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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1907 and 1908 of 2012

CMA.No.1907 of 2012:-

1.G.Sumathy
2.P.Ganapathy

..Appellants in CMA.1907/2012/Petitioners

G.Sundari

.... Appellant in CMA.NO.1908/2012

CMA.No.1908 of 2012:-

Petitioner declared as major and
discharge the guardianship
vide order dated 12.06.2017
in CMP.No.5843/17, 5844/17
in CMA.No.1908 of 2012.

Vs

1.K.Anbazhagan
2.M/s.ICICI Lombard General
Insurance Co.Ltd.,
No.140, 2nd and 3rd floor
Nungambakkam, Chennai-600 034

..Respondents in
both CMAs.

Prayer in CMA.No.1907 and 1908 of 2012:- Civil Miscellaneous
Appeals filed under Section 173 of Motor Vehicles Act, against
the order and decree in MCOP.No.4422 and 4423 of 2007 dated
29.07.2011 on the file of Motor Accident Claims Tribunal, Chief
Judge, Small Causes Court, Chennai.

For appellants : : Mr.T.G.Balachandran
For Respondents : : Ms.R.Sreevidhya for R2.
R-1 - Set exparte

COMMON JUDGMENT

The Appellants are the Petitioners and fled the above
appeals challenging the order and decree dated 29.07.2011 on the



file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.1. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 03.10.2007 at about 09.35 hours, the deceased Swapna and her elder sister Sundari who is the Petitioner in MCOP.No.4423 of 2007 /appellant in CMA.No.1908 of 2012 were proceeding in the E.C.R.Road and as they were crossing the said road, near Panayur junction, the Van bearing Reg.No.TN-21-T-1327 came at high speed overtook a Government bus standing in the bus stop came to the right side of the road, dashed on the deceased Swapna and her sister causing fatal injuries to the deceased Swapna and also injuries to her sister Sundari. According to the Petitioners in both MCOP.Nos.4422/2007, parents of the deceased Swapna and injured petitioner represented by her father at the time of filing MCOP.No.4423 of 2007, the accident occurred only due to negligence of the 1st respondent. The said vehicle was insured with the 2nd respondent. The Petitioners' claim that the deceased Swapna is their daughter and she was studying 3rd standard and her age was 8 years. The Petitioners/parents lost their daughter and suffering from mental agony. The Petitioner sought for Rs.6,00,000/- as compensation for the death of their daughter Swapna in MCOP.No.4422/2007.

2.2 Likewise, the injured Petitioner Sundari, represented by her father who suffered injuries in the said accident, states that she was aged 12 years and was studying in 6th standard at that time. She suffered injuries in right clavicle, fracture of right humerus bone and head injury. Due to the injuries suffered, she is unable to attend to her studies properly. She has claimed Rs.3,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. The claim of the Petitioners about the injuries suffered by them is denied. The Petitioners is to prove that the driver of the 1st respondent Lorry possessed valid licence and the vehicle was insured with them. The amount claimed by the Petitioner is highly excessive. The minor petitioner's claim that he suffered multiple injuries and fracture is not correct. The disability alleged in the petition is not correct.

The 2nd respondent sought for dismissal of both the petitions.

4. Before the Tribunal, both MCOPs were taken up together



for joint trial and the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.9 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

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5. After analyzing the evidence available on record, the tribunal found the negligence of the 1st respondent vehicle driver alone caused the accident, passed award for a sum of Rs.1,70,000/- for the deceased daughter of the Petitioners in MCOP.NO.4422 of 2007 and a sum of Rs.51,000/- as compensation for the injured Petitioner-Sundari, in MCOP.No.4423 of 2007.

6. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeals.

7. The learned counsel for the Petitioners/claimants contends that the Tribunal failed to appreciate the evidence on record properly and awarded a very meager amount as compensation. The Tribunal failed to consider the death of minor children properly and failed to award just and fair compensation. Likewise, for injured minor petitioner also, the Tribunal has not considered the injury suffered by her properly and passed award for a very nominal amount. The minor petitioner having suffering multiple fractures is unable to carry on her studies properly and the disability ought to have been fixed at higher level. Thus, the petitioners sought for enhancement of the award amount in both the appeals by entertaining the same.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that after fixing negligence on the 1st respondent driver, the Tribunal passed just and fair award which needs no interference. The Plea of the Petitioners is unsustainable. Thus, the 2nd respondent/insurance company sought for dismissal of both the appeals.

