

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A (MD) Nos.131 to 136 of 2014

and

C.M.A (MD) No.190 of 2014

C.M.A (MD) No.131 of 2014

1.M.Karuppan

2.Eswari

3.Sudha ... Appellants in CMA(MD).131/2014

A.Subramani ...Appellants in CMA(MD).132/2014

Kalyani ...Appellants in CMA(MD).133/2014

Palaniammal ...Appellants in CMA(MD).134/2014

Chinnaponnu ...Appellants in CMA(MD).135/2014

R.Sakthi@Sakthivel ...Appellants in CMA(MD).136/2014

1.P.Kandhasamy

2.Ponnnammal

3.Senthamarai

K.Palanichamy (Died)

4.Packaiaam ...Appellants in CMA(MD).190/2014

(Cause title is Accepted vide order Dated.07.03.2014 Made in MP(MD)
No.1 of 2014 in CMA.SR.8093/14)

Vs.

1.M.Jeyakumar

2.M/s.The Oriental Insurance Company Limited,

Rep. Through Its Regional Manager,

Third Party Hub Office,

16 KJR Complex, North Veli Street,

Madurai-625 001.

Viswanathan (Exonerated/died)

3.M/s.National Insurance Company Limited,

Rep. through its Divisional Manager,

Divisional Manager,

3, North Veli Street,

Madurai 625 001.

...Respondents in CMA(MD).Nos.131 to
136 & 190 of 2014

(Petition dismissed as against

Respondent No.3. Hence, notice

is not necessary to the Respondent No.3)

COMMON PRAYER: Civil Miscellaneous Appeals is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 29.11.2013 passed in MCOP.No.1139,1140,1271,1272,1277 & 1269 of 2011, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Madurai

For Appellant : Mr.G.Prabhu Rajadurai
 For R1 : No appearance
 For R2 : Mr.K.Bhaskaran

COMMON JUDGMENT

All the appeals filed against the common award, dated 29.11.2013, passed by the Motor Accidents Claim Tribunal, IV Additional District Judge, Madurai, in M.C.O.P.Nos.1139, 1140, 1271, 1272, 1274, 1277 and 1269 of 2011. Hence, all the appeals are heard together and disposed of by this common judgment.

2.All the appeals are filed by the claimants for enhancement of compensation. The parties are referred to as per their rank in the claim petitions.

3.Facts of the case in all the appeals:-

According to the claimants, on 12.08.2011, the claimants in M.C.O.P.Nos.1271, 1272, 1274 and 1277 of 2011 and deceased in M.C.O.P.Nos.1139, 1140 & 1269 of 2011 were travelling in a Tractor Trailer, bearing Registration No.TN-36-1244 belonging to the third respondent. At that time, a TATA Eicher Van, bearing Registration No.TN-67 H 4786 belonging to the first respondent driven by its driver in a rash and negligent manner came behind the Tractor and dashed against the Tractor and caused accident. In the accident, Kannamani, Santhiammal @ Gandhi and Chinnammal were died and their legal heirs filed the claim petitions in M.C.O.P.Nos.1139, 1140 & 1269 of 2011 claiming a sum of Rs.10,00,000/- in each petitions as compensation, for the death of the above said persons and the claimants in M.C.O.P.Nos.1271, 1272, 1274 and 1277 of 2011 were sustained injuries and they have filed the above said claim petitions claiming a sum of Rs.5,00,000/-, Rs.10,00,000/-, Rs.5,00,000/- and Rs.10,00,000/- respectively, as compensation for the injuries sustained by them in the accident.

4.The respondents resisted the said claim. The first respondent remained ex-parte before the Tribunal.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by driver of the Van belonging to the first respondent and awarded various amounts as compensation to the claimants and directed the second respondent Insurance Company to deposit the amounts and dismissed the claim petitions against the

respondents 3 & 4.

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come out with the present appeals.

7. From the materials on record, it is seen that the deceased persons were loadwomen. The appellants claimed that the deceased were earning a sum of Rs.9,000/- per month. The appellants have not produced any documents to substantiate their claim. The Tribunal fixed the notional income of the deceased at Rs.3,000/- each. The accident occurred on 12.08.2011 and the monthly income fixed by the Tribunal is very meagre. Therefore, this Court fixed the monthly income of the deceased at **Rs.6,000/-** per month. The Tribunal has not granted any amounts towards future prospects. The age of the deceased in C.M.A(MD)No.131 of 2014 is 50 years, C.M.A.(MD)No.132 of 2014 is 45 years and C.M.A (MD)No.190 of 2014 is 40 years. The appellants in the above appeals are entitled to 25% towards future prospects, respectively. As per the post mortem report, the deceased in C.M.A(MD)No.132 of 2014 is 45 years, the Tribunal applied the multiplier of '13'. As per the judgment reported in **2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation**, the correct multiplier is '14'. After fixing the notional income of the deceased at Rs.6,000/- and adding 25% towards future prospects and deducting 1/3rd towards personal expenses, the loss of income would be Rs.6,000 + 1500=7500-1/3rd=5000 x 12 x 14=8,40,000/-. In all other aspects, the award of the Tribunal is confirmed. The break-up details are hereunder:-

