

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

DATED: 31.08.2018

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

CMA.No.2560 to 2567 of 2015

CMA.No.2560 of 2015:

The New India Assurance Co.Ltd.,
Divisional Office, 45, Moore Street,
5th Floor, Chennai - 600 001.

... Appellant

-vs-

1.Saraswathi
2.B.R.Tharun (Minor)
Minor rep. by his mother N.F.Saraswathi
Narasiah (Father of the deceased died)
3.Narayanammal

... Respondents 1 to 3 in CMA 2560/15/
Claimant in MCOP 1898/13

4.M.Porselvi
(fourth respondent set exparte in the lower court)
Naresh (Died)

1.S.Murugan
2.M.Yamuna (Minor)
3.M.Sangeetha (Minor)
(Minor represented by their
father and next friend S.Murugan the
1st Respondent herein) .. Respondents 1 to 3
in CMA 2561/15/Claimants in MCOP 1970/13
4. M.Porselvi .. 4th respondent in CMA 2561/15 ..1st Respondent
in MCOP 1970/13
.. 5th Respondent in CMA 2562/15 .. MCOP 1900/13
.. 2nd Respondent in CMA 2563 .. MCOP 1934/13
to 2567/15 .. MCOP 3199/13
.. MCOP 1899/13
.. MCOP 1901/13
.. MCOP 2175/13

5. Varchala
6. G.Jeenamary
7. G.Sebasrin
8. Ramani .. Respondents 1 to 4 in CMA.No.2562/15/

Claimants in MCOP No.1900/13

10. M.Yamuna (Minor) .. 1st Respondent in CMA No.2564/15/
rep by here father Claimant in MCOP No.3199/13
and next friend S.Murugan
11. Saraswathi .. 1st Respondent in CMA No.2565/15/
Claimant in MCOP No.1899/13
12. B.R.Tharun (Minor)
represented by his mother
at next fired Saraswathi .. 1st respondent in CMA No.2566/15/
Claimant in Mcop No.1901/13
.. 2nd in CMA No.2560/15
13. M.Sangeetha (Minor)
represented by her father
at next fired S.Murugan ..1st Respondent in CMA No.2567/15/
Claimant in MCOP 2175/13

Prayer in CMA.No.2560 to 2567 of 2015:- This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the common award and decree dated 24.04.2015 passed in M.C.O.P.No. 1898, 1899, 1900, 1901, 1934, 3199, 1970/13, 2175 of 2013 on the file of the Motor Accident Claims Tribunal, Chennai (In the VI Court of Small Causes, Chennai).

For Appellant : Mrs.G.Sukumari in all the CMAs

For Respondents : Mr.K.Varada Kamaraj

1 to 3 in CMA.Nos.2560,2561/15

1 to 4 in CMA.No.2562/15

1st Respondent in CMA No.2563 to 2567/15

J U D G M E N T

The Judgment was delivered by the Honourable Mr.Justice R.Subramanian

The above Civil Miscellaneous appeals have been filed by the Insurance Company challenging the awards in MCOP Nos. 1898, 1899, 1900, 1901, 1934, 3199, 1899, 2175 of 2013.

2. The above claim petitions were preferred by different claimants who have suffered injuries or lost the sole bread winner of the family in the motor accident that occurred on 12.01.2013 at about 5.00 AM in the morning at Thirumayam Karaikudi Main Road, near Unaiyur Diversion Road in Puthukottai District.

3. According the claimants, they were travelling in the Van bearing Registration No.TN-07-BR-2418 owned by one Ramu and driven by one George. They were proceeding towards

Rameshwaram along with some Pooja articles, while so, the lorry bearing Registration No.TN-49-AJ-4645 which was going ahead of the Van suddenly applied breaks without any indication or signal and turned towards right side resulting in the Van colliding with the lorry, despite earnest attempts made by its Driver to avoid the accident.

4. As a result of the accident, the Driver of the Van, George, the owner Ramu and Usha wife of Murugan, a passenger, died. Five others namely, Murugan, Minor Yamuna, Thirumathi. Saraswathi, Minor Tharun and Minor Sangeetha sustained injuries.

