



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2467 & 2468 of 2018 and
C.M.A.Nos.1236 & 1238 of 2019 and
C.M.P.Nos.3424 & 3426 of 2019

C.M.A.No.2467 of 2018:

1.R.Kasturi

2.R.Vengatesh

3.R.Amirtha Ganesh

.. Appellants/Claimant
Vs.

1.A.Ramalingam

2.The New India Assurance Co. Ltd.,

No.1, Bharathi Road, Arcot Woodlands
Buildings, Cuddalore.

(R1 and R2 given up since no award passed against them)

3.R.Kandhan

4.The Royal Sundaram Alliance Insurance Company Ltd.,

No.127, II Floor, Natesan Towers, Natesan Nagar,
Ellaipillaichavady, Pondicherry - 605 005.

Now at

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, No.45 & 46, Whites Road,
Chennai - 600 014.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.02.2016 made in M.C.O.P.No.3628 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellants :	Ms.Ramya V.Rao
For R2 :	Mr.S.Manohar
For R4 :	Mr.M.Krishnamoorthy
R1 :	given up
R3 :	No appearance

C.M.A.No.2468 of 2018:

V.C.Natarajan

.. Appellant/Claimant
Vs.



- 1.A.Ramalingam
2.The New India Assurance Co. Ltd.,
No.1, Bharathi Road, Arcot Woodlands
Buildings, Cuddalore.
(R1 and R2 given up since no award passed against them)
3.R.Kandhan
4.The Royal Sundaram Alliance Insurance Company Ltd.,
No.127, II Floor, Natesan Towers, Natesan Nagar,
Ellaipillaichavady, Pondicherry - 605 005.
Now at Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, No.45 & 46, Whites Road,
Chennai - 600 014. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.02.2016 made in M.C.O.P.No.3629 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant	:	Ms.Ramya V.Rao
For R2	:	Mr.S.Manohar
For R4	:	Mr.M.Krishnamoorthy
R1	:	given up
R3	:	No appearance

C.M.A.No.1236 of 2019:

The Royal Sundaram Alliance Insurance Company Ltd.,
No.127, II Floor, Natesan Towers, Natesan Nagar,
Ellaipillaichavady,
Pondicherry - 605 005. .. Appellant/4th Respondent

Vs.

- 1.R.Kasthuri
2.R.Vengatesh
3.R.Amirtha Ganesh ..Respondents 1 to3/claimants
4.A.Ramalingam ..Respondent 4/Respondent 1
5.The New India Assurance Co. Ltd.,
No.1, Bharathi Road, Arcot Woodlands
Building, Cuddalore. ..Respondent 5/Respondent 2
6.R.Kandhan ..Respondent 6/Respondent 3
(R4 and R6 remained exparte before Tribunal,

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.02.2016 made in M.C.O.P.No.3628 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District



Court, Cuddalore.

WEB COPY

For Appellant : Mr.M.Krishnamoorthy
For R1 to R3 : Ms.Ramya V.Rao
For R5 : Mr.S.Manohar

C.M.A.No.1238 of 2019:

The Royal Sundaram Alliance Insurance Company Ltd.,
No.127, II Floor, Natesan Towers, Natesan Nagar,
Ellaipillaichavady,
Pondicherry - 605 005. .. Appellant/4th respondent

Vs.

1.V.C.Natarajan ..Respondent 1/Petitioner
2.A.Ramalingam ..Respondent 2/Respondent 1
3.The New India Assurance Co. Ltd.,
No.1, Bharathi Road, Arcot Woodlands
Building, Cuddalore. ..Respondent 3/Respondent 2
4.R.Kandhan .. Respondent 4/Respondent 3
(R2 and R4 remained exparte before Tribunal,
hence notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.02.2016 made in M.C.O.P.No.3629 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

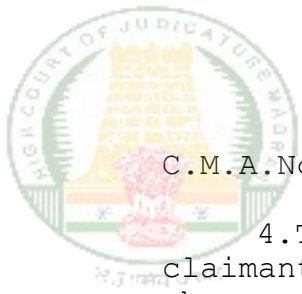
For Appellant : Mr.M.Krishnamoorthy
For R1 : Ms.Ramya V.Rao
For R3 : Mr.S.Manohar

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 09.02.2016 made in M.C.O.P.Nos.3628 and 3629 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2.All the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment. Since all the appeals are arising out of the common award, the parties are referred to as per their rank in the claim petition.