Loss of income		
(5,000/- x 12 x 14)	=	8,40,000
Loss of love and affection	=	25,000
Funeral expenses	=	8,000

Total	=	8,73,000

8. With the above modification, the appeal in C.M.A.(MD) No.132 of 2014 is partly allowed and the appellant is entitled to a sum of Rs.8,73,000/- as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1140 of 2011, on the file of the Motor Accidents Claim Tribunal (IV Additional District Court), Madurai, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit being made, the appellant/claimant is entitled to a sum of Rs.8,73,000/- (Rupees Eight Lakhs Seventy Three Thousand only) with proportionate interest and costs by filing necessary application before the Tribunal.

9. In C.M.A(MD)No.131 of 2014, fixing the monthly income of the deceased as Rs.6,000/- and adding 25% future prospects and

deducting $1/3^{\text{rd}}$ towards personal expenses and applying the multiplier '13' the loss of income would be Rs.7,80,000/-. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

Loss of income		
(5,000/- x 12 x 13)	=	7,80,000
Loss of love and affection	=	75,000
Funeral expenses	=	8,000

Total	=	8,63,000

10. In C.M.A(MD)No.190 of 2014, fixing the monthly income of the deceased as Rs.6,000/- and adding 25% future prospects and deducting $1/3^{\text{rd}}$ towards personal expenses and applying the multiplier '15' the loss of income would be Rs.9,00,000/-. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

Loss of income		
(5,000/- x 12 x 15)	=	9,00,000
Loss of love and affection	=	1,25,000
Funeral expenses	=	5,000

Total	=	10,30,000

11. With the above modification, the appeals in **C.M.A. (MD) Nos.131 & 190 of 2014 are partly allowed** and the appellants are entitled to a sum of Rs.8,63,000/- and Rs.10,30,000/- respectively, as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.Nos.1139 of 2011 and M.C.O.P.No.1269 of 2011, on the file of the Motor Accidents Claims Tribunal (IV Additional District Court), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment. In C.M.A(MD)No.131 of 2014 on such deposit being made, the first claimant is entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with respective proportionate interest by filing necessary application before the Tribunal and the claimants 2 & 3 are entitled to a sum of Rs.1,81,500/- each (Rs.3,63,000) with respective proportionate interest by filing necessary application before the Tribunal. In C.M.A(MD)No.190 of 2014 on such deposit being made, the claimants are entitled to a sum of Rs.10,30,000/- (Rupees Ten lakhs Thirty Thousand only). The fourth claimant/husband of the deceased is entitled to a sum of Rs.5,00,000/- with respective proportionate interest by filing necessary application before the Tribunal. Since the fourth respondent before the Tribunal died pending this Civil Miscellaneous Appeal, the respondents 1 to 3 are entitled to a balance amount of Rs.5,30,000/- with respective proportionate interest by filing

necessary application before the Tribunal. The claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

12.The appellants in C.M.A(MD)Nos.133, 134,135 and 136 of 2014 are claimants filed the claim petitions for the injuries sustained by them. The appellants have examined the doctor as P.W.13 and filed documents with regard to the injuries and percentage of disability suffered by them. The doctor has deposed that the appellant in C.M.A(MD)No.133 of 2014 has suffered 39.7% disability and the appellant C.M.A(MD)No.134 of 2014 has suffered 40% disability and the appellant in C.M.A(MD)No.135 of 2014 has suffered 44.4% disability and the appellant in C.M.A(MD)No.136 of 2014 has suffered 52% partial permanent disability. The Tribunal without properly appreciating the evidence of Doctor as well as the documents filed by the claimants reduced the percentage of disability to 10%, 10%, 20% and 20% respectively and awarded a sum of Rs.1,000/- per percentage of disability. Considering the materials on record and the percentage of disability, the appellants are entitled to compensation based on the disability as certified by the doctor and they are entitled to a sum of Rs.3,000/- per percentage of disability. The Tribunal has not awarded any amount towards attendant charges, transportation and extra nourishment and also not awarded any amount for loss of income for during treatment period and after treatment period. The appellants are entitled to a sum of Rs.6,000/- as one month income towards loss of income during treatment period and further a sum of Rs.6,000/- as one month income towards loss of income after treatment period.