9. The appeals are only quantum appeals. Both sides did not seriously contest the issue of negligence. The Tribunal, based on eyewitness account given by P.W.2/Saravanan as well as contents of Ex.P.1-FIR and Ex.P.2-Rough Sketch, found the negligence of the 1st respondent vehicle driver alone caused the accident. There is no contra evidence let in by the respondents to disprove the version of P.W.2 in respect of the accident. As such, the conclusion of the Tribunal that the negligence of the 1st respondent vehicle driver alone caused the accident is



appropriate are well founded. The same needs no interference.

10. The Petitioners in MCOP.No.4422 of 2007, who are the parents of the deceased Swapna produced Ex.P.4-legal Heir Certificate. As such, the Petitioners are entitled to seek compensation. The Petitioners state that the deceased Swapna was aged 8 years and she was studying 3rd standard in the Government School. The Petitioners have not produced any documentary proof for proving the age of the deceased daughter. As such, in Ex.P.3-Death Certificate as well as Ex.P.7-Post Mortem Certificate, the age of the deceased is stated to be 8 years. Hence, her age was fixed as 8 years by the Tribunal and the same is correct.

11. Admittedly, the deceased was studying 3rd standard. The Tribunal took into consideration the said fact and fixed the notional income at Rs.15,000/- per annum. Challenging the same, the claimant/Petitioner contends that as per the Apex Court Ruling reported in 2013 2 TNMAC 358 SC [Kishan Gopal and another Vs. Lala and others], the notional income for 10 years old student was fixed at Rs.30,000/- per annum by the Apex Court and the said accident took place during 1992 whereas the present accident occurred in the year 2007. As such, the Petitioners/claimants pleads that keeping in mind the rate of inflation and other attendant circumstances, the notional income of the deceased Swapna has to be fixed at higher level. The learned counsel for the Petitioners also contended that in another case, this court has fixed the notional income of the deceased minor student aged 8 years at Rs.60,000/- per annum and in the said case, the accident occurred on 29.08.2014. In the said case also, the deceased was aged 8 years and she was studying 3rd standard. Thus, the learned counsel for the Petitioners pleads to fix the notional income of the deceased at Rs.60,000/- per annum.

12. On the other hand, the learned counsel for the 2nd respondent/Insurance company contends that the accident having taken place in 2007 and the deceased was aged only 8 years, the amount now claimed by the Petitioners is highly excessive.

13. Considering the rival contentions and following the above said Rulings, wherein, the accident has taken place in 1992 and 2014, this court is of the view that for the case on hand, as the accident occurred during 2007, it will be appropriate to fix the notional income of the deceased at Rs.40,000/- per annum. In respect of multiplier to be applied, even though the deceased was aged 8 years, the learned counsel



for the 2nd respondent contends that even in the Ruling relied on by the Petitioner reported in 2017 (2) TNMAC 805 [National Insurance Co.Ltd., Vs. K.Sugumar and others], the multiplier has been applied taking note of the age of the parents of the deceased. In the case on hand, considering the age of the Petitioners/parents of the deceased Swapna as well as the age of the deceased, it will be appropriate to adopt multiplier 16 to arrive at the Pecuniary Loss as under:-

Notional Annual income - 40,000/-

Multiplier taken - 16

40,000 x 16 = 6,40,000/-.

14. Under conventional heads, following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], towards Funeral expenses, a sum of Rs.15,000/- and towards loss of estate, Rs.15,000/- is awarded. Further, following the Ruling of this Court in the case of National Insurance Co.Ltd., Vs. K.Hammed @ Shaik Ahammed and Others [CMA.No.1351 of 2017 and CMP.No.7130 of 2017 dated 06.11.2017] towards "Loss of Love and Affection", it will be appropriate to award Rs.50,000/-.

