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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.3328 of 2012 & MP Nos.1/2012 & 1/2014
and CMA No.2028 of 2018 & CMP No.15791 of 2018

National Insurance Co. Ltd.,
No.930, Sathy Main Road,
Gandhipuram,
Coimbatore 641 012.

... Appellant
(in both the Appeals)

-vs-

1. Yasodha Gopalakrishnan
2. Minor Archita
Minor Rep by Mother/Guardian
Yasodha Gopalakrishnan
3. Pitchaimuthu
4. P.Rajarajan
5. R.Govindarajan(Died)

6. G.Vasantha ... Respondents 1 to 6 in CMA 3328/12

R.Govindan (died)

1. G.Vasantha
2. P.Rajarajan
3. G.Esotha

4. Minor G.Architha ... Respondents 1 to 4 in CMA 2028/18
(Minor 4th respondent is represented
by her mother and guardian G.Esotha, 3rd Respondent)

Civil Miscellaneous Appeals filed under Section 173 of the
Motor Vehicles Act, 1988, against the Judgment and decree



(i) dated 28.07.2011 made in MCOP No.730 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, (FTC-III), Coimbatore.

(ii) dated 05.07.2011 made in MACTOP No.1610 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tiruchirappalli.

For Appellant : Mr. S.Arun Kumar
(in both the Appeals)

For Respondents : Mr.C.Veeraraghavan
for R1 & R2 in CMA 3328/2012 &
for R3 & R4 in CMA 2028/2018

Mr.V.Kumaravelan
for R6 in CMA 3328/2012 &
for R1 in CMA 2028/2018

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

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

Both these appeals are by the Insurance Company which suffered two different awards for the death of one Gopalakrishnan, in a road accident that occurred on 17.01.2008. While the wife and minor daughter of the said Gopalakrishnan, filed MCOP No.730 of 2009 on the file of the Motor Accident claims Tribunal (Additional District and Sessions Judge and Fast Tract Court -3), Coimbatore, the parents of the deceased filed MCOP No.1610 of 2008 on the file of the Motor Accident Claims Tribunal, Tiruchirappalli.

2. In the Original Petition filed before the Motor Accident Claims Tribunal, Tiruchirapalli, the wife and the minor child of the deceased were added as respondents 3 and 4 and in the Original Petition filed before the Motor Accident Claims Tribunal at Coimbatore, the parents of the deceased were added as respondents 4 and 5. The Motor Accident Claims Tribunal at Tiruchirappalli, awarded a sum of Rs.21,90,000/- as compensation, the Claims Tribunal at Coimbatore, awarded a sum of Rs.30,30,000/-.

3. Aggrieved by both the awards, the Insurance Company has come forward with the above appeals.



4. According to the claimants, the deceased Gopalakrishnan was travelling as a pillion rider in a motor cycle bearing Registration No.AP-10-AC-0589, which was driven by one A.Parameswaran and they proceeding from Annur to Coimbatore. While so, the lorry bearing Registration No.TN 37 W 8965 belonging to the 2nd respondent in CMA No.2028 of 2018 /4th respondent in CMA No.3328 of 2018 driven by its driver in a rash and negligent manner came from behind and dashed against the motor cycle. As a result of the impact, both the deceased as well as the rider of the motor cycle Mr.A.Parameswaran, were thrown off the vehicle and sustained multiple injuries resulting in the death of Gopalakrishnan. The claimants would further submit that the deceased was working as "Territory Manager" in M/s. Unicom Infotel Pvt. Ltd., Coimbatore and drawing a salary of Rs.18,500/-. Thus, the claimants sought for a compensation of Rs.40,00,000/-.

5. The Insurance Company resisted the claim contending that the accident occurred due to the rash and negligent driving of the two wheeler by the rider A.Parameswaran and there was no negligence on the part of the lorry driver. The Insurance Company also denied the age, educational qualification, employment particulars and the quantum of salary drawn by the deceased.