13.The appellant in C.M.A(MD)No.133 of 2014 is entitled to a sum of Rs.3,000/- per percentage of disability and Rs.6,000/- towards loss of income during treatment period and Rs.6,000/- towards loss of income after treatment period. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

For disability		
(40% x 3,000)	=	1,20,000
Pain and sufferings	=	10,000
Medial expenses	=	3,000
Remove the stitches	=	2,000
Loss of income during treatment period	=	6,000
Loss of income after treatment period	=	6,000

Total	=	1,47,000

14.With the above modification, **the appeal in C.M.A. (MD) Nos.133 of 2014 is partly allowed** and the appellant is entitled to a sum of Rs.1,47,000/-, as compensation. The second respondent Insurance Company is directed to deposit the modified award amount

along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1271 of 2011, on the file of the Motor Accidents Claim Tribunal (IV Additional District Court), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with proportionate interest and costs by filing necessary application before the Tribunal.

15.The appellant in C.M.A(MD)No.134 of 2014 is entitled to a sum of Rs.3,000/- per percentage of disability and Rs.6,000/- towards loss of income during treatment period and Rs.6,000/- towards loss of income after treatment period. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

For disability		
(40% x 3,000)	=	1,20,000
Medical expenses	=	2,000
Loss of income during treatment period	=	6,000
Loss of income after treatment period	=	6,000

Total	=	1,34,000

16.With the above modification, the appeal in C.M.A.(MD) Nos.134 of 2014 is partly allowed and the appellant is entitled to a sum of Rs.1,34,000/-, as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1272 of 2011, on the file of the Motor Accidents Claim Tribunal (IV Additional District Court), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with proportionate interest and costs by filing necessary application before the Tribunal.

17.The appellant in C.M.A(MD)No.135 of 2014 is entitled to a sum of Rs.3,000/- per percentage of disability and Rs.6,000/- towards loss of income during treatment period and Rs.6,000/- towards loss of income after treatment period. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

For disability		
(45% x 3,000)	=	1,35,000
Pain and sufferings	=	15,000
Medial expenses	=	3,000
Loss of income during treatment period	=	6,000

Loss of income after treatment period	=	6,000

Total	=	1,65,000

18. With the above modification, the appeal in C.M.A.(MD) Nos.135 of 2014 is partly allowed and the appellant is entitled to a sum of Rs.1,65,000/-, as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1274 of 2011, on the file of the Motor Accidents Claim Tribunal (IV Additional District Court), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with proportionate interest and costs by filing necessary application before the Tribunal.

19. The appellant in C.M.A(MD)No.136 of 2014 is entitled to a sum of Rs.3,000/- towards each percentage of disability and Rs.6,000/- towards loss of income during treatment period and Rs.6,000/- towards loss of income after treatment period. Similarly, a sum of Rs.10,000/- (Rupees Ten Thousand Only) was awarded towards pain and sufferings and this Court finds that the same is very meagre and therefore, a sum of **Rs.15,000/-** (Rupees Fifteen Thousand Only) is awarded by this Court. In all other heads, the award of the Tribunal is confirmed. The break-up details are hereunder:-

For disability		
(52% x 3,000)	=	1,56,000
Pain and sufferings	=	15,000
Taking X-ray	=	5,000
Loss of income during treatment period	=	6,000
Loss of income after treatment period	=	6,000

Total	=	1,88,000

20. With the above modification, the appeal in **C.M.A. (MD) Nos.136 of 2014 is partly allowed** and the appellant is entitled to a sum of Rs.1,88,000/-, as compensation. The second respondent Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1277 of 2011, on the file of the Motor Accidents Claim Tribunal (IV Additional District Court), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with proportionate interest and costs by filing necessary application before the Tribunal. There will be no costs in all these Civil Miscellaneous Appeals.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar

To

1. The IV Additional District Judge,
The Motor Accidents Claims Tribunal,
Madurai.

Copy To:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+7cc to Mr.G.Prabhu Rajadurai,Advocate, SR.No.86126 to 86132

+1cc to Mr.K.Bhaskaran,Advocate, SR.No.85689 to 85693

C.M.A(MD)Nos.131 to 136 of 2014
and

C.M.A(MD)No.190 of 2014
20.09.2018

SP/04.03.2019/ 7P/11C