

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.2814 and 2815 of 2013

CMA.No.2814 of 2013

1.K.Chellamuthu
2.C.Keerthika

... Appellants/Claimants

..vs..

1.R.Krishna Murthy
2.Royal Sundaram Alliance Insurance Co., Ltd.,
3rd Floor, Subramanian Building,
No.1, Club House Road,
Chennai- 600 002.

...Respondents/Respondents

C.M.A.No.2815 of 2013

K.Chellamuthu

... Appellant/Claimant

..vs..

1.R.Krishna Murthy
2.Royal Sundaram Alliance Insurance Co., Ltd.,
3rd Floor, Subramanian Building,
No.1, Club House Road,
Chennai-600002.

... Respondents/Respondents

PRAYER IN CMA NO.2814 OF 2013: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 20.03.2013 made in MCOP.No.2272 of 2010 on the file of the Motor Accident Claims Tribunal/XVI Additional District Judge, X Additional Judge, I/c of XVI Additional Court, Court of Small Causes Chennai.

PRAYER IN CMA NO.2815 OF 2013: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 20.03.2013 made in MCOP.No.2273 of 2010 on the file of the Motor Accident Claims Tribunal/XVI Additional District Judge, X Additional Judge, I/c of XVI Additional Court, Court of Small Causes Chennai.

For Appellants : Mr.U.M.Ravichandran
in both appeals)

For Respondents : Mr.R.Sreedhar For R1
Mrs.R.Sreevidhya for R-2
(in both appeals)

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 20.03.2013 made in MCOP.Nos.2272 and 2273 of 2010 on the file of the Motor Accident Claims Tribunal XVI Additional Court, Chennai, the present civil miscellaneous appeals are filed.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 20.04.2010 at about 21.40 hours, when the deceased Senthil Kumar driving his Maruthi Car bearing Registration No.TN-22-BY-8380 was proceeding in East Coast Road, from west to east and as he approached the Dhanalakshmi Engineering College, another car bearing Registration No. TN-31-AW-0009, came at high speed in the opposite direction and dashed against the car, in which the deceased was travelling causing fatal injuries to him. The accident occurred only due to the rash and negligent driving of the first respondent car driver. The petitioner/claimant in M.C.O.P.No.2273 of 2010, who is the father of the deceased states that his son was aged about 28 years and he was working as Senior Engineer in a Private Company earning a monthly income of Rs.52,069/-. Due to the death of his son, the petitioner lost the love and affection of his son and his contribution to the family. As such the petitioner seeks compensation of Rs.30,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

4. In the same accident, one Shanthi, who is the wife of the first petitioner and mother of the second petitioner in M.C.O.P.No.2272 of 2010, who was travelling with his son, the deceased Shanthi was also suffered fatal injuries and died subsequently. At the time of accident, she was aged about 48

years and self employed as Tailor, earning a sum of Rs.5,000/- per month. The petitioners states that due to the sudden death, they lost the care and love of the deceased Shanthi and also her financial contribution to the family. Hence, the petitioners seek a sum of Rs.10,00,000/- as compensation from the respondents.

5. On the other hand, opposing the claim of both the petitions, the second respondent/Insurance company filed a counter contending that they were not informed about the accident by the first respondent owner. The second respondent also disputed the manner of accident. They further contended that the accident occurred only due to the negligence of the deceased Senthilkumar who was driving the Maruthi car bearing Registration No.TN-22-BY-8380 and as such they are not liable to pay any compensation. The second respondent further pleaded that even assuming that the first respondent driver was also responsible for the accident, the negligence should be aborted between the drivers of two vehicles, which were moving in the opposite direction. Hence, the second respondent seeks dismissal of both petitions.

6. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P22 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

7. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.20,00,000/- as compensation in M.C.O.P.No.2273 of 2010 and a sum of Rs.4,25,000/- was awarded to the petitioner in MCOP.No.2272 of 2010. Being not satisfied with the quantum of compensation awarded by the Tribunal, both the petitioners/claimants have come forward with the present two appeals separately.

