Pain has no difference between Rich and Raff. Compensation of Rs.30,000/- awarded towards pain and suffering is less and hence, this Court is inclined to award another Rs.20,000/- under the said head. Hence, the compensation towards pain and suffering is fixed as Rs.50,000/-.

15. Compensation of Rs.15,000/- for transportation and extra nourishment is less and hence, enhanced to Rs.20,000/-. Compensation of Rs.750/- for attendant charge is also enhanced to Rs.1,000/-. In view of the above, the minor respondent/claimant is entitled to total compensation of Rs.2,06,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

16. In the result, C.M.A.Nos.2839 and 2840 of 2016 is allowed and C.M.A.No.2814 of 2016 is dismissed. The appellant-Insurance Company is directed to deposit the amount, determined by this Court, with accrued interest and costs, to the credit of M.C.O.P.Nos.7270 and 7333 of 2013, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw their respective share, as apportioned by this Court, by making necessary applications before the Tribunal. Minors' share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of

the 1st respondent herein/claimant. The interest accruing on the share of the minor shall be paid to the first respondent/guardian once in three months, till they attain majority. bNo costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

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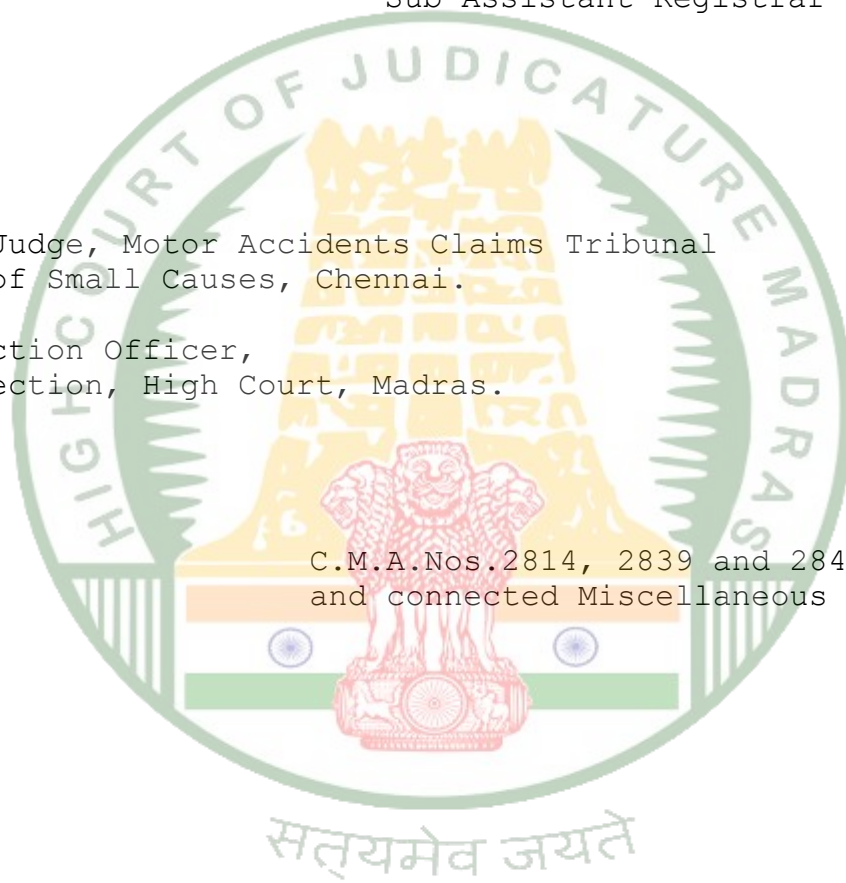
Sub Assistant Registrar

To

1. The V Judge, Motor Accidents Claims Tribunal
Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

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C.M.A.Nos.2814, 2839 and 2840 of 2016
and connected Miscellaneous Petitions



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