

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2102 to 2107 of 2013 and 3488 and 3624 to 3629 of 2012
and

M.P.No.1 of 2012 in C.M.A.Nos.3624 to 3629 of 2012

K.P.Abraham

S/o Abraham ... Appellant/Petitioner in C.M.A.No.2102 of 2013

C.O.Abraham

S/o C.A.Pappay ... Appellant/Petitioner in C.M.A.No.2103 of 2013

1. Ajmol Abraham
W/o Deepu Kurian

2. Deepu Kurian,
S/o Kurian ... Appellants in C.M.A.2104 of 2013

1. Sumi P.Thomas
W/o Late Anish Abraham

2. Alka Anish (minor)
S/o Late Anish Abraham
(minor rep. by her mother and
natural guardian Sumi P.Thomas)

3. Mollykutty Abraham
W/o K.P.Abraham

4. K.P.Abraham
S/o Abraham ..Appellants/Petitioners in C.M.A.No.2105 of 2013

Mrs.Molly Kutty Abraham

W/o K.P.Abraham ...Appellant/Petitioner in C.M.A.No.2106 of 2013

Mrs.Usha Abraham

W/o C.O.Abraham ...Appellant/Petitioner in C.M.A.No.2107 of 2013

M/s.New India Assurance Co. Ltd.,
No.514/515, Gandhi Road, Kancheepuram.

.. Appellant/2nd Respondent in C.M.A.Nos.3488
and 3624 to 3629 of 2012

Vs.

1. T.Teekaram

2. The New India Assurance Co. Ltd.,

No.514/515, Gandhi Road,
Kancheepuram

(now operating from

Motor Third Party Claims Office,

No.45, Moore Street, Chennai-1)

(First respondent ex-parte in Tribunal)

.. Respondents in C.M.A.No.2102 to 2107 of 2013

1. Sumi P.Thomas,

W/o Late Anish Abraham

2. Alka Anish (minor) D/o Late Anish Abraham

(second respondent minor

rep. by mother and next friend 1st respondent)

3. Mollykutty Abraham, W/o K.P.Abraham

4. K.P.Abraham, S/o Abraham

5. T.Teekaram

.. Respondents/Petitioners 1 to 4 &

5th Respondent in C.M.A.No.3488 of 2012

1. K.P.Abraham, S/o Abraham

2. T.Teekaram

.. Respondents/Petitioner/1st Respondent

in C.M.A.No.3624 of 2012

1. C.O.Abraham, S/o C.A.Pappay

2.T.Teekaram

.. Respondents/Petitioners/

1st Respondent in C.M.A.No.3625 of 2012

1. Ajimol Abraham, W/o Deepu Kurian

2. Deepu Kurian, S/o Kurian

3. T.Teekaram

.. Respondents/Petitioners/1st Respondent

in C.M.A.No.3626 of 2012

1. Babu Mathew, S/o Late C.W.Mathew

2. Rajan Mathew, S/o Late C.W.Mathew

3. Usha Abraham, W/o C.O.Abraham

4. Rama Eugene, W/o Eugene Paul

5. Vijay Mathew, S/o Late C.K.Mathew

6. Subha Henry, W/o Henry

7. Nirupa Paulson, W/o Paulson

8.T.Teekaram .. Respondents/Petitioners 1 to 7 &
1st Respondent in C.M.A.No.3627 of 2012

1. Mrs.Mollykutty Abraham, W/o K.P.Abraham

2.T.Teekaram .. Respondents/Petitioner &
1st Respondent in C.M.A.No.3628 of 2012

1. Mrs.Usha Abraham, W/o C.O.Abraham

2.T.Teekaram .. Respondents/Petitioner &
1st Respondent in C.M.A.No.3629 of 2012

Civil Miscellaneous Appeal No.2102 of 2013 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3195 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.2103 of 2013 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3196 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.2104 of 2013, filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3197 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.2105 of 2013 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3199 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.2106 of 2013 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3200 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.2107 of 2013 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3201 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3488 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3199 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3624 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3195 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3625 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3196 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3626 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3197 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3627 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3198 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3628 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3200 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.3629 of 2012 filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 24.11.2011 made in M.C.O.P.No.3201 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