15. In total, the Petitioners/claimants in CMA.No.1907 of 2012 [MCOP.No.4422 of 2007] are entitled to Rs.7,20,000/- as compensation for the death of their deceased daughter Swapna in the road accident. The award amount is apportioned at equal share for the claimants/Petitioners in MCOP.No.4422 of 2007. The modified award amount in MCOP.No.4422 of 2007 [CMA.No.1907 of 2012] is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss	1,50,000	6,40,000
2.	Loss of love and affection	10,000	50,000
3.	Funeral expenses	10,000	15,000
4.	Loss of estate	---	15,000
	Total	1,70,000	7,20,000

CMA.No.1908 of 2012 [MCOP.No.4423 of 2007]:-

16. The injured Petitioner/Sundari states that in the accident, she suffered multiple fracture and grievous injuries. The injured was admitted at Ragas Hospital and thereafter, at



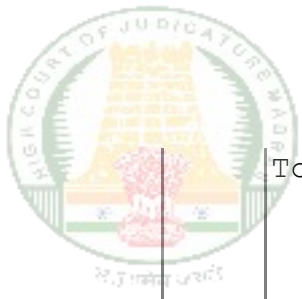
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Government Hospital, Chennai, from 03.10.2007 to 10.10.2007. The Petitioner produced Ex.P.5-Discharge summary and Ex.P.6-O.P.Chit to prove the same. The Petitioner stated that she suffered fracture in right clavicle, right humerus and head injury. The Petitioner to prove the disability suffered by her, examined P.W.2/doctor and P.W.3/doctor who issued Ex.P.8-Disability certificate. According to P.W.3/doctor, who examined the injured petitioner physically and also took Ex.P.9-X ray, the minor Petitioner has sustained 35% permanent disability. Admittedly, the injured Petitioner was a school student at the time of the accident. However, there is no evidence to show that the petitioner is still suffering due to any functional disability. P.W.3/doctor admittedly did not give treatment to the injured petitioner. Further he has not attached calculation sheet along with Ex.P.8 Disability Certificate. As such, considering the injury suffered by the Petitioner, it will be appropriate to fix the disability at 25%. As the accident took place in 2007, it will be appropriate to compensate the petitioner at Rs.3000/- per percentage. Accordingly, Disability compensation is calculated as follows:-

$25\% \times 3000 = \text{Rs.}75,000/-$.

17. For the Pain and suffering undergone by the injured petitioner, it will be appropriate to provide Rs.10,000/- instead of Rs.5,000/- provided by the Tribunal. Likewise, towards Extra Nourishment, this court feels it will be appropriate to award Rs.10,000/- instead of Rs.5000/- provided by the Tribunal. The sum of Rs.5000/- provided towards "Transport to Hospital" and the sum of Rs.1,000/- provided towards Damage to clothing and article, are confirmed. Accordingly, the modified compensation for the injured Petitioner-Sundari in MCOP.No.4423/2007 [CMA.No.1908/2012] is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Transport to hospital	5000	5,000
2.	Extra Nourishment	5000	10,000
3.	Damage to clothing and articles	1000	1,000
4.	Pain and suffering	5000	10,000
5.	Permanent disability	25,000	75,000



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Total	41,000/- But awarded total compensation as Rs.51,000	1,01,000
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18. In the result,

(i) The Civil Miscellaneous Appeals are Allowed;

(ii) The appellants/claimants in CMA.No.1907 of 2012 are entitled to award amount of Rs.7,20,000/- and the appellant/claimant in CMA.No.1908 of 2012 is entitled to Rs.1,01,000/-, which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The 2nd respondent/Insurance company is directed to deposit the award amount in both the CMAs along with proportionate accrued interest within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) On such deposit, the appellants/claimants in CMA.No.1907 of 2012 are entitled to equal share in the award amount of Rs.7,20,000/- and the same shall be withdrawn along with accrued interest by filing necessary application before the Tribunal. The appellant/claimant in CMA.No.1908 of 2012 is entitled to withdraw the deposited amount of Rs.1,01,000/- with accrued interest, less the amount, if any already withdrawn.

(v) The appellants in both CMAs are directed to pay necessary court fee for the enhanced award amount, if any to be paid, before obtaining the copy of the decree in the above CMAs. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Chief Judge, Small Causes Court, Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



+2cc to Mr.T.G.Balachandran, Advocate sr.no.46090, 46091

+1cc tp Ms.R.Sreevidhya, Advocate sr.no.46303

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C.M.A.Nos.1907 and 1908 of 2012

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