

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NOS.2361 & 2935 OF 2013

AND

M.P.NOS.1 & 1 OF 2013

(THROUGH VIDEO CONFERENCING)

The Branch Manager,
National Insurance Company Limited,
Shriram Site Office,
No.2-A, Prakassam Road, T.Nagar,
Chennai - 600 017.

.... Appellant/2nd Respondent
in both C.M.As

Vs.

1.Krishnadas

2.Selvi Rajam

3.M.Ramya

.... Respondents/Petitioners 1,2/
Respondents 1 in C.M.A.No.2361/2013

1.Selvi Rajam

2.M.Ramya

.... Respondents/Petitioner/
Respondents 1 in C.M.A.No.2935/2013

(3rd respondent in C.M.A.No.2361/2013, who
is also the 2nd respondent in
C.M.A.No.2935/2013 was set exparte before
the Tribunal)

Common Prayer:-

Civil Miscellaneous Appeals filed under Section 173 of
Motor Vehicles Act, 1988, to set aside the awards made in
M.C.O.P.Nos.834 & 835 of 2009 dated 08.06.2012, on the file of
the Motor Accidents Claims Tribunal (Additional District Court),
Krishnagiri.

For Appellant in both C.M.As. : M/s.K.Saraswathi

For R1 & R2 in

C.M.A.No.2361/2013 &

R1 in C.M.A.No.2935/2013 : No appearance

COMMON JUDGMENT

Though there is no representation for the respondents in the respective Civil Miscellaneous Appeals, these appeals are being disposed by this common Judgment as no adverse orders are proposed to be passed against them.

2. The 1st and 2nd respondents in C.M.A.No.2361 of 2013 were claimants in M.C.O.P.No.834 of 2009 and 1st respondent in C.M.A.No.2935 of 2013 (2nd respondent in C.M.A.No.2361 of 2013) was the sole claimant in M.C.O.P.No.835 of 2009.

3. In these appeals, the appellant Insurance Company has challenged the impugned common Judgment and separate Decrees dated 08.06.2012 passed by the Motor Accidents Claims Tribunal, presided by the Additional District Judge, Krishnagiri, in M.C.O.P.Nos.834 & 835 of 2009.

4. By the impugned common Judgment, the Tribunal has awarded a sum of Rs.5,75,000/- as compensation together with interest at 6% per annum from the date of claim petition till the date of deposit, to claimants for the death of their son K.Alwis Brian in M.C.O.P.No.834 of 2009. The Tribunal has awarded a sum of Rs.5,24,700/- as compensation together with interest at 6% per annum from the date of claim petition till the date of deposit, to the claimant in M.C.O.P.No.835 of 2009 for the injuries suffered by her.

5. Aggrieved by the same, both Civil Miscellaneous Appeals have been filed by the Insurance Company.

6. These cases arise out of an accident that took place on 28.05.2005 at about 06.20 a.m in Krishnagiri-Hosur Road, near Ameeriya Petrol Bunk, when the deceased Alwis Brian was riding TVS XL along with his mother in the pillion. A lorry bearing registration No.TN-04-M-0029 belonging to the 3rd respondent insured with the appellant Insurance Company driven by its driver allegedly in a rash and negligent manner is said to have been knocked down the said TVS XL, as a result of which the deceased Alwis Brian and his mother sustained grievous injuries. They were taken to a Hospital. However, the deceased Alwis Brian died in the hospital on the same day while the 2nd respondents suffered grievous injuries.

7. Therefore, two claim petitions were filed for the death of their son and for the injury suffered by mother in MC.O.P.Nos.834 & 835 of 2009. After considering the evidence on record, the Tribunal has awarded the compensation in the respective claim petitions as follows:-

C.M.A.Nos.	Claimant(s)	M.C.O.P.Nos.	Award amount
2361/2013	1 st and 2 nd respondents	834/2009	Rs.5,75,000/-
2935/2013	1 st respondent	835/2009	Rs.5,24,700/-

8. In C.M.A.No.2935 of 2013, the appellant has challenged the impugned Judgment (M.C.O.P.No.835 of 2009) on the ground that the Tribunal erred in awarding compensation under the head of loss of earning twice, i.e., by applying the multiplier for loss of earning for a sum of Rs.1,78,200/- and towards loss of earning a sum of Rs.60,000/-. It is submitted by the learned counsel for the appellant that there is an error in awarding the compensation under the same head twice.