5. The claimants namely, the Wife, children and parents of Ramu preferred MCOP No. 1898 of 2013 (C.M.A.No.2560 of 2015) seeking compensation of Rs.20,00,000/- for the death of the said Ramu. The Husband and Minor children of Usha filed M.C.O.P.No.1970 of 2013 (C.M.A.No.2561 of 2015) seeking compensation of Rs.15,00,000/- for the death of the said Usha. The wife, children and mother of George filed M.C.O.P.No.1900 of 2013 (C.M.A.No.2562 of 2015) seeking compensation of Rs.15,00,000/- for his death. The Injured Murugan filed M.C.O.P.No.1934 of 2013 (C.M.A.No.2563 of 2015) seeking compensation of Rs.2,00,000/- for the injuries suffered by him. Minor Yamuna filed M.C.O.P.No.3199 of 2013 (C.M.A.No.2564 of 2015) seeking compensation of Rs.20,00,000/- for the injuries suffered by her. Saraswathi wife of Ramu filed M.C.O.P. 1899 of 2013 (C.M.A.No.2565 of 2015) seeking compensation Rs.6,00,000/- for the injuries suffered by him. Minor B.R.Tharun filed M.C.O.P.No.1901 of 2013 (C.M.A.No.2566 of 2015) seeking compensation of Rs.6,00,000/- for the injuries suffered by him. Minor Sangeetha filed

M.C.O.P.No.2175 of 2013 (C.M.A.No.2567 of 2015) seeking compensation of Rs.3,00,000/- for the injuries suffered by her.

6. The Claim petitions were resisted by the Insurance Company mainly contending that the accident occurred due to the rash and negligent driving of the Van bearing Registration No.TN-07-BR-2418, inasmuch as the Van came from behind and dashed against the parked lorry. The age and the income of the deceased were denied. In so far as the injury cases are concerned, the Insurance Company contended that the compensation claimed is excessive. Considering the nature of injuries suffered by the claimants. The Claims Tribunal which tried the original petitions found that even, as per the Investigation report, marked as Ex.R1 the accident occurred due to the parking of the lorry in hapazard manner on the road without any signal or tail light. The rough sketch that formed part of Ex.R1 was considered by the Tribunal to conclude that the lorry was parked in the middle of the road without any warning signal.

7. On the aforesaid conclusions, the Tribunal held that the negligence of the lorry Driver alone was the cause for

the accident. As far as the quantum is concerned, the Tribunal taking into account the age, monthly income and the dependency factors, granted a sum of Rs.26,25,000/- as compensation for the death of Ramu in M.C.O.P.No. 1898 of 2013 (C.M.A.No. 2560 of 2015). Similarly, the Tribunal granted a sum of Rs.16,65,000/- for the death of Mrs.usha in M.C.O.P.No.3199 of 2013 (C.M.A.No.2564 of 2015) and for the death of George who was the driver of the Van, the Tribunal granted a sum of Rs.18,63,000/- in M.C.O.P.No.1899 of 2013 (C.M.A.No. 2565 of 2015).

8. In so far as the deceased Ramu is concerned, the Tribunal took his monthly income of Rs.12,500/- per month added 50% towards future prospects applied a multiplier of 16 and deducting $1/3^{\text{rd}}$ towards personal expenses, the Tribunal arrived at the figure of Rs.24,00,000/- as loss of dependency. The Tribunal granted a sum of Rs.1,00,000/- towards loss of love and affection another sum of Rs.1,00,000/- for loss of consortium, Rs.25,000/- towards funeral expenses and thus a total award was made for Rs.26,25,000/-.

9. In so far as deceased Usha is concerned (M.C.O.P.No.1970 of 2013) C.M.A.No.2561 of 2015 the Tribunal took her monthly income at Rs.8,000/- and added 50% towards future prospects and applied multiplier of 15 and deducting $1/3^{\text{rd}}$ towards personal expenses, granted a sum of Rs.14,40,000/- towards loss of dependency. The Tribunal also granted a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses. Thus, the Tribunal arrived at Rs.16,65,000/-.