C.M.A.Nos.2102 to 2107 of 2013:

For appellants :Mr.G.Balaji Prasad

For respondents :M/s.M.B.Gopalan for R-2

First respondent-Ex-Parte before the Tribunal

C.M.A.Nos.3488 and 3624 to 3629 of 2012

For appellant : M/s.M.B.Gopalan

For respondents :

Mr.G.Balaji Prasad for RR-1 to 4 in C.M.A.No.3488 of 2012 and for R-1 in C.M.A.No.3624, 3625 of 2012, for RR-1 and 2 in C.M.A.No.3626 of 2012, for RR-1 to 7 in C.M.A.No.3627 of 2012 and for R-1 in C.M.A.No.3628 and 3629 of 2012

R-5 remained ex-parte before the Tribunal in C.M.A.No.3488 of 2012

R-2 remained ex-parte before the Tribunal in C.M.A.Nos.3624, 3625, 3628 and 3629 of 2012

R-3 remained ex-parte before the Tribunal in C.M.A.No.3626 of 2012

R-8 remained ex-parte before the Tribunal in C.M.A.No.3627 of 2012

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R.Subbiah, J)

The above Civil Miscellaneous Appeals (CMAs) are heard through video-conferencing.

2. All these appeals arise out of the common Award dated 24.11.2011 passed by the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai in M.C.O.P.Nos.3195 to 3201 of 2007.

3 (a). C.M.A.Nos.2102 to 2107 of 2013 are filed by the claimants for enhancement of the compensation amount awarded by the Tribunal.

(b) C.M.A.Nos.3488 and 3624 to 3629 of 2012 are filed by the Insurance Company questioning their liability to pay the compensation amount awarded by the Tribunal.

4. There are seven claim petitions filed before the Tribunal in M.C.O.P.Nos.3195 to 3201 of 2007 in respect of the accident that had occurred on 07.05.2007 involving a car bearing Registration No.TN-07-AE-6397 and Mahindra Van bearing Registration No.TN-07-H-7688. The claimants/victims/injured in the accident are the occupants of the said car. They were travelling from Kancheepuram to Chennai on the National Highways road. While so proceeding, the said van, insured with the Insurance Company, came from opposite direction in a rash and negligent manner and all of a sudden, without any signal, took "U" turn to go towards Chennai, and in that process, the driver of the said car who did not expect the negligent act of the driver of the van, made an attempt to stop the car by applying sudden brake. In spite of his best efforts, the car dashed

against the van. In the said impact, three persons died and four persons sustained injuries. Four claim petitions were filed for compensation by the claimants/victims and three claim petitions have been filed by the legal heirs of the three deceased persons claiming compensation for the death of the respective deceased persons.

5. All the claim petitions were resisted by the insurer of the van, i.e. the Insurance Company, by raising a defence that the liability has to be apportioned equally between the driver of the car as well as the insured. Moreover, the driver of the car did not have a valid and effective licence to drive the vehicle. Therefore, the Insurance Company sought for dismissal of the claim petitions.

6. Joint trial was conducted before the Tribunal by recording common evidence in all the claim petitions and ultimately, the Tribunal passed an common Award.

7. The owner of the car remained ex-parte before the Tribunal.

8. In order to prove the claim, on the side of claimants, P.Ws.1 to 9 were examined and Exs.P-1 to P-51 were marked. On the side of the Insurance Company, no oral and documentary evidence was adduced.

8(a). The Tribunal, on an analysis of the evidence available on record, passed Award as detailed below in respect of the respective M.C.O.Ps.