8. The learned counsel appearing for the petitioners/appellants in CMA.No.2815 of 2013(MCOP.No.2273 of 2010) submitted that the Tribunal erred in deducting 50% of the income of the deceased towards his personal expenses. The deceased being mechanical engineer and earning a sum of Rs.52,069/- per month and as he was having very high future prospects, the Tribunal failed to take into account the same and awarded a very meager amount as future prospectus. The multiplier applied by the Tribunal is not correct. The amount granted by the Tribunal is on the lower side and the monthly income was not taken into consideration properly. Hence, the petitioner seeks to enhance the award amount by entertaining the

appeal.

9. Similarly, the learned counsel appearing for the petitioner/appellant in CMA.No.2814 of 2013 (MCOP.No.2272 of 2010) contended that the future prospectus of the deceased, who was Tailor cum Home maker, was not properly considered and the compensation awarded by the Tribunal is not appropriate and the same has to be enhanced by entertaining the appeal.

10. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal has properly appreciated the evidence on record and arrived at just and proper compensation. It is pointed out that the Tribunal has awarded the compensation on higher side and as such the plea of the petitioners for enhancement of compensation is unsustainable. Hence, the second respondent seeks dismissal of both the appeal.

11. I have considered the rival submissions and perused the materials available on record.

12. The petitioners contended that the accident occurred only due to the negligence of the first respondent vehicle driver. The deceased Senthilkumar was driving his Maruthi Car, wherein he was accompanied by his mother, namely, Shanthi. The eye witness to the occurrence, who deposed as P.W.2 clearly states that the first respondent vehicle came at high speed and dashed against the Maruthi car, in which the deceased was travelling. The police also registered the case against the first respondent driver as evidenced by Ex.P1 First Information Report. After investigation, the police fixed the negligence on the part of the driver of the first respondent car and laid Ex.P3 Charge Sheet against him. That also will substantiate the claim of the petitioners, that the accident occurred only due to the negligence of the first respondent driver. The said contention of the petitioner is further corroborated by Ex.P2 rough sketch, which clearly shows that the first respondent vehicle alone came to extreme right side of the road and dashed against the car, in which the deceased were travelling. The respondent has not examined the driver of the first respondent vehicle and also failed to produce any other materials to contradict the version of P.W.2 and the averments in Ex.P1 to Ex.P3 documents. In such circumstances, the petitioners categorically established the negligence on the part of the first respondent driver alone caused the accident. The finding of the Tribunal to that effect is just and proper and the same is no interference.

13. The main grievance of the petitioners herein is that the Tribunal failed to fix the monthly income of the deceased properly and awarded less compensation. As far as the

petitioner in MCOP.No.2273 of 2010 is concerned, the deceased Senthil Kumar was his son and he was working as Senior Engineer in GEA Energy Systems (India) Limited, and earning a monthly income of Rs.52,069/- per month. The transfer certificate of the deceased is produced as Ex.P11, the appointment order of the deceased as Ex.P13, the pay slip of the deceased as Ex.P14, copy of his Bank statement as Ex.P15, Pan Card as Ex.P15 and income tax returns as Ex.P16. It is evident from Ex.P13, that the monthly income of the deceased Senthilkumar was Rs.54,429/- as on 01.07.2009. The Salary slip for the month of February,2010 was produced as Ex.P14 and his monthly income was shown as Rs.48,000/-. As per Ex.P16 the income returns, the total salary of the deceased for the year,2009 - 2010 is shown as Rs.6,59,381/-. On the basis of above said documents, the Tribunal has fixed the monthly income of the deceased at Rs.50,000/- and after deduction of 10% towards income tax, the deceased would have earned Rs.45,000/- per month. The learned counsel appearing for the petitioners contended that the said finding of the Tribunal is not proper and deducting 10% towards income tax is not necessary, as already the management itself has deducted 10% for tax purpose. The Tribunal has only taken the total salary of the same deducted.(10% towards income tax). As such, this Court find that the calculation of the Tribunal is in order. Therefore, the finding of the Tribunal that the deceased was getting net income of Rs.45,000/- per month is to be accepted. The Tribunal has taken into consideration the age of the father of the deceased and adopted multiplier 7. However, the learned counsel appearing for the petitioner relying upon the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, contended that the age of the deceased alone should be taken into consideration. The said contention is correct and the same is accepted. Hence, in the instant case, the age of the deceased was 28 years at the time of accident, the multiplier to be applied is 17. The learned counsel appearing for the petitioner further contended that as the deceased was aged about 28 years, 50% of his income should be added towards future prospectus. Further, in the above said ruling as the deceased was aged 28 years, the claim of the petitioner that 50% of the actual salary to be treated as future prospectus is to be accepted. Accordingly, the loss of income is calculated as follows:-