10. In so far as deceased George is concerned M.C.O.P.No.1900 of 2013 (C.M.A.No.2562 of 2015) the Tribunal took his monthly at Rs.10,000/- added 30% towards future prospects applied a multiplier of 14 and after deducting $1/4^{\text{th}}$ towards his personal expenses arrived at the loss of dependency at Rs.16,38,000/-. The Tribunal also granted a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium. A sum of Rs.25,000/- was granted towards funeral expenses. Thus, the total compensation arrived by the Tribunal was Rs.18,63,000/-.

11. In so far as the above 3 appeals which relate to death of the victim. Mrs.G.Sugukumari learned counsel appearing for the Insurance company would contend that in case of Ramu and Usha in O.P.No.1898 and 3199 of 2013. The Tribunal erred and infixing the future prospects at 50%, whereas according to the judgment of the larger bench of the Supreme Court in National Insurance Company Vs Pranay Sethi report in 2018 (1) LW 331, the Supreme Court has suggested future prospects for a self-employed person below 40 years only at 40%. She would also contend that the amounts granted towards loss of love and affection and loss of consortium are on the higher side,

considering the limits prescribed by the Honourable Supreme Court of National Insurance Company Vs Pranay Sethi referred to Supra.

12. Per Contra, Mr.Varadha Kamaraj learned counsel appearing for the respondents/claimants would contend that the income has been taken by the Tribunal is below par, therefore, the overall compensation is just and reasonable. We have considered the rival submissions.

13. Considering the date of accident as well as the occupation of the deceased, we are of the considered opinion that the monthly income adopted by the Tribunal at Rs.12,500/- and Rs.8,000/- is fairly reasonable. The Tribunal ought to have fixed the future prospects at 40% instead of 50%. If so, worked out the loss of dependency in the case of Ramu (O.P.No.1898 of 2013 in C.M.A.2560 of 2015) will be Rs.12,500 + 5000 + $12 \times 16 \times \frac{2}{3}$ = Rs.22,40,000/-. The amount awarded under the head of loss of love and affection cannot be said to be on the higher side, inasmuch as said Ramu had died leaving his Minor son, mother and father apart from his wife. Therefore, the award of Rs.1,00,000/- for love and affection is sustained and, as far as the loss of consortium is concerned, the award of Rs.1,00,000/- is definitely on the higher side. In view of the judgment of the Honourable Supreme Court in Pranay Sethi referred to Supra. The amount awarded under the head of funeral expenses is sustained. The Tribunal has not awarded any amount towards loss of estate. We are of the opinion that an award of Rs.20,000/- for loss of estate would be just and reasonable. Therefore, the award in M.C.O.P.No.1898 of 2013 is modified as follows:

S.No.	Particulars	Amount
1.	Loss of Pendency	Rs.22,40,000/-
2.	Loss of Love and Affection	Rs.1,00,000/-
3.	Loss of Consortium	Rs.40,000/-
4.	Funeral Expenses	Rs.25,000/-
5.	Loss of Estate	Rs.20,000/-
	Total	Rs.24,25,000/-

The award will carry interest at 7.5% per annum.

14. The Claimants are the wife, son and parents of the deceased. The compensation of Rs.24,25,000/- is apportioned as follows:

The 1st respondent in CMA 2560 of 2015 wife of Ramu will be entitled to Rs.9,00,000/- with proportionate interest with entire costs. The 2nd respondent Minor B.R.Tharun would be

entitled to Rs.10,25,000/- with proportionate interest with entire costs. The remaining Rs.5,00,000/- is to be taken by the 3rd respondent the mother of the deceased with proportionate interest. The Insurance company is directed to deposit the award amount within a period of 6 weeks from the date of receipt of the copy of this judgment. The major claimants are permitted to withdraw their share of the compensation with proportionate interest and costs. The share of the minor claimant is directed to be deposited in an interest earning fixed deposit in any one of the nationalized banks till he attains majority.

