

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1518 of 2008 &
M.P.No.1 of 2008 &
Cros.Obj.No.39 of 2019

CMA.No.1518 of 2008

M/s.The United India Insurance Co. Limited,
No.38, Anna Salai,
Chennai - 600 002.Appellant /2nd Respondent

vs.

1.G.Vanaja
2.G.Swetha (Minor)
3.G.Sujesh (Minor)

(R2 and R3 rep. by mother &
next friend G.Vanaja)

4.M.Kuppammal
5.N.Munusamy (died)
(fifth Respondent/Respondent/5th Appellant in Cross objection
No.39/09 in CMA No.1518/08 died as per memo dated 26.09.2019)
6.D.Velu Respondents /Claimants 1 to
5 and 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the decree and Judgment
dated 16.11.2007 passed in MCOP.No.3072 of 2003, on the file of
the Motor Accident Claims Tribunal, IV Judge, Court of Small
Causes, Chennai.

For Appellant : Mrs.N.Mala

For Respondents: Mr.V.Mohan Choudry for R1 to R5

R6- Exparte

Cros.Obj.No.39 of 2019

1.G.Vanaja
2.G.Swetha (Minor)

3.G.Sujesh (Minor)
(R2 and R3 rep. by mother &
next friend G.Vanaja)

4.M.Kuppammal

5.N.Munusamy (died) ... Cross Objectors
(5th Cross Objector died as per Memo dated 26/09/2019 in CMA
No.1518/08 and Cross Obs.39/19)

vs.

1.M/s.The United India Insurance Co. Limited,
No.38, Anna Salai,
Chennai - 600 002.

2.D.Velu

...Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of the
Code of Civil Procedure, against the decree and Judgment dated
16.11.2007 passed in MCOP.No.3072 of 2003, on the file of the
Motor Accident Claims Tribunal, IV Judge, Court of Small Causes,
Chennai.

For Cross objectors : Mr.V.Mohan Choudry

For Respondents : Mrs.N.Mala for R1

R2-Exparte

J U D G M E N T

The United India Insurance Company Limited, the second
respondent in MCOP.No.3072 of 2003 on the file of the Motor
Accident Claims Tribunal / IV Judge, Court of Small Causes,
Chennai has filed the present appeal questioning the quantum of
compensation awarded by the Tribunal. The claimants in the said
MCOP filed the Cross Objection. No.39 of 2019 seeking for
enhancement of compensation awarded by the Tribunal for the
death of one M.Gopalakrishnan in a road accident that took place
on 30.05.2003.

2. The parties are referred to as per their ranking before
the Tribunal and at appropriate places their ranks in the
present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimants is that on 30.05.2003, the
deceased M.Gopalakrishnan was riding his motorcycle bearing
Registration No. TN 09 L 9367 along Aranganathan subway. At
about 23.30 hours, a speeding lorry bearing Registration No. TDE

2424 belonging to one D.Velu (first respondent in MCOP.No.3072 of 2003) hit the motorcycle, as a result of which, the deceased fell down and died on the spot. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. TDE 2424 was the cause of the accident and that since the said lorry was insured with the United India Insurance Company Limited, both the owner as well as the insurer are jointly and severally liable to pay compensation to them.

4. The owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.10,11,000/- together with interest at the rate of 7.5% per annum to the claimants. As already observed, the United India Insurance Company Limited filed the present appeal questioning the quantum of compensation, while, the claimants filed cross objection seeking for enhancement of compensation.

5. Mrs.N.Mala, learned counsel appearing for the appellant / United India Insurance Company Limited contended that the Tribunal fixed the notional monthly income of the deceased as Rs.6,000/- without any evidence and therefore, the award passed by the Tribunal should be scaled down.

6. Per contra, Mr.V.Mohan Choudry, learned counsel appearing for the claimants / cross objectors contended that the Tribunal did not award any amount towards future prospects of the deceased. He also contended that when there are five claimants depending on the income of the deceased, the Tribunal has deducted only 1/3rd of the deceased's income towards his personal expenses. Therefore, he prayed for enhancement of compensation.

7. A perusal of the records shows that in the claim petition, the claimants had contended that the deceased was owning a lorry bearing Registration No. TMH 3249 and was earning a sum of Rs.20,000/- per month. Since no proof showing the income of the deceased was filed, the Tribunal has fixed the notional monthly income of the deceased as Rs.6,000/-. It is relevant to point out that the accident took place in the year 2003. In the facts and circumstances of the present case, I hold that the notional monthly income fixed by the Tribunal at Rs.6,000/- is perfectly in order. Since there are five dependents, 1/4th of the income of the deceased is deducted towards his personal expenses which would come to Rs.4,500/-. As per the decision laid down in National Insurance Co. vs

Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards future prospects of the deceased and thus a sum of Rs.6,300/- is taken up for calculating loss of dependency. Since the age of the deceased was 32 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of dependency

= Rs.6,300/- x 12 x 16

= Rs.12,09,600/-

8. Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.12,09,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.12,79,600/-

Thus the quantum of compensation awarded by the Tribunal is enhanced from Rs.10,11,000/- to Rs.12,79,600/- which would carry interest at the rate of 7.5% per annum.

9. A memo is filed by the learned counsel appearing for the appellant stating that the fifth respondent / fifth claimant namely, Mr.N.Munusamy died pending the present appeal. Memo is recorded. The award amount is apportioned as detailed hereunder:

(i) The first claimant is entitled to a sum of Rs.5,00,000/- together with interests and costs.

(ii) The second claimant is entitled to a sum of Rs.3,00,000/-. Since in the claim petition, her age is mentioned as 3 years on the date of the accident, she would have become major by now and therefore she is entitled to withdraw her share of compensation after following due process of law.

(iii) The third claimant is entitled to a sum of Rs.3,00,000/-. Since in the claim petition, his age is mentioned as 1 year on the date of the accident, his share of

compensation amount is ordered to be deposited in any one of the nationalized bank in India until he attains majority.

(iv) The fourth respondent / fourth claimant is entitled to a sum of Rs.1,79,600/-.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. The Cross Objection is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.10,11,000/- to Rs.12,79,600/-.

(iii) The respondents 1 to 4 / claimants 1 to 4 are directed to pay the Court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant / United India Insurance Company Limited is directed to deposit the enhanced compensation awarded by this court i.e., Rs.12,79,600/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.3072 of 2003 on the file of the Motor Accidents Claims Tribunal / IV Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents 1, 2 and 4 / claimants 1, 2 and 4 are at liberty to withdraw the same as apportioned above after following due process of law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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

Copy to
The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.V.Mohan Choudary, Advocate Sr.82708

CMA.No.1518 of 2008 &
M.P.No.1 of 2008 &
Cros.Obj.No.39 of 2019

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srg 08/06/2020