



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)Nos.244 and 245 of 2014

and

CMA (MD) .Nos.922 & 923 of 2018

and

C.M.P(MD)Nos.10099 & 10100 of 2018

C.M.A(MD)No.244 of 2014

1.Sethumathavan
2.Thilagavathi
3.Kokila

... Appellants/Petitioners

Vs.

1. Babu
2. The Oriental Insurance Company Ltd.,
Through its Divisional Manager,
No.6A West Veli Street,
3rd Floor, Pangur Tharmasala Building,
Madurai-625 001.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.744 of 2010, dated 14.09.2012, passed by the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.

For Appellant : Mr.T.Selvakumaran
For R1 : No appearance
For R2 : Mr.S.Veeranasamy

C.M.A(MD)No.245 of 2014

1.Sethumathavan
2.Thilagavathi
3.Kokila

... Appellants/Petitioners

Vs.

1. Babu
2. The Oriental Insurance Company Ltd.,
Through its Divisional Manager,
No.6A West Veli Street,
3rd Floor, Pangur Tharmasala Building,
Madurai-625 001.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.883 of 2010, dated 14.09.2012, passed by the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.



For Appellant : Mr.T.Selvakumaran
For R1 : No appearance
For R2 : Mr.S.Veeranasamy

C.M.A(MD)No.922 of 2018

The Oriental Insurance Co.Ltd.,
Divisional Manager Office, 3rd Floor,
Bangur Dharmasalai Building,
6-A West Veli Street,
Madurai-1.

... Appellant/Respondent No.2

Vs.

1.Sethumadhavan
2.Thilakavathi
3.Gokila

... Respondents 1 to 3/
Petitioners 1 to 3

4.T.R.S.Babu

... Respondent No.4/Respondent No.1

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 14.09.2012 made in M.C.O.P.No.744 of 2010, on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirunelveli.

For Appellant : Mr.S.Veeranasamy
For R1 to R3 : Mr.T.Selvakumaran

C.M.A(MD)No.923 of 2018

The Oriental Insurance Co. Ltd.,
Divisional Manager Office,
3rd Floor Bangur Dharmasalai Building,
6-A, West Veli Street,
Madurai-1.

... Appellant/Respondent No.2

Vs.

1.Sethumadhavan
2.Thilakavathi
3.Gokila
4.T.R.S.Babu

... Respondents 1 to 3/Petitioners 1 to 3
... Respondent No.4/ Respondent No.1

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.883 of 2010, dated 14.09.2012, passed by the Motor Accident Claims Tribunal, (II Additional District Judge), Tirunelveli.

**COMMON JUDGMENT**

All the four appeals arise out of common award passed by the Motor Accident Claims Tribunal, (II Additional District Judge), Tirunelveli, in M.C.O.P.Nos.744 & 883 of 2010, dated 14.09.2012. Two appeals viz., C.M.A(MD)Nos.244 & 245 of 2014 have been filed by the claimants for enhancement of compensation. Two appeals viz., CMA (MD).Nos.922 & 923 of 2018 have been filed by the Insurance Company challenging the award passed by the Tribunal. Both the claim petitions were filed by the legal heirs/children of the deceased, who are the father and mother and hence, all the appeals are disposed of by this common judgment.

2.The parties are referred to as per their rank in the claim petitions.

3.According to the claimants, the bus bearing Registration No.TN-59-A.J.0527 belonging to the first respondent driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the father of the claimants with mother as pillion rider. Due to the same, both the father and the mother of the claimants sustained injuries and died in the accident. The bus belonging to the first respondent was insured with the second respondent at the time of accident and hence, both are liable to pay compensation.

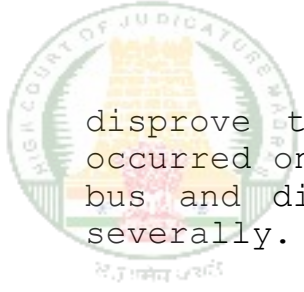
4.The claimants have contended that their father was having Video and Photo shop business and was earning a sum of Rs.15,000/- per month. Their mother was working in Tea Estate and was earning a sum of Rs.6,000/- per month. Hence, they claimed a sum of Rs.10,00,000/- each respectively.

5.The first respondent remained ex-parte before the Tribunal.

6.The second respondent Insurance Company filed counter statement and contended that the accident occurred only due to rash and negligent riding by the father of the claimants 1 to 3, who was the rider of the motorcycle. According to the second respondent/Insurance Company, the deceased father drove the motorcycle in a rash and negligent manner and dashed against the bus even after the driver stopped the bus.

7.Before the Tribunal, the first claimant examined himself as P.W.1 and one Mary was examined as P.W.2 and marked 16 documents as Ex.P1 to Ex.P16. The second respondent did not let in any oral and documentary evidence.

8.The Tribunal after considering the pleadings, oral and documentary evidence, especially, the evidence of P.W.2 eye witness and documents filed by the claimants and on the failure of the second respondent/Insurance Company to let in any evidence to



disprove the case of the claimants, held that the accident had occurred only due to rash and negligent driving by the driver of the bus and directed the respondents to pay compensation jointly and severally.

9. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed C.M.A(MD)No.244 & 245 of 2014 and the Second Respondent Insurance Company has filed C.M.A(MD)Nos.922 & 923 of 2018.

10. The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal failed to see that the accident occurred only due to the negligence on the part of the deceased, as he came on the wrong side and crossed the center line. The Tribunal erred in fastening the entire liability on the driver of the first respondent. The documents produced by the claimants are fabricated one and unauthenticated. The Tribunal erred in relying on the said documents to fix the income of the deceased. The amounts awarded by the Tribunal under different heads are excessive.