15. In so far as the award M.C.O.P.No.1970 of 2013 (CMA No.2561 of 2015) is concerned here again, the Tribunal has taken the future prospects at 50%, the same will have to be reduced to 40%. If future prospects is at 40%, then the monthly income would be Rs.11,200/- (8,000 + 3200). The Tribunal has rightly applied a multiplier of 15 and deducted the 1/3rd towards personal expenses. Therefore, the total loss of dependency would be $\text{Rs.11,200} \times 12 \times 15 \times 2 \times \frac{2}{3} = 13,44,000$. The amount of Rs.1,00,000/- awarded towards loss of love and affection is sustained. Inasmuch as the deceased has left behind two daughters and the husband. The amount of Rs.1,00,000/- awarded towards loss of consortium is reduced to Rs.40,000/-, the award of Rs.25,000/- towards funeral expenses and a sum of Rs.20,000/- towards loss of estate are sustained. Thus, the total compensation works out to Rs.15,29,000/-.

16. The claimants will be entitled to interest at 7.5% on the above compensation from the date of petition till date of payment. The compensation is apportioned as follows: The husband Murugan, the 1st respondent in CMA No.2561 of 2015 will be entitled to Rs.7,29,000/- with proportionate interest and the entire costs. The two minor daughters will each be entitled to Rs.4,00,000/- with proportionate interest. The Tribunal is directed to deposit the share of the minors in anyone of the Nationalized Banks in an interest bearing fixed deposit till they attain majority and the 1st respondent Murugan will be entitled to withdraw quarterly interest from the fixed deposits for the maintenance of the minors.

17. In so far as M.C.O.P. No.1900 of 2013 in C.M.A No.2562 of 2015 is concerned the Tribunal has adopted 30% as future prospects, considering the age of the deceased at 44 years and the fact he was employed as a driver in a private Van. The future prospects suggested by the Honourable Supreme Court in the larger bench division in Pranay Sethi and others comes to 25% only. The monthly income taken by the Tribunal at Rs.10,000/- is just and reasonable. Thus, worked out the loss of dependency will be as follows: $10,000 + 2,500 \times 12 \times 14 \times \frac{3}{4} = 14,00,000$. The Tribunal has awarded a sum of Rs.1,00,000/- for love and affection. Considering the fact that the deceased had left behind wife, two children and mother, the award of

Rs.1,00,000/- granted for loss of love and affection is sustained. The sum of Rs.1,00,000/- awarded for loss of consortium is reduced to Rs.40,000/-, the award of Rs.25,000/- towards funeral expenses and a sum of Rs.20,000/- towards his loss of estate are sustained. Thus, the total compensation works out to Rs.15,85,000/- . The award will carry interest at 7.5% per annum. The sum of Rs.15,85,000/- is apportioned among the respondents 1 to 4 as follows:

18. The 4th respondent and mother will be entitled to a sum of Rs.2,00,000/- with proportionate interest. The first respondent wife will be entitled to a sum of Rs.6,85,000/- with proportionate interest and entire costs.

The son and daughter each to be entitled to Rs.3,50,000/- each with proportionate interest.

19. In so far as the injury cases are concerned, the claimants in MCOP No.2175 of 2013 (CMA No.2567 of 2015) minor Sangeetha and the claimant in MCOP No.1901 of 2013 (CMA No.2566 of 2015) minor Tharun had suffered only simple injuries which have not resulted in loss of future earning power. It is seen from the records that they are continuing their education. The Tribunal has awarded a sum of Rs.3,00,000/- to each of them towards lumpsum compensation, apart from that the Tribunal awarding a sum of Rs.1,50,000/- towards future medical expenses. We do not see any reason to interfere in the said awards. Hence, the said awards are confirmed the appeal in MCOP No.2175 of 2013 and MCOP No.1901 of 2013 will stands dismissed.

20. In so far as the MCOP No.1934 of 2013 (CMA No.2563 of 2015) is concerned, the Tribunal has found that the injuries suffered by the claimant Murugan are only simple injuries and there was no loss of earning capacity because of the injuries suffered. Therefore, the Tribunal has awarded a total sum of Rs.1,52,000/- taking into account the percentage of disability at 20%.

21. The learned counsel appearing for the Appellant Insurance company would make faint attempt to challenge the said award. We do not see any reason to conclude that the award is unreasonable and unjust. We, therefore, confirm the said award and the appeal in MCOP No.1934 of 2013 will stands dismissed.