3.The fourth respondent-Insurance Company filed two appeals in C.M.A.Nos.1236 and 1238 of 2019 challenging the compensation awarded. Not being satisfied with the award amount granted by the Tribunal, the claimants have filed two appeals in



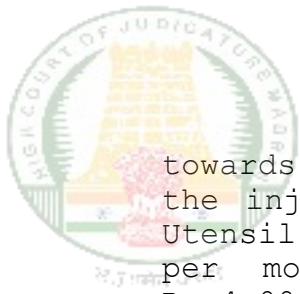
C.M.A.Nos.2467 and 2468 of 2018 for enhancement of compensation.

4.The appellants in C.M.A.Nos.2467 and 2468 of 2018 are the claimants in M.C.O.P.Nos.3628 and 3629 of 2013. They filed the above said claim petitions claiming a sum of Rs.25,00,000/- and Rs.10,00,000/- respectively as compensation for the death of one G.Ramalingam and compensation for the injuries sustained by the claimant in M.C.O.P.No.3629 of 2013.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent driving by the driver-cum-owner of the Tata Ace, the third respondent and directed the fourth respondent-Insurance Company to pay a sum of Rs.7,60,000/- and Rs.6,55,000/- respectively as compensation to the claimants in M.C.O.P.Nos.3628 and 3629 of 2013 and dismissed the claim petitions against the respondents 1 and 2.

6.The learned counsel appearing for the fourth respondent-Insurance Company contended that accident has occurred only due to rash and negligent driving by the driver of the car. The Tribunal on erroneous grounds, did not accept the evidence of R.W.1, the driver-cum-owner of the Tata Ace. The Tribunal atleast ought to have fixed contributory negligence on the part of the driver of the car, as he failed to maintain sufficient distance between two vehicles. In any event, the amounts awarded by the Tribunal is excessive. The deceased in C.M.A.No.2467 of 2018 was aged 56 years and the Tribunal erroneously fixed monthly income of the deceased at Rs.9,000/- per month and awarded excessive amounts. The injured in C.M.A.No.2468 of 2018 has suffered only simple injuries and the Tribunal erroneously applied multiplier method and prayed for setting aside the common award passed by the Tribunal.

7.The learned counsel appearing for the claimants contended that the accident has occurred only due to the negligence of driver of the Tata Ace, who suddenly stopped the vehicle without any indication. The claimants have examined P.W.2, injured eye-witness and proved that accident has occurred only due to negligence on the part of the driver of the Tata Ace. F.I.R. was lodged only against the driver of the Tata Ace. The Tribunal properly appreciated the materials on record and rejected the evidence of R.W.1 and fixed negligence on the part of the driver of the Tata Ace. The deceased was working as a driver and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed meager sum of Rs.9,000/- as the monthly income of the deceased. The deceased was aged 56 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amount awarded by the Tribunal towards loss of consortium is meager and the Tribunal has not granted any amount



towards loss of estate. The appellant in C.M.A.No.2648 of 2018, the injured claimant was working as Manager in Meenatchi Vilas Utensil Shop, Kumbakonam and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed meager sum of Rs.4,000/- as monthly income and awarded meager amount as compensation and prayed for dismissal of appeals filed by the Insurance Company and for enhancement of compensation.

8.I have heard the learned counsel appearing for the fourth respondent-Insurance Company as well as the claimants and perused all the materials on record.

9.From the materials available on record, it is seen that P.W.2, who is the injured eye-witness traveled in the car has deposed that accident has occurred only when R.W.1, the driver of the Tata Ace suddenly stopped the vehicle without any indication. F.I.R. was also lodged against R.W.1. The fourth respondent had examined R.W.1, driver of the Tata Ace, who deposed that driver of the car drove the same in a rash and negligent manner and dashed against the backside of the Tata Ace and caused the accident. The Tribunal taking note of the fact that F.I.R. was registered only against R.W.1 and R.W.1 did not give any complaint against the driver of the car, accepted the evidence of P.W.1 and P.W.2 and F.I.R. registered against the driver of the Tata Ace, rejected the evidence of R.W.1 and held that accident has occurred only due to rash and negligent driving by driver-cum-owner of the Tata Ace. I do not find any error in the above finding of the Tribunal warranting interference by this Court.