M.C.O.P.No.3195 of 2017:

Loss of earning during treatment period	: Rs.10,000/-
Transport to hospital	: Rs.5,000/-
Extra-nourishment	: Rs.5,000/-
Medical expenses (as per bills)	: Rs.58,000/-
Pain and suffering	: Rs.10,000/-
Disability	: Rs.30,000/-

Total : Rs.1,18,000

M.C.O.P.No.3196 of 2017:

Loss of earning during treatment period	: Rs.10,000/-
Transport to hospital	: Rs.5,000/-
Extra-nourishment	: Rs.5,000/-
Medical expenses (as per bills)	: Rs.80,000/-
Pain and suffering	: Rs.10,000/-
Disability	: Rs.1,00,000/-

Total : Rs.2,10,000

M.C.O.P.No.3197 of 2017:

Loss of pecuniary benefits : Rs.1,50,000/-
Loss of love and affection : Rs.10,000/-
Transport to Hospital and
funeral expenses : Rs.10,000/-

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Total : Rs.1,70,000
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M.C.O.P.No.3198 of 2017:

Loss of pecuniary benefits : Rs.2,52,000/-
Loss of love and affection : Rs.10,000/-
Transport to Hospital and
funeral expenses : Rs.11,000/-

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Total : Rs.2,73,000
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M.C.O.P.No.3199 of 2017:

Loss of pecuniary benefits : Rs.43,65,600/-
Loss of consortium to the first claimant
: Rs.10,000/-
Loss of love and affection
to claimants 2 to 4 : Rs.10,000/-
Transport to Hospital and
funeral expenses : Rs.10,400/-

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Total : Rs.43,95,400/-

(which was rounded off by the Tribunal as Rs.43,96,000)
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M.C.O.P.No.3200 of 2017:

Transport to hospital : Rs.10,000/-
Extra-nourishment : Rs.7,000/-
Medical expenses as per bills : Rs.53,000/-
Pain and suffering : Rs.10,000/-
Disability : Rs.30,000/-

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Total : Rs.1,10,000/-
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M.C.O.P.No.3201 of 2017:

Loss of earning during treatment period : Rs.10,000/-
Transport to hospital : Rs.10,000/-
Extra-nourishment : Rs.10,000/-
Medical expenses (as per bills) : Rs.1,59,000/-
Pain and suffering : Rs.16,000/-
Disability : Rs.1,30,000/-

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Total : Rs.3,35,000/-
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The respective compensation amounts are awarded by the Tribunal with interest at 7.5% per annum from the date of claim petitions till the date of payment.

9. Now, it is the submission of the learned counsel appearing for the Insurance Company that the accident is the result of the negligence on the part of the driver of the car. Moreover, the driver of the car did not possess valid driving licence, and under such circumstances, the Tribunal ought to have deducted certain portion of the amount from the total compensation amount by fixing contributory negligence on the part of the driver of the car and the driver of the van.

10. We find that in order to prove the defence on the side of the Insurance Company, they have not let in any oral or documentary evidence. It is settled legal principle that mere pleadings are not evidence, unless it is recorded in the manner known to law. Therefore, we do not find any infirmity in the finding of the Tribunal in rejecting the defence raised by the Insurance Company. Hence, we confirm the findings rendered by the Tribunal regarding the negligence fixed on the part of the driver of the van.

11. So far as the quantum of compensation awarded by the Tribunal, we will deal with the same in each appeal filed by the claimant/Insurance Company, in the respective C.M.As.

