



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.07.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.M.A(MD)Nos.88 and 89 of 2014
and
C.M.P. (MD)Nos.6570 and 6560 of 2017

In C.M.A(MD)No.88 of 2014:

1. A.Gokila
 2. Minor.A.Vignesh
 3. Minor.A.Piruthika
 4. R.Namburaniyammal ... Appellants/Petitioners
- (Minor appellants 2 &3 are represented by their first appellant)

Vs.

1. G.Raja
2. The Branch Manager,
National Insurance Company Ltd.,
Jerome Block, Fort Station Road,
Trichy - 2. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree made in M.C.O.P.No.501 of 2011 on the file of the Motor Accident Claims Tribunal (District Judge), Karur, dated 04.12.2013.

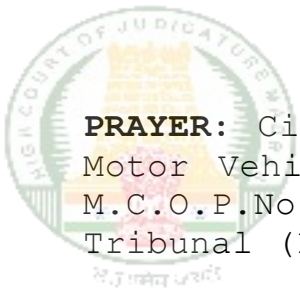
For Appellant	: Mr.T.Selvakumaran
For R-1	: Mr.R.M.Sivakumar
For R-2	: M/s.K.R.Shivasankari

In C.M.A(MD)No.89 of 2014:

- 1.M.Selvi
- 2.Minor.M.Myeilsamy, represented by his mother first appellant
- 3.G.Pappayee
- 4.M.Govindasamy
- 5.G.Sellammal ... Appellants/Petitioners

Vs.

1. G.Raja
2. The Branch Manager,
National Insurance Company Ltd.,
Jerome Block, Fort Station Road,
Trichy - 2. ... Respondents/Respondents



PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree made in M.C.O.P.No.505 of 2011 on the file of the Motor Accident Claims Tribunal (District Judge), Karur, dated 04.12.2013.

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For Appellant : Mr.T.Selvakumaran
For R-1 : Mr.R.M.Sivakumar
For R-2 : Mr.D.Sivaraman

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeals have been filed by the appellants/claimants against the awards of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District, passed in M.C.O.P.Nos.501 of 2011 and 505 of 2011, dated 04.12.2013.

2. Both Claim Petitions have arisen out of the same accident. It is a case of fatal accident, which took place on 27.09.2011 at 4.30 p.m., at Karur-Kovai N.H.67 Road.

3. It is the case of the claimants before the Tribunal that when the deceased Arumugam was riding TVS -50 two wheeler bearing Registration No. TN-47-J-6809, in which, the deceased Manoharan was travelling as a pillion rider, the driver of a Bolero Jeep bearing Registration No.TN-23-AD-3555 drove the vehicle in a rash and negligent manner and dashed against the two wheeler and due to that, both driver and pillion rider were dead.

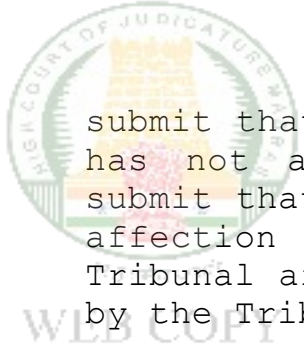
4. The claimants filed applications in M.C.O.P.Nos.501 of 2011 and 505 of 2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District, seeking compensation.

5.Before the Tribunal, the appellants/claimants examined four witnesses as P.Ws.1 to 4 and marked twenty one documents as Ex.P.1 to Ex.P.21. On the side of the respondents, they did not let in any oral and documentary evidence.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the Bolero Jeep and therefore directed the second respondent/Insurance Company to pay a sum of Rs.8,90,000/- and Rs.6,65,000/- respectively to the claimants in two Claim Petitions. Against which, the appellants/ claimants filed the present appeals seeking enhancement of compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

7.The learned counsel for the appellants/claimants would



submit that while calculating income of the deceased, the Tribunal has not added 50% towards future prospects. He would further submit that under the heads of loss of consortium, loss of love and affection and for funeral expenses the amounts awarded by the Tribunal are on lower side and therefore, the compensation awarded by the Tribunal is to be enhanced.