6. The Tribunals in both the Original Petitions concluded that the accident had occurred due to the rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunals relied upon the evidence of Parameswaran, the rider of the motor cycle, who was examined as P.W.2 in both the cases. It was also found that the evidence of P.W.2 was in consonance with the contents of the FIR which was marked as Ex.A1.

7. On the quantum, the Tribunal in OP No.1610 of 2008 took the monthly income of the deceased at Rs.15,000/-, after deducting 1/3 towards personal expenses took the contribution to the family at Rs.10,000/- per month, adopting a multiplier of 18, the total loss of dependency was worked out at Rs.21,60,000/-. The Tribunal also granted Rs.25,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. Thus, the total award works out to Rs.21,90,000/-

8. In MCOP No.730 of 2009, the Tribunal took the monthly income of the deceased at Rs.18,500/-, added 50% towards future



prospects and worked out the annual income at Rs.3,33,000/-. The Tribunal deducted 10% towards income tax, adopted a multiplier of 16 and applied a deduction of 1/3 towards personal expenses, thus the Tribunal concluded that the loss of dependency would be Rs.30,00,000/-. The Tribunal awarded a sum of Rs.5,000/- towards funeral expenses Rs.5,000/- towards transportation, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection to the parents. In all the Tribunal awarded a sum of Rs.30,30,000/-.

9. The Tribunals also apportioned the compensation between the four claimants, namely the parents, the wife and the daughter of the deceased.

10. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company, Mr.C.Veeraraghavan, learned counsel appearing for respondents 1 & 2 in CMA No.3328/2012 & for respondents 3 & 4 in CMA 2028/2018 and Mr.V.Kumaravelan, learned counsel appearing for the 6th respondent in CMA No.3328/2012 & 1st respondent in CMA 2028/2018. The 5th Respondent, the father of the deceased Gopalakrishnan, died pending the appeal, the 4th respondent his wife has been recognised as his legal representative. Respondents 3 & 4 who are the owner and driver of the lorry had remained ex-parte before the Tribunals and hence notice to them is dispensed with.

11. Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company would not challenge the findings of the Tribunals on the ground of negligence. He would restrict his arguments only to the quantum. Arguing on quantum Mr.S.Arun Kumar, would point out that while the Tribunal in MCOP No.1610 of 2008 has not added any amount towards future prospects, the Tribunal in OP No.730 of 2009 was added 50% towards future prospects, which is on the higher side. He is unable to pick holes in the award of the Tribunals on conventional damages, the same was below the quantum suggested by the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331.

12. Per contra Mr.C.Veeraraghavan, learned counsel appearing for the respondents 1 and 2 and Mr.V.Kumaravelan, learned counsel appearing for the 6th respondent would contend that the quantum of compensation awarded by both the Tribunals is on the lower side. Even though, the Tribunal in MCOP No.730 of 2009 has adopted 50% towards future prospects, the



conventional damages are really on the lower side.

13. We have considered the rival submissions.

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14. In order to arrive at the loss of dependency, we must fix the annual income of the deceased. Though it is claimed that the deceased was earning about Rs.18,500/- per month and the pay slip for the month of December 2007 is produced as the evidence of said income, we find that certain allowances have been included along with the basic salary. We, therefore, take the income at 17,700/- per month. Thus, the annual income would be Rs.2,12,400/-. The accident occurred in 2008 and the Income Tax exemption limit was Rs.1,80,000/-. Therefore, the taxable income is Rs.32,400/-, deducting 10% of Rs.32,400/- towards Income Tax, the balance income would be Rs.2,09,160/- per annum.

Adding 40% towards future prospects, deducting 1/3 towards personal expenses and applying a multiplier of 17, the total loss of dependency would be

$$[\text{Rs. } 2,09,160/- + 40\% \times 17] - 1/3\text{rd} = \text{Rs. } 33,18,672/-$$

The awards of the Tribunals on the conventional damages are below par. Hence, we award the following amounts towards conventional damages:

S.No.	Particulars	Amount
1.	Loss of dependency	Rs.33,18,672/-
2.	Loss of consortium	Rs. 40,000/-
3.	Loss of love and affection	Rs. 50,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.34,38,672/-

the same is rounded off to Rs.34,40,000/-. The award will carry interest at 7.5% per annum from 05.06.2008 i.e. the date of the filing of the Claim Petition in MACTOP No.1610 of 2008.