11. The learned counsel appearing for the claimants contended that the claimants have examined P.W.2 eye witness to prove the accident occurred only due to the negligence on the part of the driver of the bus belonging to the first respondent. The mother of the claimants worked in Tea Estate and was earning a sum of Rs.6,000/- and their father was running a Video and Photo shop and was earning Rs.15,000/- per month. The notional income fixed by the Tribunal is meagre and the Tribunal has not awarded any amount for future prospects. The Tribunal erred in deducting 1/3rd from the income of both the deceased. The amounts awarded under different heads are meagre and prayed for enhancement of compensation.

12. I have heard the learned counsel appearing on either side and perused the materials available on record.

13. The contention of the learned counsel appearing for the second respondent/Insurance Company that the accident occurred only due to rash and negligent riding by rider of the motorcycle, the father of the claimants and that the Tribunal fixed the notional income based on the fabricated and unauthenticated documents, are without merits. The claimants examined P.W.2 eye witness as well as marked the documents to substantiate their contention that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the first respondent. The first respondent remained ex-parte before the Tribunal. The second respondent Insurance Company has not let in any evidence to disprove the contention of the claimants as well as to substantiate the case of the second respondent that the accident occurred only due to rash and negligent riding by the deceased.



14. From the materials on record, it is seen that the claimants have filed Ex.P10 and Ex.P15 with regard to income of the deceased. The Tribunal did not rely on the said documents to arrive at income of the deceased. Considering the contention with regard to nature of avocation of the deceased and age, fixed the notional income at Rs.4,500/- for mother and Rs.6,000/- for father. The same are reasonable. The Tribunal has not awarded any amount towards future prospects and erred in deducting $1/3^{\text{rd}}$ from the income of both the deceased. Considering the materials on record in its entirety, this Court is of the considered view that this is a fit case to enhance the compensation.

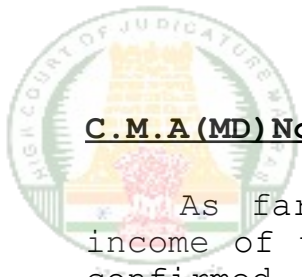
15. As far as C.M.A.(MD)No.245 of 2014 is concerned, the notional income of the father is modified as follows:-

The age of the deceased was fixed by the Tribunal as from 47 to 50 at the time of accident. The claimants are entitled to 25% enhancement for future prospects. After deducting $1/3^{\text{rd}}$, and applying the multiplier '13' the loss of income would be Rs.6,000 + 1,500 (25% of 6,000) x $2/3$ x 12 x 13 = 7,80,000. The amounts awarded under other heads are set aside. The claimants are entitled to a sum of Rs.70,000/- under conventional heads.

16. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

C.M.A(MD)No.245 of 2014

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	6,24,000	7,80,000	enhanced
2.	For funeral expenses	10,000	-	Set aside
3.	For loss of love and affection	50,000	-	Set aside
4.	Conventional heads	-	70,000	awarded
	Total	Rs.6,84,000	Rs.8,50,000	By enhancing a sum of Rs.1,66,000/-

**C.M.A(MD)No.244 of 2014**

As far as C.M.A(MD)No.244 of 2014 is concerned, the notional income of the mother fixed by Tribunal is reasonable and is here by confirmed

WEB COPY

The Tribunal applied the multiplier of '15' instead of '14'. The Tribunal fixed the age of the deceased at 45 at the time of accident. The correct multiplier applicable is '14'. The claimants are entitled to 25% enhancement for future prospects. The Tribunal had already deducted 1/3rd from the income of the father and therefore, no amount can be deducted from the income of the mother. Accordingly, the loss of income would be Rs.9,45,000/- [Rs.4,500 + 1125 (25% of 4,500) x 12 x 14=9,45,000/-]. The amounts awarded under other heads are set aside. The claimants are entitled to a sum of Rs.70,000/- towards conventional heads.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	5,40,000	9,45,000	enhanced
2.	For funeral expenses	10,000	-	Set aside
3.	For loss of love and affection	50,000	-	Set aside
4.	Conventional heads	-	70,000	awarded
	Total	Rs.6,00,000	Rs.10,15,000	By enhancing a sum of Rs.4,15,000/-

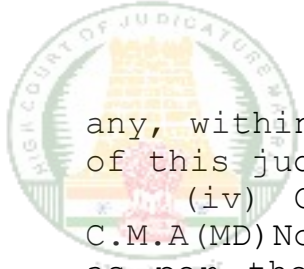
17. In the result,

(i) C.M.A(MD)Nos.922 & 923 of 2018 are dismissed and C.M.A(MD) Nos.244 & 245 of 2014 are partly allowed. The rate of interest awarded by the Tribunal at 8% per annum is modified to 7.5% per annum.

(ii) The second respondent Insurance Company is directed to deposit the enhanced award amount, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.Nos.883 & 744 of 2010, on the file of the Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli, within a period of **eight weeks** from the date of receipt of copy of this judgment;

<https://hcservices.courts.gov.in/hcservices>

(iii) The appellants in C.M.A(MD)Nos.244 & 245 of 2014/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;

(iv) On such deposit being made, the claimants/appellants in C.M.A(MD)Nos.244 & 245 of 2014 are entitled to withdraw their shares as per the ratio of apportionment made by the Tribunal, less the amount already withdrawn, if any, with interest and costs by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(II Additional District Court),
Tirunelveli.
2. The Record Keeper,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+2.CC. To Mr.T.Selvakumaran, Advocate in SR No.94189&94190

C.M.A(MD)Nos.244 & 245 of 2014
and
CMA (MD) .Nos.922 & 923 of 2018
01.11.2018

am

MK (03.05.2019) 7P 6C