12. C.M.A.No.2102 of 2013 and C.M.A.No.3624 of 2012 ((M.C.O.P.No.3195 of 2007)):

This claim petition is filed by the injured victim, namely K.P.Abraham, who was aged about 63 years at the time of accident. He was an Ex-serviceman. It is his case that he was self-employed and was earning his livelihood by taking tuition to students. His monthly income was Rs.4,500/-. On account of the accident, he had sustained grievous injuries, i.e. multiple lacerated injury on the face with subdural haemotoma. He was immediately given first-aid at Meenakshi Medical College and Hospital, Kancheepuram and thereafter, at Apollo First Med Hospital, Chennai, as an in-patient from 07.05.2007 to 16.05.2007. On account of the injuries sustained by him, he is not able to work as before the accident. In order to prove the disability suffered by the claimant/victim, he examined P.W.5 Doctor and marked Ex.P-23 Disability Certificate, in which his disability was assessed at 30%. The Tribunal, by considering the evidence on both sides, has passed an Award of Rs.1,18,000/- with break-up details as mentioned above.

13. Now, the only grievance of the learned counsel for the appellant/claimant in C.M.A.No.2102 of 2013 (M.C.O.P.No.3195 of 2007) is that the Tribunal, while Awarding the amount under the head "disability", which was assessed by the Doctor at 30%, had awarded only a sum of Rs.30,000/- at the rate of Rs.1,000/- per percentage of disability, (i.e. $30 \times 1000 = 30,000$), which had resulted in awarding an inadequate compensation under the head

"disability" and thus, the learned counsel prayed for suitable enhancement of the compensation amount under the said head of disability.

14. Considering the factual aspects of the matter, we are of the opinion that a sum of Rs.2,000/- per percentage could be the reasonable Award, taking into consideration the grievous injuries sustained by him. Accordingly, a sum of Rs.2,000/- is awarded for each percentage. Resultantly, the amount works out to Rs.2,000/- x 30% = Rs.60,000/-. Accordingly, the amount awarded by the Tribunal under the head "disability" is hereby enhanced from Rs.30,000/- to Rs.60,000/-. Consequently, the amount awarded by the Tribunal under the other heads are confirmed. The total compensation is thus enhanced from Rs.1,18,000/- to Rs.1,48,000/-. Accordingly, C.M.A.No.2102 of 2013 is partly allowed. Consequently, C.M.A.No.3624 of 2012 is dismissed.

15. C.M.A.No.2103 of 2013 and C.M.A.No.3625 of 2012 (M.C.O.P.No.3196 of 2007):

This claim petition is filed by one C.O.Abraham for the injury sustained by him in the same accident. He was aged about 54 years at the time of accident. It is his case that at the time of accident, he was working as Supervisor (Senior Applications) in Forms and Gears Company Limited in Guindy at Chennai and was earning Rs.18,000/- per month, due to the accident, he sustained head injury, facial laceration, fracture of right maxilla and bruises and lacerations. He was immediately admitted at Meenakshi Medical College and Hospital, Kancheepuram, where he was given first-aid and thereafter, he was admitted in Apollo First Med Hospital, Chennai, where he was treated as an in-patient from 07.05.2007 to 17.05.2007. Due to the injury, he was not able to masticate and not able to work as before. In order to prove the disability suffered by the victim, he had examined P.W.5 Doctor, who has stated that the disability suffered by the victim is 50% in the disability certificate Ex.P-25.

16. Now, the grievance of the appellant in C.M.A.No.2103 of 2013 is that the Tribunal has awarded Rs.1,00,000/- towards the head "disability", which appears to be on the lower side and hence, the learned counsel for the appellant/claimant in C.M.A.No.2103 of 2013 prayed for enhancement of the amount under the said head "disability". But we are of the opinion that the Tribunal had awarded Rs.2,000/- per percentage (50%) of disability suffered by the appellant/victim. Absolutely, we do not find any infirmity in the amounts awarded by the Tribunal under the various heads including the disability. Hence, C.M.A.No.2103 of 2013 and C.M.A.No.3625 of 2012 are liable to be dismissed. Accordingly, the same are dismissed.