8. The learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

9. This Court heard the submissions made on either side and perused the materials available on record.

10. In C.M.A.(MD) No.88 of 2014, the deceased age was 38 at the time of accident and the Tribunal rightly fixed monthly income at Rs.6075/- and if 50% of future prospects added, the monthly income would be Rs.9112/- and after 1/4th deduction, Rs.6834/- would be the monthly income and by adopting multiplier 15, the total loss of income would come to Rs.12,30,120/- (Rs.6834 X 15 X 12). The Tribunal granted Rs.40,000/- towards loss of consortium to the wife of the deceased/first appellant. This Court enhances the same to Rs.90,000/-. A sum of Rs.20,000/- granted by the Tribunal to the children of the deceased/the second and third appellants is enhanced to Rs.40,000/- and a sum of Rs.10,000/- granted to the mother of the deceased/the fourth appellant towards loss of love and affection is enhanced to Rs.20,000/- and a sum Rs.10,000/- granted by the Tribunal for funeral expenses is confirmed. Totally, a sum of Rs.13,90,120/-, which is rounded off to Rs.13,90,000/- is awarded to the appellants/claimants in C.M.A.(MD) No. 88 of 2014.

11. In C.M.A.(MD) No.89 of 2014, the deceased age was 47 at the time of accident and the tribunal rightly fixed monthly income at Rs.5336/- and if 50% of future prospects added, the annual income would be Rs.9,60,48/- and after 1/4th deduction, Rs.72,036/- would be the annual income and by adopting multiplier 15, the total loss of income would come to Rs.10,80,540/-. Accordingly, Rs.10,80,540/- is awarded for loss of income. The Tribunal granted a sum of Rs.40,000/- towards loss of consortium to the wife of the deceased/first appellant. A sum of Rs.30,000/- is granted towards loss of love and affection for P2 to P4 and a sum of Rs.10,000/- granted for funeral expense. The same are confirmed. Since the fifth appellant is the married sister the Tribunal has held that she is not entitled to compensation under the head of love and affection. This Court accepts the said finding. Totally, a sum of Rs.11,60,540/- which is rounded off to Rs.11,60,000/-, is awarded to the appellants/claimants in C.M.A.(MD) No. 89 of 2014.

12. This Court modifies the award of the Tribunal by enhancing

the compensation in **C.M.A(MD) No.88 of 2014**, as under:-

S No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1.	For loss of income	8,10,000	12,30,120	enhanced
2.	Loss of consortium to the first claimant	40,000	90,000	enhanced
3.	Loss of love affection to P2 and 3	20,000	40,000	Enhanced
4.	Loss of love and affection to P4	10,000	20,000	enhanced
5.	For funeral expenses	10,000	10,000	confirmed
	Total	Rs.8,90,000	13,90,120 13,90,000/-	By enhancing Rs.5,00,000/-

13. This Court modifies the award of the Tribunal by enhancing the compensation in **C.M.A(MD) No.89 of 2014**, as under:-

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1.	For loss of income	5,85,000	10,80,540	enhanced
2.	Loss of consortium to the first claimant	40,000	40,000	confirmed
3.	Loss of love affection to P2 to P4	30,000	30,000	confirmed
5.	Loss of love and affection to P5	-	-	
4.	For funeral expenses	10,000	10,000	confirmed
	Total	6,65,000	11,60,540 11,60,000/-	By enhancing 4,95,000/-



14. In the result,

(i) The Civil Miscellaneous Appeals are partly allowed, in C.M.A.(MD) No.88 of 2014 enhancing the award of the Tribunal from Rs.8,90,000/- to a sum of **Rs.13,90,000 /-** and in C.M.A.(MD) No.89 of 2014 enhancing the award of the Tribunal from Rs.6,65,000/- to a sum of **Rs.11,60,000 /-** along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; Since the claimants in C.M.A.(MD)No.89 of 2014 is restricted the claim to Rs.4 lakhs, the claimants are directed to pay the additional court fee within a period of two weeks from the date of receipt of copy of this judgement.

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major appellants/ claimants are permitted to withdraw the respective shares with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. The share of minor appellants/claimants is directed to be deposited in anyone of the nationalized banks till the minors attain majority. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
District Judge, Karur.

+ 2 CC TO Mr.T.Selvakumaran, ADVOCATE IN SR No.69229&69230

+ 1 CC TO Mr.J.S.Murali , ADVOCATE IN SR No.69404

+ 1 CC TO Mr.D.Sivaraman, ADVOCATE IN SR No.68881

cm

MK/SV MMS/SAR-1/26.10.2017/5P/6C

C.M.A(MD)Nos.88 and 89 of 2014

and

C.M.P. (MD)Nos.6570 and 6560 of 2017

31.07.2017