

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.423 of 2018 and 957 of 2017  
and C.M.P.No.3768 of 2018  
in C.M.A.No.423 of 2018

M/s.Shriram General Insurance  
Company Limited,  
City Centre Complex, 2<sup>nd</sup> Floor,  
No.66, Thirumalai Pillai Road,  
T.Nagar, Chennai - 600 017.

...Appellant in C.M.A.No.423/2018

1.K.Anjali

2.V.Kumarasamy

...Appellants in C.M.A.No.957/2017

Versus

1.K.Anjali

2.V.Kumarasamy

3.T.Ellappan

...Respondents in C.M.A.No.423/2018

(R3 remained exparte in  
Lower Court and hence notice  
to R3 may be dispensed with)

1.T.Ellapan

2.Shriram Gen.Ins.Co.Ltd.,  
City Centre Complex, 2<sup>nd</sup> Floor,  
No.66, Thirumalai Pillai Road,  
T.Nagar, Chennai-600 017.

...Respondents in C.M.A.No.957/2017

Prayer: Civil Miscellaneous Appeals filed against the judgment  
and decree dated 09.07.2013 made in M.C.O.P.No.3535 of 2011 on  
the file of the Motor Accident Claims Tribunal, IV Court of  
Small Causes, Chennai.

For Appellant

In C.M.A.No.423/2018

: Mr.B.Murugavel

For Appellants

In C.M.A.No.957/2017

: Mr.K.Varadha Kamarj

For Respondents 1 and 2

In C.M.A.No.423/2018

: Mr.K.Varadha Kamarj

In C.M.A.No.957/2017

: Mr.B.Murugavel [for R2]

## C O M M O N     J U D G M E N T

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 09.07.2013 made in M.C.O.P.No.3535 of 2011 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 07.08.2011 at about 1.30 hours while the deceased K.Jeyagopinath was getting down from the bus bearing Registration No.TN-21-N-1024 in G.S.T Road, Guduvanchery, a lorry bearing Registration No.TN-72-AB-4784 came at high speed dashed against another lorry bearing Registration No.HR-55-L-3205 causing grievous injuries to the deceased who died on the spot. The respondents are the owner and insurer of the vehicle. The deceased was aged 26 years at the time of the accident and he was earning Rs.8,000/- per month by working in a private concern. The petitioners who are the parents of the deceased were depending on the income earned by the deceased and they are now suffering due to the death of only breadwinner of the family. Thus, the petitioners seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, the 2<sup>nd</sup> respondent/Insurance Company contends that the accident did not take place in the manner alleged by the petitioners and it is not correct to say that the incident occurred only due to rash and negligent driving by the 1<sup>st</sup> respondent lorry driver. The petitioners have to prove that the offending vehicle was insured with the 2<sup>nd</sup> respondent. Further, the driver of the offending vehicle was not in possession of a valid driving license. The age, avocation and income of the deceased is denied. Thus, the 2<sup>nd</sup> respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.4 and produced documents Exs.P.1 to P.20 to prove their claim. On the basis of available evidence on record, the Tribunal passed an award for a sum of Rs.6,84,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners have come forward with the appeal in C.M.A.No.957 of 2017 whereas, aggrieved over the finding of the Tribunal, the 2<sup>nd</sup> respondent/Insurance Company has come forward with the appeal in C.M.A.No.423 of 2018.

6. The learned counsel for the petitioners/claimants contends that the Tribunal applied wrong multiplier without considering the age of the deceased. The Tribunal ought to have applied multiplier '18' instead of '13'. The future prospectus has not been taken into consideration by the Tribunal. The award amount under different heads is very low. Hence, the petitioners sought for enhancement of the award amount by allowing their appeal in C.M.A.No.957 of 2017 and sought for dismissal in C.M.A.No.423 of 2013 filed by the 2<sup>nd</sup> respondent/Insurance Company.

7. Per contra, the learned counsel for the 2<sup>nd</sup> respondent/Insurance Company contends that the Tribunal fixed the monthly income of the deceased at Rs.8,000/- without any evidence. The Tribunal, ought to have fixed the monthly income at Rs.4,000/- only. The Tribunal, wrongly fixed the negligence on the part of the 1<sup>st</sup> respondent driver for causing the accident. The amount awarded under difference heads is on higher side. Hence, the 2<sup>nd</sup> respondent/Insurance Company sought for reduction of the quantum of the award passed by the Tribunal by entertaining the appeal in C.M.A.No.423 of 2018.