17. C.M.A.No.2104 of 2013 and C.M.A.No.3626 of 2012 (M.C.O.P.No.3197 of 2007):

This is a fatal case where one Gregory Kurian Deepu @ Giri Giri, a three year old child, died in the accident. His parents have filed the claim petition claiming a sum of Rs.7 lakhs. The Tribunal has passed an award for a sum of Rs.1,70,000/-. The Tribunal fixed Rs.15,000/- as the notional income of the deceased-child and after deducting 1/3 towards the personal expenses, Rs.10,000/- was fixed by the Tribunal as the loss of income to the claimants and by adopting the multiplier 15, the Tribunal arrived at Rs.1,50,000/- towards the loss of pecuniary benefits.

18. The learned counsel for the appellant in C.M.A.No.2104 of 2013, relied on a decision of a Division Bench of this Court reported in 2012 ACJ 663 = 2010 (4) LW 927 = 2010 (2) TN MAC 486 (DB) (National Insurance Company Limited, Kumbakonam Vs. G.Parimala and others), wherein for an unborn child, namely six month foetus, the Tribunal awarded Rs.5,00,000/-, which was reduced by this Court to Rs.2,50,000/-. Hence, based on this decision of this Court, the learned counsel for the appellant prayed that a sum of Rs.5,00,000/- may be awarded as compensation in this case. However, the learned counsel for the second respondent-Insurance Company opposed the said submission of the learned counsel for the appellants/claimants. But, considering the factual aspects and also the dictum laid down in the above case, we are of the opinion that a consolidated sum of Rs.4,00,000/- could be awarded as a just and proper compensation. Hence, the sum of Rs.1,70,000/- awarded by the Tribunal, is hereby enhanced to a sum of Rs.4,00,000/- under the head "loss of pecuniary benefits". The amounts awarded by the Tribunal under the head "love and affection" to the parents at Rs.10,000/- and for transport to hospital and funeral expenses at Rs.10,000/-, are hereby confirmed. In all, the appellants/claimants are entitled to get Rs.4,20,000/-. Accordingly, C.M.A.No.2104 of 2013 is partly allowed. Consequently, C.M.A.No.3626 of 2012 is dismissed. No costs.

19. C.M.A.No.2105 of 2013 and C.M.A.No.3488 of 2012 (M.C.O.P.No.3199 of 2007):

The deceased in this case is one Anish Abraham and the claimants are wife, daughter and parents of the deceased. The appellants/claimants have made a claim for Rs.80 lakhs, but the Tribunal awarded a sum of Rs.43,96,000/-.

20. In C.M.A.No.2105 of 2013, considering the evidence on record, i.e. Ex.P-51 service extract copy of the deceased, in which his date of birth is noted as 22.03.1979, the Tribunal fixed the age of the deceased as 28 years at the time of accident which occurred on 07.05.2007. At the time of accident,

he was working as Assistant Manager in Standard Chartered Bank and was earning a sum of Rs.42,000/- per month, plus perks. To prove the income of the deceased, P.W.8 was examined, through whom, Ex.P-45 Transfer Certificate of the deceased, Ex.P-46 Admission Certificate of Master of Foreign Trade Course, Ex.P-47 Promotion Letter of the deceased and Ex.P-48 pay particulars of the deceased/par revision letter of the deceased, were marked. To prove the income of the deceased, P.W.9 Janardhanan, Head Service Delivery Officer, Chennai, attached to Standard Chartered Bank was also examined, through whom, Ex.P-49 Authorisation Letter, Ex.P-50 Appointment Order copy of the deceased and Ex.P-51 Service Extract copy of the deceased were marked. The Tribunal, on a perusal of these documents, observed that the deceased was appointed on 24.07.2001 and his basic salary was Rs.1,27,400/- per annum and the consolidated allowances and reimbursement was Rs.1,32,600/- per annum. It was also observed by the Tribunal that his designation based on the above documents at the time of death was Assistant Manager and his last monthly salary was Rs.33,450/-. The Tribunal further observed based on the above documents that the additional superannuation allowance was Rs.27,209/- per annum. Considering the above oral and documentary evidence, the Tribunal fixed the monthly income of the deceased at Rs.33,450/-, and the annual income was fixed at Rs.4,01,400/-, to which, Rs.27,209/- was added as superannuation allowance, and the amount of loss of annual income works out to Rs.4,28,609/-, which was rounded off to Rs.4,28,000/- per annum. Thereafter, the Tribunal deducted 20% towards income tax, i.e. Rs.85,600/- (4,28,000 x 20%) and arrived at a sum of Rs.3,42,400/- (4,28,000 - 85,600) as annual loss of income of the deceased. Then, 1/4 was deducted towards personal expenses of the deceased and thus the Tribunal arrived at a sum of Rs.2,56,800 (3,42,400 - 85,600 (1/4 of 3,42,400)) as annual loss of dependency. Then, the Tribunal adopted the multiplier 17 and arrived at the loss of pecuniary benefits at Rs.43,65,000/- (Rs.2,56,800 x 17).