15. In view of the above just and reasonable compensation payable as determined by us is over and above the compensation awarded by the Tribunals in both the Original Petitions. Even though, the claimants have not preferred any Appeal against the awards of the Tribunals and the Appeals before us or by the



Insurance Company, we exercise our powers under Order 41 Rule 33 and enhance the compensation as above. The claimants had claimed Rs.40,00,000/- as compensation in both the Original Petitions. The claimants shall pay the Court Fees for the enhanced amount of Rs.4,10,000/- in the appeal.

***"16. Since two Original Petitions claiming compensation were filed for the death of one Gopala Krishnan and two independent awards came to be passed by the Motor Accident Claims Tribunal at Tiruchirapalli and Coimbatore. These Appeals arising out of the said proceedings were heard together. As per the discussion in the foregoing paragraphs, we have enhanced the compensation awarded in MCOP No.730 of 2009 on the file of the Motor Accident Claims Tribunal, Coimbatore to Rs.34,40,000/- from Rs.30,30,000/-. In view of the same CMA No.3328 of 2012 which arises out of MCOP No.730 of 2009 will stand disposed of enhancing the compensation to Rs.34,40,000/-, there will be an award for a sum of RS.34,40,000/- in MCOP No.730 of 2009. Resultantly, CMA No.2028 of 2018, which is filed against MCOP No.1610 of 2008 on the file of the Motor Accident Claim Tribunal at Triuchirapalli will stand allowed and the said Original Petition will stand dismissed. It is stated that the Insurance Company has deposited a sum of Rs.25,000/- to the credit of MCOP No.1610 of 2008. Now that the said Original Petition stands dismissed, the Insurance Company is permitted to withdraw the said sum of Rs.25,000/- deposited by it to the credit of MCOP No.1610 of 2008 on the file of the Motor Accident Claims Tribunal, Tiruchirapalli.**

17. It is stated that the Insurance Company has deposited a sum of Rs.22,00,000/- to the credit of MCOP No.730 of 2009 on the file of the Motor Accident Claims Tribunal, Coimbatore. The Insurance Company is directed to deposit the balance amount as per the enhanced award with accrued interest within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit the major claimants namely mother and wife of the deceased are permitted to withdraw their share of the compensation. The Tribunal is directed to deposit the share of the minor claimant, in an interest earning fixed deposit in any one of the Nationalised Banks with automatic renewal, till she attains majority and the mother of the minor namely Yasodha, will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minor."

18. The compensation is apportioned between the claimants as follows:

1. The wife Yasodha of the deceased will be entitled to Rs.10,00,000/- with proportionate interest and entire costs.



2. The daughter G.Architha (minor) of the deceased will be entitled to Rs.15,00,000/- with proportionate interest.

3. The Mother Vasantha of the deceased will be entitled to Rs.9,40,000/- with proportionate interest.

It is made clear that the claimants will be entitled to one set of costs only in the Original Petitions.

-s/d-

Assistant Registrar (CS-I)

Dated: 15.02.2019.

*** Deleted and substituted
as per order dated 07.02.2019 and
made in C.M.A. 3328/2012 & 2028/2018.**

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Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Court, (FTC-III),
Coimbatore.
2. The Motor Accidents Claims Tribunal,
Principal District Court,
Tiruchirappalli.

+1 CC to Mr.C.Veeraraghavan, advocate sr 70446.

+1 CC to Mr.V.Kumaravelan, Advocate sr 70954.

+1 CC to Mr.S.Arun kumar, Advocate sr 71308.

CMA.Nos.3328 of 2012 & MP Nos.1/2012 & 1/2014
and CMA No.2028 of 2018 & CMA No.15791 of 2018

RSI (CO)
SP (18/02/2019)