8. Thus, both the parties were seeking to modify the amount awarded by the Tribunal as compensation. The 1<sup>st</sup> petitioner deposed as P.W.2 stated that her son met with an accident and died on the spot itself. Ex.P.3 - Copy of the F.I.R, was registered against the driver of the 1<sup>st</sup> respondent lorry. The eye-witnesses to the accident deposed as P.W.1 and P.W.3. According to them, when they got down from the bus bearing Registration No.TN-21-N-1024 in G.S.T Road, Guduvanchery, the lorry bearing Registration No.TN-72-AB-4784 came at high speed dashed against another lorry bearing Registration No.HR-55-L-3205 and thereafter hit the deceased causing grievous injury to the deceased, resulting in his death; whose parents are the petitioners in the case on hand. It is evident from Exs.P.5, P.6 and P.7 - MVI Reports that the accident did not occur due to mechanical defect. Further, as the rear left side cowl & body of the bus, which the deceased got down, will clearly prove that the bus was on the edge of the road at the time of the accident. As such, it is clear that the 1<sup>st</sup> respondent lorry only caused the accident. Therefore, as the owner and insurer of the vehicle the respondents 1 and 2 are liable to pay compensation to the petitioners.

9. The Tribunal fixed the monthly income of the deceased at Rs.4,000/-. It is evident from Ex.P.14 - Legal heir certificate of the deceased Jeyagopinath, that the mother of the deceased was aged 49 years. In such circumstances, on the basis of Ex.P.4 - Death Report as well as Ex.P.8 - Post mortem report of deceased Jeyagopinath as well as Ex.P.9 - Transfer Certificate,

Ex.P.10 - Provisional Certificate, Ex.P.12 - Transfer Certificate and Ex.P.13 - Death certificate of the deceased, the age of the deceased is fixed at 26 years. The deceased was stated to be working in a private concern earning Rs.8,000/- per month. Considering the nature of employment of the deceased, the Tribunal fixed the monthly income at Rs.8,000/-. However, as there is no proof for his earnings, it will be appropriate to fix the monthly income of the deceased at Rs.7,000/-.

10. Considering the fact that the deceased was aged 26 years, it will be appropriate to add 40% of the income towards future prospectus. Since the deceased was a Bachelor, 50% of income is deducted towards personal expenses and the correct multiplier to be applied is '17'. Thus, the contribution by the deceased to the family will be,

$$[(7000+40\%)-4990*12*17] = \text{Rs.}9,99,600/-$$

Thus, a sum of Rs.9,99,600/- is granted as compensation under the head "Loss of Income".

11. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation to be awarded towards loss of estate and funeral expenses is clearly stated. Hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses.

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

| Sl. No. | Head               | Amount granted by the Tribunal | Amount awarded by this Court |
|---------|--------------------|--------------------------------|------------------------------|
| 1       | Loss of income     | Rs.6,24,000.00                 | Rs.9,99,600.00               |
| 2       | Love and affection | Rs.50,000.00                   | -                            |
| 3       | Funeral Expenses   | Rs.10,000.00                   | Rs.15,000.00                 |
| 4       | Loss of Estate     | -                              | Rs.15,000.00                 |
| 5       | Total              | Rs.6,84,000.00                 | Rs.10,29,600.00              |

12. In the result,

(i) The Civil Miscellaneous Appeal in C.M.A.No.957 of 2017 filed by the petitioners/claimants is Allowed by enhancing the compensation to Rs.10,29,600/- from Rs.6,84,000/-.

(ii) In view of the order passed in C.M.A.No.957 of 2017, this Court finds no merit in C.M.A.No.423 of 2018 preferred by the Insurance Company for reducing the award amount and the same is dismissed.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) The appellant/Insurance Company is directed to deposit the enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit, the petitioners are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) Since there is enhancement in the award amount, each appellants/claimants are entitled to 50% of the award amount.

(vii) Appellants/claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(viii) In view of the order of this Court dated 27.02.2017 passed in M.P.No.1 of 2014 in C.M.A(SR).No.30505 of 2014 and since the appeal has been filed with the delay of 153 days, interest is waived off, for the default period.

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bri  
To

1.Motor Accident Claims Tribunal,  
The IV Court of Small Causes,  
Chennai.

2.The Section Officer,  
V.R.Section, High Court,  
Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.23114  
+2cc to Mr.B.Murugavel, Advocate SR.No.23300

C.M.A.Nos.423 of 2018  
and 957 of 2017

GMR (CO)  
GN(11/07/2018)