(i) Rs.45,000/- (monthly income) + 50% of the amount of Rs.22,500/- added towards future prospectus = Rs.67,500/-.

(ii) Rs.67,500/- - 10% of the amount of Rs.6,750/- is deducted towards income tax = Rs.60,750/-.

(iii) Rs.60,750/- - 50% of the amount of Rs.30,375/- is deducted towards the personal income of the deceased = Rs.30,375/-.

(iv) Rs.30,375 x 12 = Rs.3,64,500/- x 17 = Rs.61,96,500/-.

Accordingly, the loss of income comes to Rs.61,96,500/-.

14. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Funeral Expenses = Rs. 15,000.00

15. The sum of Rs.1,00,000/- awarded under the head of loss of love and affection by the Tribunal is not justify and the same is hereby set aside.

16. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	18,90,000.00	61,96,500.00
2.	Loss of love and affection	1,00,000.00	-
3.	Funeral Expenses	10,000.00	15,000.00
	Total	20,00,000.00	62,11,500.00

17. The learned counsel appearing for the petitioner contended that even assuming the claim amount was only less, this Court is entitled to award the higher compensation, as the Courts are bound to give just compensation. In support of the same, the learned counsel appearing for the petitioner relied upon the Apex Court ruling in Civil Appeal No.8251 of 2013 Dated 03.10.2013 in SANOBANU NAZIRBHAI MIRZA AND OTHERS Vs. AHMEDABAD MUNICIPAL TRANSPORT SERVICE, wherein it has held as follows:-

9. The amount of Rs.16,96,000/- as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal principles of Nagappa Vs. Gurudayal Singh & Ors.[7] at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

"There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court

considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is – it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.”

10. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants.

In the instant case, the award amount granted by this Court is higher than the amount claimed by the petitioner/claimant. Following the above said Ruling, it is clear that the petitioner/claimant is entitled to get higher compensation even though the claim in the petition is on the lower side. The point is answered accordingly.

18. M.C.O.P.No.2272 of 2010 in CMA.No.2814 of 2013:-

The petitioners, who are the husband and daughter of the deceased Shanthi, contends that the monthly income of the deceased was Rs.5,000/-, but the Tribunal has failed to take into consideration the same properly and awarded lesser sum. The first petitioner who deposed as P.W.1 sated that his wife/deceased Shanthi was working as Tailor and earning a sum of Rs.5,000/- per month. However, no proof was produced to substantiate the same. As such, the notional income of the deceased was fixed by the Tribunal at Rs.4,500/-, this Court find the same is to be just and appropriate. It is evident from the Postmortem Certificate Ex.P4 that the deceased was aged about 48 years. Taking into consideration the first petitioner's age 61 years, it would appropriate to fix the age of the deceased as 50 years. Hence, the multiplier to be applied is 11. As such, the loss of dependency is calculated as follows:-

(i) Rs.4,500/- + added 10% of the amount towards future prospectus Rs.450/- = Rs.4,950/-.

(ii) Rs.4950/- - deducted 1/3rd of the amount towards personal expenses Rs.1650/ = Rs.3,300/-.

(iii) Rs.3,300/- x 12 = Rs.39,600/- x 11 = Rs.4,35,600/-.

19. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Consortium	Rs.	40,000.00
Funeral Expenses	Rs.	15,000.00
Loss of Estate	Rs.	15,000.00

20. The Tribunal has awarded a sum of Rs.19,000/- under the head of loss of love and affection is hereby set aside.

21. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	3,96,000.00	4,35,600.00
2.	Loss of love and affection	19,000.00	-
3.	Funeral Expenses	10,000.00	15,000.00
4.	Loss of consortium	-	40,000.00
5.	Loss of Estate	-	15,000.00
	Total	4,25,000.00	5,05,600.00

22. CMA.No.2814 of 2013:-

In the result, the civil miscellaneous appeal is allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.5,05,600/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to equal share of the award amount. The petitioners/claimants are permitted to withdraw their respective shares with accrued interest by filing necessary application before the Tribunal.

23. CMA.No.2815 of 2013:-

In the result, the civil miscellaneous appeal is allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.62,11,500/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposits, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. The petitioner/claimant is directed to pay the Court fee for the enhanced award amount within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

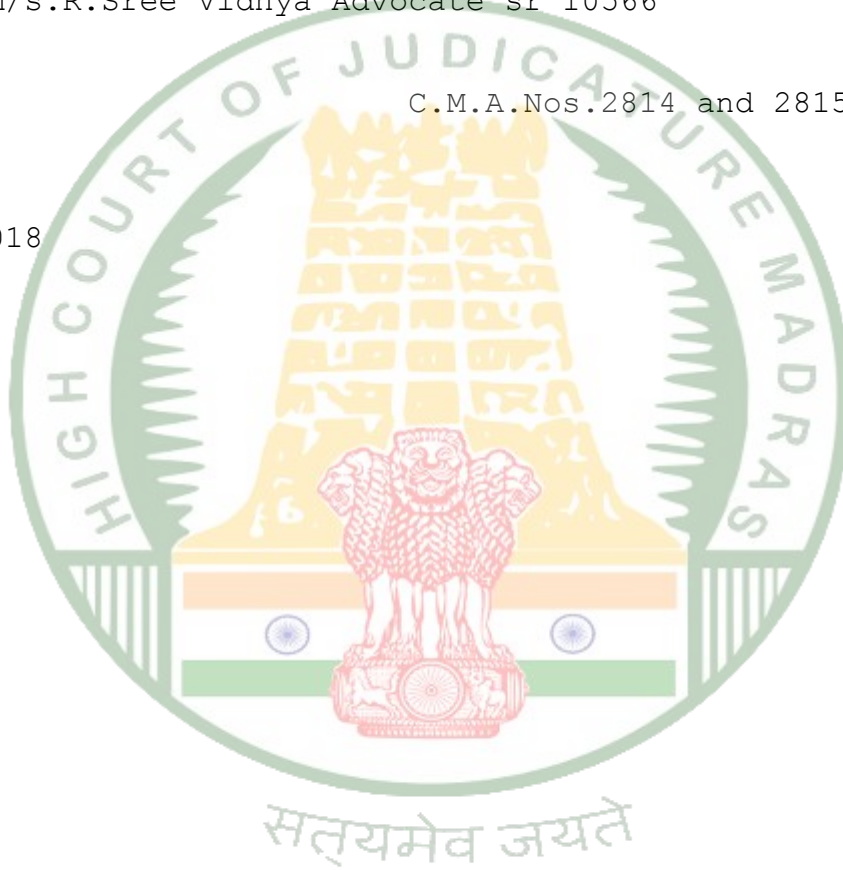
To

The Motor Accident Claims Tribunal
XVI Additional District Judge,
X Additional Judge,
I/c of XVI Additional Court, (Motor Accidents Claims Tribunal)
Court of Small Causes
Chennai.

+4 ccs to Mr.U.M.Ravichandran Advocate sr 9977,9978
+1 cc to M/s.R.Sree Vidhya Advocate sr 10566

C.M.A.Nos.2814 and 2815 of 2013

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