



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.3059 to 3062 of 2006

(Through Video Conferencing)

1.Minor K.Nandan

2.Minor K.Naresh

(both are represented by next friend/
Grandfather A.P.Thangavelu)

3.N.Sivagami

... Appellants/Claimants
in C.M.A.Nos.3059 & 3060/2006

Minor K.Naresh

(represented by next friend/
Grandfather A.P.Thangavelu)

... Appellant/Claimant
in C.M.A.No.3061 of 2006

A.P.Thangavelu

... Appellant/Claimant
in C.M.A.No.3062 of 2006

Vs.

1.M/s.Aryes Garph O Pack,
Rep. by its Managing Partner,
No.A-349, 9th Main Road,
Second Stage, Peenya Industrial Area,
Bangalore - 562 058.

2.The Oriental Insurance Company Ltd.,
Branch Office, Ethiraj Mutt Building,
First Floor, 199, Sampige Road,
Near Second Cross Malleswaram,
Bangalore.

... Respondents/Respondents in all C.M.As.



WEB C

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common award and separate decreetal order in M.C.O.P.Nos.1421 to 1424 of 2002 dated 23.02.2005 on the file of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.2), Salem.

For Appellants : M/s.Ramya V Rao
in all C.M.As.

For 2nd Respondent : Mr.S.Arunkumar
in all C.M.As.

R1 : Exparte in all C.M.As.

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

By this common Judgment, all the four Civil Miscellaneous Appeals are being disposed of as which arise out of the same accident on 21.07.2002 involved the death of the couples N.Kasilingam and K.Arulmozhi and the injury of their minor son K.Naresh and the damages to the Omni Van of A.P.Thangavelu.

2. These Civil Miscellaneous Petitions have been filed by the minor children of the deceased parents N.Kasilingam and K.Arulmozhi, the mother of the deceased N.Kasilingam and the father of the Arulmozhi who was the owner of the Omni Van against the common Judgment and separate Decrees passed by the Motor Accidents Claims Tribunal, Salem (Additional District Judge cum Fast Track Court No.2, Salem) in M.A.C.T.O.P.Nos.1421, 1422, 1423 & 1424 of 2002. In these appeals, they seek for enhancement of compensation.

3. By the impugned common Judgment, the Tribunal has awarded the following compensation to the appellants:-

C.M.A.Nos.	Name of the Appellant(s)	M.A.C.T.O.P.Nos.	Award Amount
3059/2006	1.Minor K.Nandan 2.Minor K.Naresh 3.N.Sivagami	1421/2002	Rs.5,37,500/-
3060/2006	1.Minor K.Nandan 2.Minor K.Naresh 3.N.Sivagami	1422/2002	Rs.4,95,330/-
3061/2006	Minor K.Naresh	1423/2002	Rs. 57,800/-
3062/2006	A.P.Thangavelu	1424/2002	Rs. 64,725/-



WEB COPY

4. The brief facts of the cases are that on 21.07.2002 at about 3.45 p.m, while the deceased N.Kasilingam and K.Arulmozhi along with their children (1st and 2nd appellants in C.M.A.Nos.3059 & 3060 of 2006) and other relatives were travelling in Maruthi Omni bearing registration number TN-09-B-3944 belonging to the appellant in C.M.A.No.3062 of 2006 from Samaypuram Temple to Salem on Munsiri to Thottiam main Road, a Tata 407 Tempo bearing registration number KA-02-A-3922 belonging to the 1st respondent insured with the 2nd respondent in the respective appeals driven by its driver in a rash and negligent manner dashed against the Omni Van, as a result of which, the N.Kasilingam died on the spot who was the driver of the Omni Van while his wife K.Arulmozhi succumbed to the injuries and later died in the hospital.

5. Therefore, the appellants filed the above claim petitions for compensation before the Tribunal. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.5,37,500/-, 4,95,330/-, 57,800/- & 64,725/- respectively in the respective claim petitions. Aggrieved by the quantum of compensation awarded by the Tribunal, they have filed these Civil Miscellaneous Appeals.

6. In C.M.A.Nos.3059 & 3060 of 2006, the appellants have prayed for enhancement of compensation on the ground that the Tribunal has considered the meager income of the deceased persons for computing the compensation and that the Tribunal has also not added future prospects which is now contrary to the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680. In C.M.A.Nos.3061 & 3062 of 2006, the respective appellants have prayed for enhancement of compensation on the ground that the Tribunal has awarded lesser amount of compensation for the injuries suffered by the appellant in C.M.A.No.3061 of 2006 and for the damages to the accident Omni Van of the appellant in C.M.A.No.3062 of 2006.