9. I have perused the Judgment and Decrees and considered the arguments of the learned counsel for the appellants.

10. On a combined reading of the impugned Judgment and Decrees and evidence, it is noticed that a sum of Rs.1,78,200/- was arrived by considering a notional income of the 1st respondent in C.M.A.No.2935 of 2013 as Rs.3,000/- after applying the multiplier 9 at 55% of disability and considering the fact that the she had sustained multiple injuries. Ex.P13 Disability Certificate issued by PW2 Dr.Devendran also confirmed the same. An amount of Rs.60,000/- has been awarded towards loss of earning for one year during the period of accident.

11. The Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343 and in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and in V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178 has awarded amount towards future prospectus.

12. In my view, the compensation awarded by the Tribunal to the 1st respondent in C.M.A.No.2935 of 2013 appears to be reasonable. I find no merits to interfere with the compensation awarded by Tribunal. I am therefore inclined to dismiss the C.M.A.No.2935 of 2013.

13. Similarly, in C.M.A.No.2361 of 2013, the appellant has challenged the impugned Judgment and Decree (M.C.O.P.No.834 of 2009) on the ground that the Tribunal while awarding the compensation of Rs.5,75,000/-, has reckoned the notional income

of the deceased as Rs.5,000/- per month for determining the compensation. It was argued that the notional income of Rs.5,000/- per month was excessive and cannot be considered as reasonable as there is no evidence to substantiate that the deceased was earning the aforesaid income.

14. The learned counsel for the appellant submitted that though it was said that the deceased was working as Supervisor in a private company, no proof of employment was filed by the 1st and 2nd respondents in C.M.A.No.2361 of 2013 before the Tribunal and nobody was examined from the alleged private company where the deceased was allegedly earning. It is therefore submitted that the Tribunal erred in determining the compensation based on the notional income of the deceased of Rs.5,000/-. The Tribunal has awarded an amount of Rs.5,75,000/- as compensation as follows:-

Heads and Calculation	Amount of compensation
For loss of dependency (5,000 - 1/2 nd x 12 x 18)	Rs.5,40,000/-
For Love and Affection (R1 & R2)	Rs. 30,000/-
For Funeral Expenses	Rs. 5,000/-
Total	Rs.5,75,000/-

15. I find that the notional income of the deceased considered as Rs.5,000/- per month was to be reasonable. The Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, has taken the notional income of a vegetable vendor as Rs.6,500/- in 2008. As per decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 and in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546, the compensation to be awarded to the 1st and 2nd respondents in C.M.A.No.2361 of 2013 (parents of the deceased) appears to be slightly higher. However, in absence of an appeal by the 1st and 2nd respondents/claimants and their presence, I find no merits to interfere with the impugned Judgment and Decree passed by Tribunal. Therefore, the compensation awarded by the Tribunal is confirmed.

16. Therefore, if the amount of compensations awarded by the Tribunal as per the respective Decrees in the respective M.C.O.Ps have not deposited by the appellant Insurance Company, it is directed to deposit the same together with interest as directed by the Tribunal, less if any amount already deposited,

within a period of six weeks from the date of receipt of a copy of this Judgment.

17. On such deposits, the respective claimant(s) in M.C.O.P.Nos.834 & 835 of 2009 are permitted to withdraw the their respective amount of the compensations together with interest as directed by the Tribunal, less if any amount already withdrawn, by filing suitable applications.

18. Accordingly, both the Civil Miscellaneous Appeals are dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:-

Motor Accidents Claims Tribunal,
(Additional District Court),
Krishnagiri.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.Nos.2361 & 2935 of 2013
and M.P.Nos.1 & 1 of 2013

VGII(CO)
CS/09/03/2021

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