21. The grievance of the appellant in C.M.A.No.2105 of 2013 is that the Tribunal, while calculating the "loss of income", had not added any amount towards future prospects. Considering the age of the deceased being 28 years at the time of accident, the Tribunal ought to have added 50% towards future prospects. Thus, the learned counsel for the appellant in C.M.A.No.2105 of 2013 submitted that by adding 50% towards future prospects, the amount awarded by the Tribunal under the head "loss of income" (loss of pecuniary benefits) may be enhanced.

22. Per contra, the learned counsel appearing for the second respondent/Insurance Company, supporting the Award of the Tribunal, prayed for dismissal of C.M.A.No.2105 of 2013.

23. In C.M.A.No.2105 of 2013, the Tribunal apportioned the annual loss of income at Rs.4,28,000/-, to which, if 20% is deducted towards income tax, the amount works out to Rs.3,42,400/- (4,28,000 - 85,600 (20% of 3,42,400)). Thereafter, if 1/4 is deducted towards personal expenses, the amount works out to Rs.2,56,800 (3,42,400 - 85600 (1/4 of 3,42,400)). Now, 50% has to be added towards future prospects and consequently, the amount works out to Rs.3,85,200 (2,56,800 + 50% of 2,56,800). Then, by adopting multiplier 17, the actual loss of income works out to Rs.65,48,400/-. Hence, the sum of Rs.43,65,600/- awarded by the Tribunal towards loss of income is hereby enhanced to Rs.65,48,400/-. The loss of consortium awarded by the Tribunal to the first claimant being the wife of the deceased, is hereby enhanced from Rs.10,000/- to Rs.40,000/-. The loss of love and affection to the appellants/claimants 2 to 4 is hereby enhanced from Rs.10,400/- to Rs.1,00,000/-.

24. Further, in C.M.A.No.2105 of 2013, we find that no amount was awarded by the Tribunal towards loss of estate, for which Rs.15,000/- is hereby awarded. For funeral expenses and transport to hospital, the Tribunal awarded a sum of Rs.10,400/-, which is hereby enhanced to Rs.30,000/-. The total compensation awarded by the Tribunal at Rs.43,96,000/- is hereby enhanced to Rs.67,33,400/-. The break-up details are as follows:

Sl.No.	Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	43,65,600	65,48,400
2	Loss of consortium to the first claimant/wife of the deceased	10,000	40,000
3	Loss of love and affection to the claimants 2 to 4	10,000	1,00,000
4	Loss of estate	-	15,000
5	Funeral expenses and transport to hospital	10,400	30,000
	Total	43,96,000	67,33,400

25. Thus, C.M.A.No.2105 of 2013 is partly allowed and the total amount of compensation awarded by the Tribunal is hereby enhanced from Rs.43,96,000/- to Rs.67,33,400/-. Consequently, C.M.A.No.3488 of 2012 is dismissed.