7. Defending the impugned common Judgment, the learned counsel for the 2nd respondent Insurance Company submits that the Tribunal has passed well reasoned common Judgment and separate Decrees and they require no interference in these appeals. He therefore prays for dismissal of these appeals.



WEB COPY

8. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent Insurance Company. I have perused the evidence on record and the impugned common Judgment and separate Decrees passed by the Tribunal.

9. Before taking up the C.M.A.Nos.3059 & 3060 of 2006 against the Judgment and Decree passed in M.A.C.T.O.P.Nos.1421 & 1422 of 2002, I am inclined to dispose the other two appeals, namely C.M.A.Nos.3061 & 3062 of 2006 which have been filed against the impugned Judgment and Decrees passed in M.A.C.T.O.P.Nos.1423 & 1424 of 2002.

10. The compensation of Rs.64,725/- awarded by the Tribunal towards loss of property to the appellant in C.M.A.No.3062 of 2006 appears to be reasonable under the scheme of enactments. Therefore, the amount awarded by the Tribunal in M.A.C.T.O.P.No.1424 of 2002 stands confirmed. Accordingly, the C.M.A.No.3062 of 2006 is liable to be dismissed.

11. Similarly, the quantum of compensation of Rs.57,800/- awarded to the minor K.Naresh in M.A.C.T.O.P.No.1423 of 2002 for the injuries suffered by him which has been impugned in C.M.A.No.3061 of 2006 not only appears to be reasonable but also appears to be a just compensation under the provisions of the Motor Vehicles Act, 1988. The nature of injuries suffered by the appellant in C.M.A.No.3061 of 2006 is as follows:-

- i. Right eye puncture.
- ii. Lacerated wound on left side head.
- iii. Cut injuries in left auricle
- iv. Other injuries all over the body.

12. Since the amount of compensation of Rs.57,800/- awarded by the Tribunal for the injuries suffered by the appellant in C.M.A.No.3061 of 2006 appears to be reasonable, the amount awarded in M.A.C.T.O.P.No.1423 of 2002 stands confirmed. Accordingly, C.M.A.No.3061 of 2006 is liable to be dismissed.

13. As far as two other appeals, namely, C.M.A.Nos.3059 & 3060 of 2006 involved the death of the parents of the two minor children are concerned, I am of the view that the Tribunal has erred in awarding the lesser compensation by considering a notional income of the deceased N.Kasilingam as Rs.5,000/- per month. Similarly, the annual notional income of the deceased



WEB CPM

K.Arulmozhi considered by the Tribunal also appears to be very low. Considering the fact that the accident is of the year 2002, in my view, the notional income of the deceased N.Kasilingam can be enhanced to Rs.6,500/- per month from Rs.5,000/-. Similarly, the annual notional income of the deceased K.Arulmozhi can be enhanced to Rs.36,000/- (3,000 x 12) for the purpose of re-computing the compensation under Section 166 of the Motor Vehicles Act, 1988. It is made clear that there is no error in the age of the deceased persons considered by the Tribunal and therefore, same is confirmed for re-computation of the compensation.

14. Accordingly, the compensation of Rs.5,37,500/- awarded by the Tribunal in M.C.O.P.No.1421 of 2002 is re-quantified as follows:-

Heads and Calculation	Amount
Loss of Income to the appellants due to the death of N.Kasilingam:- Monthly Income : Rs.6,500.00 Add: Future Prospects at 25% (6,500 x 25/100) : Rs.1,625.00 ----- : Rs.8,125.00 Less : Personal Expenses at 1/3 rd (8125 x 1/3) : Rs.2,708.50 ----- Monthly contribution to the Family : Rs.5,416.50 Annual Contribution to the Family (5,416.50 x 12) : Rs.64,998/- Multiplier 14 (64,998 x 14) - Rs.9,09,972/-	Rs.9,09,972/-
Loss of parental consortium to the 1 st and 2 nd appellants(40,000 x 2)	Rs.80,000/-
Loss of love and affection to the 3 rd appellant	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Transportation	Rs. 2,500/-
Funeral Expenses	Rs. 7,500/-
Total	Rs.10,54,972/- rounded off to Rs.10,55,000/-



