

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.2950 to 2952 of 2014

C.M.A.No.2950 of 2014

Sonigra Juhi Uttamchand

.. Appellant

Vs

1.D.Kumar

2.The New India Assurance Co., Ltd.,
No.45, Moore Street, 5th Floor,
Chennai 600 001.

3.Champalal Sonigra

4.Shanthabhai Sonigra
Respondents

..

(1st respondent was
set ex-parte before lower Court)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5238 of 2011 dated 07.02.2014 on the file of Motor Accident Claims Tribunal, (IV Judge, Small Causes Court), Chennai.

C.M.A.No.2951 of 2014

Sonigra Juhi Uttamchand

.. Appellant

Vs

1.D.Kumar

2.The New India Assurance Co., Ltd.,
No.45, Moore Street, 5th Floor,

Chennai 600 001.

Respondents

(1st respondent was
set ex-parte before lower Court)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5239 of 2011 dated 07.02.2014 on the file of Motor Accident Claims Tribunal, (IV Judge, Small Causes Court), Chennai.

C.M.A.No.2952 of 2014

Sonigra Juhi Uttamchand

.. Appellant

Vs

1.D.Kumar

2.The New India Assurance Co., Ltd.,
No.45, Moore Street, 5th Floor,
Chennai 600 001.
Respondents

(1st respondent was
set ex-parte before lower Court)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5252 of 2011 dated 07.02.2014 on the file of Motor Accident Claims Tribunal, (IV Judge, Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
for all C.M.As.

For Respondents : Mr.S.Manoha
for [R2]
for all C.M.As.

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COMMON JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J.]

These Civil Miscellaneous Appeals arise against the judgment and decree of Motor Accident Claims Tribunal, (IV Judge, Small Causes Court), Chennai, passed in M.C.O.P.Nos.5238 of 2011, 5239 of 2011 and 5252 of 2011 on 07.02.2014.

2. Appellant is the claimant in all Civil Miscellaneous Appeals. First respondent is the owner of the vehicle namely, Tata Van involved in an accident and second respondent is the insurance company. Appellant is the legal heir of the deceased Uttamchand Sonigra, Sathana Uttamchand and Mayur Sonigra, who are her father, mother and brother respectively. On 20.06.2007 at about 21.30 hours, when deceased were travelling in an Auto bearing Registration No.TN 07 Y 0657 at Egmore Rukmani Lakshmipathi Salai, a Tata Van bearing Registration No.TN 21 X 3879, driven in a rash and negligent manner, hit against a Car, and on the driver losing control, also hit the Autorickshaw, resulting in death of occupants/deceased. Aggrieved by the award passed by the Tribunal in M.C.O.P.Nos.5238, 5239 and 5252 of 2011, appellant preferred these appeals.

3. Before the Tribunal, on the side of appellant, she examined herself as P.W.1 and one Mr.R.Balasubmanian was examined as P.W.2 and 19 exhibits were marked. On the side of second respondent/insurance company, one witness was examined and one exhibit was marked.

4. On appreciation of materials before it, Tribunal awarded the following compensation:

M.C.O.P.No.5238 of 2011

Tribunal, on consideration of evidence of P.W.1, Exs.P.4 and P.5, Postmortem and Death certificate respectively, Ex.P.13 Income Tax returns for the financial years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 and Ex.P.16, bank statement, fixed the monthly income of the deceased father at Rs.8,000/- p.m. after deduction of 1/3rd towards his personal expenses, applied multiplier 18 and arrived at Pecuniary loss at Rs.12,48,000/- (Rs.8,000*12*13) and awarded a sum of Rs.14,78,000/- as total compensation, as follows:

Description	Amount
Pecuniary loss (Rs.8,000x12x13)	Rs.12,48,000/-
Shock and mental agony to the claimant/appellant	Rs. 1,00,000/-
Loss of Love and affection to the claimant/appellant	Rs. 1,00,000/-
Loss of Love and affection to the claimants/respondents 3 and 4	Rs. 20,000/-
Funeral Expenses	Rs. 10,000/-
Total Compensation	Rs. 14,78,000/-

M.C.O.P.No.5239 of 2011

Tribunal on consideration of evidence of P.W.1, Exs.P.6 and P.7, Postmortem and Death certificate respectively, Ex.P.14 Income Tax returns for the financial years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 and Ex.P.17, bank statement fixed the monthly income of deceased mother at Rs.5,333/- p.m. after deduction of 1/3rd towards her personal expenses, applied multiplier 16 and arrived at Pecuniary loss at Rs.10,23,936/- (Rs.5,333*12*16) and awarded a sum of Rs.13,33,936/- as total compensation under the following heads:

Heading	Amount
Pecuniary loss (Rs.5,333x12x13)	Rs.10,23,936/-
Shock and mental agony to the claimant/appellant	Rs. 1,00,000/-
Loss of Love and affection to the claimant/appellant	Rs. 2,00,000/-
Funeral Expenses	Rs. 10,000/-
Total Compensation	Rs. 13,33,936/-

M.C.O.P.No.5252 of 2011

Tribunal on consideration of evidence of P.W.1, Exs.P.8 and P.9, Postmortem and Death certificate respectively, fixed the annual income of deceased minor brother of the claimant at Rs.15,000/-, applied multiplier 15 and arrived at Pecuniary loss at Rs.2,25,000/- (Rs.15,000*15) and awarded a sum of Rs.2,45,000/- as total compensation under the following heads:

Description	Amount
Pecuniary loss (Rs.15,000x15)	Rs.2,25,000/-
Loss of Love and affection to the claimant/appellant	Rs. 10,000/-
Funeral Expenses	Rs. 10,000/-
Total Compensation	Rs. 2,45,000/-

5. Heard learned counsel for appellant and learned counsel for second respondent Insurance Company and perused the materials available on record.