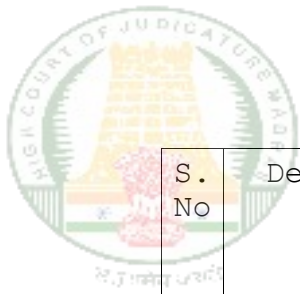
10.As far as quantum of compensation is concerned, in M.C.O.P.No.3628 of 2013 is concerned, the claimants contended that the deceased was working as heavy vehicle driver and was earning a sum of Rs.20,000/- per month. They have not substantiated their contention. In the absence of any evidence to prove the income of the deceased, the Tribunal fixed monthly income of the deceased at Rs.9,000/- per month and the same is correct. The deceased was aged 56 years at the time of accident as per Ex.P7/copy of driving license. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,12,800/- [Rs.9,000/- + Rs.900/- (10% of Rs.9,000/-) X 12 X 9 X 2/3]. The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium, which is meager and the same is enhanced to Rs.40,000/-. The Tribunal has not granted any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection, transportation and funeral expenses are confirmed.



Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,48,000/-	7,12,800/-	enhanced
2.	Loss of consortium	25,000/-	40,000/-	enhanced
3.	Loss of love and affection	60,000/-	60,000/-	confirmed
4.	Transportation and funeral expenses	25,000/-	25,000/-	confirmed
5.	Loss of estate	-	15,000/-	granted
	Total	Rs.7,58,000/- rounded off to Rs.7,60,000/-	Rs.8,52,800/- rounded off to Rs.8,53,000/-	enhanced by Rs.93,000/-

11.As far as C.M.A.No.2468 of 2018 is concerned, the claimant contended that he suffered 70% disability and examined P.W.3/Doctor to prove the disability and nature of injuries. P.W.3/Doctor deposed that the movement of claimant's right side wrist is restricted. Considering the nature of injuries and evidence of P.W.3/Doctor, the Tribunal has adopted multiplier method. The claimant contended that he was aged 50 years at the time of accident and was working as Manager in Meenatchi Vilas Utensil Shop, Kumbakonam and was earning a sum of Rs.10,000/- per month. The accident occurred in the year 2013 and a sum of Rs.4,000/- fixed as monthly income of the claimant is meager. Therefore, a sum of Rs.6,000/- is fixed by this Court as monthly income of the claimant. Thus, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.6,55,200/- [Rs.6,000/- X 12 X 13 X 70/100]. The Tribunal has not granted any amount towards loss of amenities. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of amenities. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	4,36,800/-	6,55,200/-	enhanced
2.	Pain and sufferings	25,000/-	25,000/-	confirmed
3.	Transportation and extra nourishment	25,000/-	25,000/-	confirmed
4.	Medical bills	1,67,350/-	1,67,350/-	confirmed
5.	Loss of amenities	-	15,000/-	granted
	Total	Rs.6,54,150/- rounded off to Rs.6,55,000/-	Rs.8,87,550/- rounded off to Rs.8,88,000/-	enhanced by Rs.2,33,000/-

12.The compensation awarded by the Tribunal at Rs.7,60,000/- (in M.C.O.P.No.3628 of 2013) and Rs.6,55,000/- (in M.C.O.P.No.3629 of 2013) are hereby enhanced to Rs.8,53,000/- and Rs.8,88,000/- respectively, together with interest at the rate of 7.5% per annum for the enhanced award amount, now determined by this Court. The fourth respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.Nos.3628 and 3629 of 2013 respectively. On such deposit, the appellants in C.M.A.No.2467 of 2018 are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal and the appellant in C.M.A.No.2468 of 2018 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn, by making necessary applications before Tribunal.

13.In the result, the C.M.A.Nos.2467 and 2468 of 2018, filed by the claimants are Partly Allowed and the C.M.A.Nos.1236 and 1238 of 2019, filed by the fourth respondent-Insurance Company are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar



To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

copy to

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

+2 ccs to Mr.M.Krishnamoorthy Advocate sr28156
and 28157

+4 ccs to Mr.A.N.Visuwanatha Rao Advocate sr27881,27880

C.M.A.Nos.2467 & 2468 of 2018 and
C.M.A.Nos.1236 & 1238 of 2019 and
C.M.P.Nos.3424 & 3426 of 2019

vba (co)
aa22/10/2019