26. C.M.A.No.2106 of 2013 and C.M.A.No.3628 of 2012 (M.C.O.P.No.3200 of 2017):

This appeal is filed by the injured/claimant, namely Mollykutty Abraham, who was aged about 61 years at the time of accident. She is home-maker. During the course of accident, she had sustained grievous injuries, namely cerebral concussion, multiple facial laceration with fracture on maxilla left and bruises and laceration. Initially, she was admitted in Meenakshi Medical College and Hospital, Kancheepuram for first-aid and thereafter, shifted to Apollo First Med Hospital, Chennai and was an in-patient from 07.05.2007 to 16.05.2007. Plastic surgery was also performed on her face. In order to prove the disability suffered by the appellant/claimant/injured/victim in C.M.A.No.2106 of 2013, P.W.5 Doctor was examined and he has assessed the disability suffered by the victim at 30%. Ex.P-27 is her Disability Certificate. The Tribunal, after analysing the evidence, has awarded compensation under the head "disability" at Rs.30,000/-.

27. The main grievance of the appellant in C.M.A.No.2106 of 2013 is that the Tribunal has awarded only a sum of Rs.30,000/- towards the disability suffered by the appellant-victim by fixing Rs.1,000/- per percentage of disability. Hence, the same needs proper enhancement. We find some force in the said submission. We are of the opinion that a sum of Rs.2,000/- per percentage could be the reasonable Award in this case, taking into account the disfigurement of her face and injuries sustained by her. Accordingly, a sum of Rs.2,000/- is hereby awarded for each percentage of disability. Resultantly, the amount works out to $\text{Rs.2,000/-} \times 30\% = \text{Rs.60,000/-}$. Accordingly, the amount awarded by the Tribunal under the head "disability" is hereby enhanced to Rs.60,000/-. The amounts awarded by the Tribunal under other other heads in C.M.A.No.2106 of 2013 are confirmed. Consequently, the compensation awarded by the Tribunal is enhanced from Rs.1,10,000/- to Rs.1,40,000/-. Accordingly, C.M.A.No.2106 of 2013 is partly allowed. Consequently, C.M.A.No.3628 of 2012 is dismissed.

28. C.M.A.No.2107 of 2013 (M.C.O.P.No.3201 of 2007):

The victim in this case is one Mrs.Usha Abraham, who was 44 years at the time of accident. She was working as Marketing Coordinator in Gupta Garments, Chennai and was earning Rs.12,000/- per month as salary. She sustained fracture of maxilla, compound fracture of mandible, fracture of left distal radius, pneumothorax and fracture of ribs and bruises and lacerations. She was initially admitted at Meenakshi Medical College Hospital, Kancheepuram, where first-aid was given to her and thereafter admitted to Apollo First Med Hospital, Chennai, where she was treated as an in-patient from 07.05.2007 to 17.05.2007. In order to prove the disability, P.W.5 Doctor was

examined and Ex/P-29 Disability Certificate was marked, which would reveal that the injured-claimant had sustained totally 65% disability. The Tribunal has awarded a sum of Rs.1,30,000/- under the head "disability".

29. The learned counsel for the appellant/claimant/victim/injured in C.M.A.No.2107 of 2013 submitted that the evidence on record shows that the victim had lost her teeth in the accident. She had incurred to fix ceramic teeth, but no amount was awarded on that score. Hence, Rs.30,000/- is hereby awarded under the head 'future medical expenses' towards maintenance of ceramic teeth. Except this addition in the award, the amounts awarded by the Tribunal under the other heads are confirmed. C.M.A.No.2107 of 2013 is partly allowed with total compensation of Rs.3,65,000/- being enhanced from Rs.3,35,000/- awarded by the Tribunal.

30. In C.M.A.Nos.2102 to 2107 of 2013, the amount of compensation shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment and the appellants/claimants in C.M.A.Nos.2102, 2104, 2105, 2106 and 2107 of 2013 shall pay necessary Court fee, if any on the enhanced compensation. The apportionment of shares adopted by the Tribunal, shall stand confirmed. In respect of the minor claimant in C.M.A.No.2105 of 2013, her share shall be deposited in any nationalised Bank in any interest bearing Fixed Deposit scheme till she attains majority and the interest thereon shall be withdrawn by the first claimant (mother) once in three months.