15. Similarly, the compensation of Rs.4,95,330/- awarded by the Tribunal in M.C.O.P.No.1422 of 2002 is re-quantified as follows:-

Heads and Calculation	Amount
Loss of Income to the appellants due to the death of K.Arulmozhi :-	
Monthly Income : Rs.3,000/-	
Add: Future Prospects at 40% (3,000 x 40/100) : Rs.1,200/-	

: Rs.4,200/-	
Less : Personal Expenses at 1/3 rd (4,200 x 1/3) : Rs.1,400/-	

Monthly contribution to the Family : Rs.2,800/-	
Annual Contribution to the Family (2,800 x 12) : Rs.33,600/-	
Multiplier 15 (33,600 x 15) - Rs.5,04,000/-	Rs.5,04,000/-
Loss of parental consortium to the 1 st and 2 nd appellants (40,000 x 2)	Rs. 80,000/-
Loss of love and affection to the 3 rd appellant	Rs. 20,000/-
Loss of Estate	Rs. 15,000/-
Transportation	Rs. 2,500/-
Medical Expenses	Rs.3,12,830/-
Funeral Expenses	Rs. 7,500/-
Total	Rs.9,41,830/- rounded off to Rs.9,42,000/-

16. Thus, the compensation of Rs.5,37,500/- awarded by the Tribunal in M.C.O.P.No.1421 of 2002 is enhanced to Rs.10,55,000/- and the compensation of Rs.4,95,330/- awarded by the Tribunal in M.C.O.P.No.1422 of 2002 is enhanced to Rs.9,42,000/- .



17. These appeals are of the year 2002. Considering the delay in disposal of these appeals, the interest is awarded at 6% per annum on the enhanced amount of compensation.

WEB COPY

18. Though the Tribunal had directed the respondents to deposit the compensation jointly, to meet the ends of justice, the 2nd respondent Insurance Company is directed to pay the compensation to the appellants as the 2nd respondent Insurance Company had contracted a contract of insurance which is a contract of indemnity to indemnify the 1st respondent owner of the vehicle against any liability that may be fastened against him as the owner of the insured vehicle under the Motor Vehicles Act, 1988.

19. Therefore, the 2nd respondent insurance Company is directed to deposit the compensations of Rs.5,37,500/-, 4,95,330/-, 57,800/- & 64,725/- respectively together with interest at 9% per annum from the date of claim petition till the date of deposit as was awarded by the Tribunal in the claim petitions, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

20. The 2nd respondent Insurance Company is further directed to deposit a sum of Rs.5,17,500/- (10,55,000 - 5,37,500) and Rs.4,46,670/- (9,42,000 - 4,95,330) together with interest at 6% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment.

21. On such deposit, the appellants in C.M.A.Nos.3059 & 3060 of 2006 are entitled to withdraw the compensation in the same proportion awarded by the Tribunal.

22. The 1st and 2nd appellants (the 2nd appellant is also the appellant in C.M.A.No.3061 of 2006) in C.M.A.Nos.3059 & 3060 of 2006 were aged about 3 years at the time of filing of the claim petition in the year 2002. Since they would have attained the age of majority, they are directed to file suitable application before the Tribunal for recording their age of majority to withdraw their amount. The Tribunal may thereafter permit the 1st and 2nd appellants (the 2nd appellant is also the appellant in C.M.A.No.3061 of 2006) in C.M.A.Nos.3059 & 3060 of 2006 to withdraw their respective shares.



23. The 2nd appellant in C.M.A.Nos.3059 & 3060 of 2006 and the appellant in C.M.A.No.3062 of 2006 are permitted to withdraw their respective shares in the same proportion awarded by the Tribunal together with interest and costs awarded by the Tribunal, less any amount already withdrawn by them, by filing appropriate applications before the Tribunal.

24. In the result,
i. C.M.A.Nos.3059 & 3060 of 2006 are partly allowed.
ii. C.M.A.Nos.3061 & 3062 of 2006 are dismissed.
iii. No costs.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

jen

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To
The Motor Accident Claims Tribunal,
Additional District Judge
cum Fast Track Court No.2,
Salem.

+8CCs to Mr.T.S.Ramarathnam, Advocate, SR.No.42424, 42425,
42426, 42427

+1CC to M/s.S.Arunkumar, Advocate, SR.No.42731

C.M.A.Nos.3059 to 3062 of 2006

BS(CO)
B.VC (09/09/2021)