22. As regards the MCOP No. 3199 of 2013 (CMA.No.2564 of 2015), the Tribunal has granted a sum of Rs.16,95,700/- out of which a sum of Rs.1,82,700/- has been granted towards medical expenses, a sum of Rs.81,000/- has been granted towards pain and suffering, a sum of Rs.1,00,000/- has been granted towards disfigurement of body, a sum of Rs.5,00,000/- has been granted towards loss of marriage life. A sum of Rs.4,00,000/- has been granted towards loss of future earning capacity, and a sum of Rs.4,32,000/- has been granted towards future medical expenses.

23. Mrs.G.Sugumari learned counsel appearing for the Insurance company would submit that the award of Rs.5,00,000/- for loss of married life and the award of Rs.4,32,000/- for future medical expenses is on the higher side. In so far as the award of Rs.5,00,000/- for loss of Marriage life is concerned, we are in agreement with the contention of the learned counsel for the Insurance Company. However, considering the fact that the injured is a minor girl aged about 15 years at the time of the accident. We are of the opinion that a sum of Rs.3,00,000/- towards loss of Marital life would be just and reasonable. A sum of Rs.4,00,000/- granted towards loss of future earning capacity is sustained, as the same has been granted as lumpsum compensation. In so far as the future medical expenses is concerned, it is seen from the evidence of PW1 that the injured claimant had lost resistance because of the removal of Spleen and this requires periodical medication in the form of injections of Menecepra, Peoronan, Penuinrac which cost about Rs.6,000/-.

24. In the light of the said evidence, the Tribunal has granted a sum of Rs.4,32,000/- towards future medical expenses. We do not see any reason to interfere in the said factual and conclusion of the Tribunal. Therefore, the award of the Tribunal in MCOP No.3199 of 2013 (CMA.No.2564 of 2015) is modified and granting a sum of Rs.14,95,700/- with proportionate interest at 7.5% per annum. Since the Claimant/Respondent is a minor, the Tribunal is directed to deposit the compensation in a interest earning fixed deposit in any one of the nationalized banks till she attains Majority. The father namely Murugan is permitted to withdraw the quarterly interest for the maintenance of the minor.

25. In so far as the MCOP No.1899 of 2013 (CMA.No.2565 of 2015), the Tribunal has granted a sum of Rs.4,32,100/- towards loss of earning capacity. Here again, the Tribunal has added 50% towards future prospects. As rightly pointed out by the learned counsel appearing for the Insurance Company, it could be only 40%. Thus, in the loss of future earning capacity works out to Rs.3,85,560/- ($12600 \times 12 \times 17 \times 15$). The compensation awarded under the other heads namely, medical expenses, loss of income, pecuniary damages like transportation,

extra nourishment, attender charges, damages to clothes are all sustained. The total compensation works out to Rs.4,72,560/- and it is rounded off to Rs.4,73,000/- with 7.5% interest per annum.

26. In fine, CMA Nos.2563, 2566, 2567 of 2015 are dismissed confirming the award of the Tribunal. The other appeals namely CMA.Nos.2560, 2561, 2562, 2564, 2565 are allowed in part as indicated above. The Insurance company granted six (6) weeks time to deposit the award amounts, less the amounts already deposited, if any, to the credit of the respective original petitions. On such deposit, the Tribunal shall invest the share of the minor claimants as indicated above and disburse the shares of the major claimants. The Guardians of the minor claimants are permitted to withdraw quarterly interest from the fixed deposit for maintenance of the minors. There shall be no order as to costs in these appeals.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

kkn

To

The Motor Accident Claims Tribunal/
VI Court of Small Causes, Chennai)

Copy To :

The Section Officer, VR Section, High Court, Madras-104.

+8cc to Mr.K.Varadha Kamaraj, Advocate SR.No.60054 to 60061

+8cc to Mrs.G.Sukumari, Advocate SR.No.60064 to 60071

CMA.No.2560 to 2567 of 2015

KGK(CO)

GMV(16/11/2018)