31. The Insurance Company in C.M.A.Nos.2102 to 2107 of 2013, which is the appellant in C.M.A.Nos.3488 and 3624 and 3629 of 2012, shall deposit the compensation amounts as stated above, within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amounts if any already deposited by the Insurance Company. On such deposit, the appellants/claimants shall withdraw the amount of compensation as calculated above in these appeals, in accordance with law, except the minor share in C.M.A.No.2105 of 2013, as directed above.

32. To sum up:

(i) C.M.A.Nos.2102, 2104, 2105, 2106 and 2107 of 2013 are partly allowed. No costs.

(ii) C.M.A.No.2103 of 2013 is dismissed. No costs.

(iii) C.M.A.Nos.3488 and 3624 to 3629 of 2012 are dismissed. No costs.

(iv) Connected Miscellaneous Petitions in M.P.No.1 of 2012 in C.M.A.Nos.3624 to 3629 of 2012, are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

CS
To

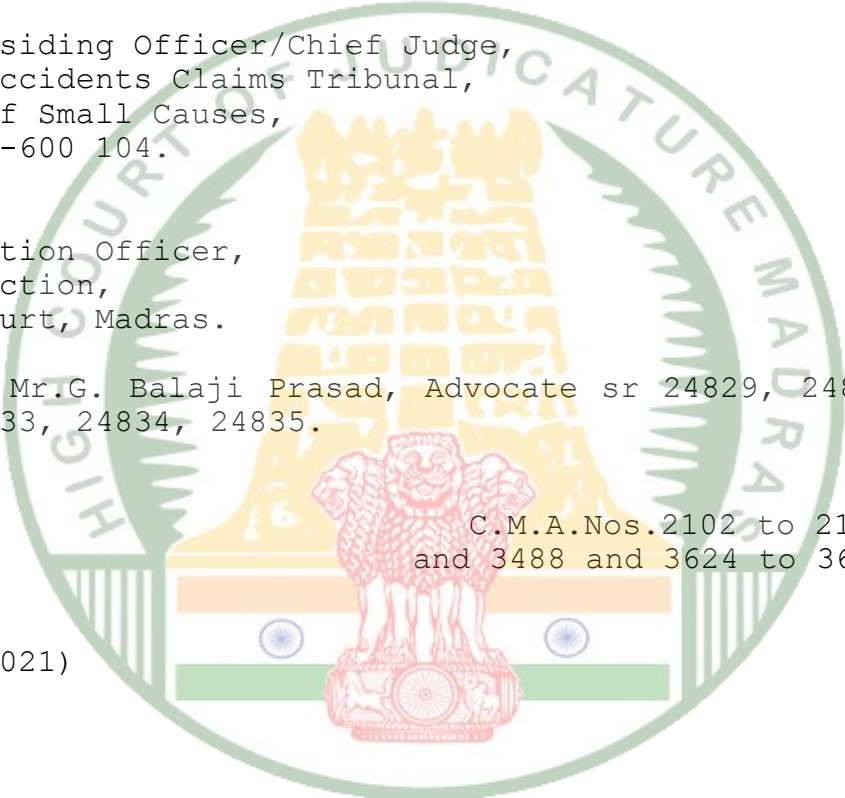
1. The Presiding Officer/Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai-600 104.

Copy to
The Section Officer,
V.R. Section,
High Court, Madras.

+7 Ccs to Mr.G. Balaji Prasad, Advocate sr 24829, 24830, 24831, 24832, 24833, 24834, 24835.

C.M.A.Nos.2102 to 2107 of 2013
and 3488 and 3624 to 3629 of 2012

RP(CO)
SP(27/01/2021)



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