6. It is not in dispute that deceased/father and mother of the petitioner, were running jewellery shops. The income tax returns of deceased father and mother pertaining to financial years 2003 to 2007, marked as Exs.P13 and P14, inform that deceased father was earning beyond Rs.25,000/- per month and the deceased mother was earning beyond Rs.16,000/- per month. Bank statements marked as Exs.P16 and P17 show sizeable transactions. Though in course of examination,

claimant/appellant has not informed specified location of the Jewellery shops, she has stated that the shops were located at N.S.C. Bose Road. It is common knowledge that N.S.C. Bose Road, Chennai, is a most busy business locality. The presumption of this Court is that deceased/father and mother of the claimant/appellant would have earned not less than Rs.18,000/- and Rs.9,000/- per month respectively. Accordingly, we fix the monthly income of the deceased father and mother at Rs.18,000/- and Rs.9,000/- per month.

7. Learned counsel for appellant submitted that the brother/minor died in the said accident and the Tribunal failed to consider that the deceased would have earned at least Rs.10,000/- per month after his study, but the Tribunal erroneously fixed the income of deceased at Rs.15,000/- per annum. In support of his submission, learned counsel relied on the decision of Supreme Court in KISHAN GOPAL AND ANOTHER Vs. LALA AND OTHERS (2013 (2) TN MAC 358 (SC)).

8. Though learned counsel for Insurance Company submitted that claimant's paternal grandfather is alive and as the jewellery business would have been running continuously, there would be no loss of income, there is no proof in support of his contention. Learned counsel for Insurance Company submitted that the amount awarded under the head "Shock and mental agony" has to be omitted and in support of his submission, he relied on the decision of Hon'ble Supreme Court in Jeyakodi and others Vs. Branch Manager, National Insurance Co. Ltd., and another (2010 [ACJ] 697), wherein, it is held that no compensation would be awarded under the head shock and mental agony.

9. On consideration of rival submissions and on a perusal of papers, it is seen that Tribunal awarded a sum of Rs.1,00,000/- under the head "Shock and Mental Agony" in M.C.O.P.Nos.5238 and 5239 of 2011. In the light of decision cited supra (2010 [ACJ] 697), the amount awarded under the head "Shock and Mental Agony" in both M.C.O.Ps. is deleted. It is further seen that Tribunal awarded a sum of Rs.1,00,000/- under the head "Loss of love and affection" to the claimant in M.C.O.P.No.5238 of 2011. As the claimant was less than 15 years at the time of accident and the amount awarded under the head "Loss of love and affection" is very meagre and a sum of Rs.2,00,000/- is awarded under the head "Loss of love and affection" in M.C.O.P.5238 of 2011. The amount awarded under the head "Funeral Expenses" is found to be inadequate and the same is increased to Rs.30,000/- from Rs.10,000/- in M.C.O.P.Nos.5238 and 5239 of 2011. Accordingly, the compensation payable would be:

C.M.A.No.2950 of 2011

Description	Amount
Pecuniary loss (Rs.18,000x12x13)	Rs. 28,08,000/-

Description	Amount
Loss of Love and affection to the claimant/appellant	Rs. 2,00,000/-
Loss of Love and affection to the claimants/respondents 3 and 4	Rs. 20,000/-
Funeral Expenses	Rs. 30,000/-
Total Compensation	Rs. 30,58,000/-

C.M.A.No.2951 of 2011

Heading	Amount
Pecuniary loss (Rs.9,000x12x13)	Rs.14,04,000/-
Loss of Love and affection to the claimant/appellant	Rs. 2,00,000/-
Funeral Expenses	Rs. 30,000/-
Total Compensation	Rs. 16,34,000/-

C.M.A.No.2952 of 2011

In view of the decision cited supra [2013 (2) TN MAC 358], this Court awards a sum of Rs.5,00,000/- i.e. the stipulated minimum compensation.

The enhanced amount of compensation of Rs.30,58,000/-, Rs.16,34,000/- and Rs.5,00,000/- shall be payable together with interest at 7.5% per annum from the date of petition till the date of realization.

10. In the result, these Civil Miscellaneous Appeals are allowed. Insurance Company is directed to deposit the enhanced compensation amount less the amount already deposited within a period of six weeks from the date of receipt of this judgment. Appellant/claimant in all appeals and respondents 3 and 4/claimants in C.M.A.No.2950 of 2014 are at liberty to withdraw the award sums on due application and as apportioned by Tribunal. No costs.

s/d-

Assistant Registrar(CS VII)

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Sub-Assistant Registrar

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To

1.The (IV Judge, Small Causes Court)
Motor Accident Claims Tribunal
Chennai.

+3 Ccs to Mr.K. Varadha Kamaraj, Advocate sr 76279,76280,76281.

+3 Ccs to Mr.S.Manoharan, Advocate sr 75786,75787, 75788.

Civil Miscellaneous Appeal Nos.
2950, 2951 and 2952 of 2014

KS (CO)
SP (24/05/2018)



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