



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.Nos.246 to 249 of 2016

K.Kumar ... Appellant in  
CMA.Nos.246 & 249 of 2016

K.Arun Subramaniam ... Appellant in  
CMA.Nos.247 & 249 of 2016

K.Indhumathi ... Appellant in  
CMA.Nos.248 & 249 of 2016

/versus/

1. The Manager,  
M/s.India Metronics Company Pvt. Limited,  
No.302-303, Plot No.662,  
CRPN No.68, 4<sup>th</sup> Block 2<sup>nd</sup> Main Road,  
Jaya Nagar, Bangalore.
2. The Manager,  
The Royal Sundaram Alliance  
Insurance Company Limited,  
No.45& 46, Sundaram Towers,  
White Road, Chennai. ... Respondents in all CMAs

Prayer in CMA.No.246 of 2016:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the Civil Miscellaneous Appeal by enhancing the award passed in the Judgment and Decree made in M.C.O.P.No.226 of 2012 dated 07.04.2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Namakkal from that of Rs.12,05,831/- to that of Rs.17,05,831/- thereby increasing the compensation/award by five lakhs.

Prayer in CMA.No.247 of 2016:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award passed in the



Judgment and Decree made in M.C.O.P.No.227 of 2012 dated 07.04.2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Namakkal from that of Rs.3,05,590/- to that of Rs.5,05,590/- thereby to increase the compensation/award by another two lakhs.

Prayer in CMA.No.248 of 2016:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award passed in the Judgment and Decree made in M.C.O.P.No.228 of 2012 dated 07.04.2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Namakkal from that of Rs.1,08,495/- to that of Rs.3,08,495/- thereby increasing the compensation/award by two lakhs.

Prayer in CMA.No.249 of 2016:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award passed in the Judgment and Decree made in M.C.O.P.No.229 of 2012 dated 07.04.2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Namakkal to a sum of Rs.9,31,052 from that of the award amount of Rs.4,31,052/- with other consequential benefits arising thereto thereby to increase the compensation/award by another five lakhs.

For Appellants : Mr.L.Chandrakumar in all CMAs

For R1 : Ex-parte in all CMAs

For R2 : Mr.G.Vasudevan in all CMAs

#### COMMON JUDGMENT

(The case has been heard through video conference)

These four appeals have been filed against the Common Order passed by the Tribunal in four claim petitions.

2. Heard the learned counsel for the appellants and the learned counsel for the 2<sup>nd</sup> respondent.

3. The claimants are the members of one family. Kumar is the claimant in M.C.O.P.No.226 of 2012. He along with his wife and two children while travelling his Maruthi Omni car bearing



registration No.TN 30AB 0027 on 25.12.2009, near Salem, Puduchatram over bridge, an Innova car bearing registration No. KA 05 ME 2218, rash and negligently hit the central median and dashed against the Omni car driven by Kumar. In the said accident, Kumar sustained injury. His wife Mrs.Rajam died, his son Arun Subramanian and daughter Indumathi sustained fractured injury.

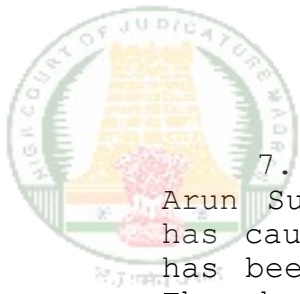
4. Claim petitions were filed for compensation. Considering the evidence let in by the claimants, the Tribunal has awarded the claim petitions in the following manner:

| Claim Petition<br>M.C.O.P.Number | Name of the claimant                | Award of the<br>Tribunal |
|----------------------------------|-------------------------------------|--------------------------|
| 226 of 2012                      | K.Kumar                             | Rs.12,05,831/-           |
| 227 of 2012                      | Arun Subramanian                    | Rs. 3,05,590/-           |
| 228 of 2012                      | Indumathi                           | Rs. 1,08,495/-           |
| 229 of 2012                      | dependants of the<br>deceased Rajam | Rs. 4,31,052/-           |

5. The present appeals are filed by the claimants being unsatisfied with the quantum of compensation.

6. C.M.A.No.246 of 2016 (M.C.O.P.No.226 of 2012) is filed by Kumar who has suffered amputation of right leg upto thigh, this Court finds that he was earning his livelihood as an Instructor in a driving school. The amputation of his right leg upto thigh level has almost taken away his livelihood. The functional disability caused due to amputation of one limb upto thigh level ought to have been assessed at 80%. Accordingly the award of the Tribunal is modified as below:

|                                                 |                |
|-------------------------------------------------|----------------|
| Loss of income<br>(Rs.6000x12x13x80%)           | Rs. 7,48,800/- |
| Medical Expenditure as<br>per the bill [Ex.P-7] | Rs. 5,50,631/- |
| Loss of amenities                               | Rs. 25,000/-   |
| For pain and sufferings                         | Rs. 25,000/-   |
| Total                                           | Rs.13,49,431/- |



7. C.M.A.No.247 of 2016 (M.C.O.P.No.227 of 2012) is filed by Arun Subramaniam. The injury sustained by him in the accident has caused fracture of his left leg Tibia and Fibula bone, rod has been fixed at the time of surgery and the bone misunited. The doctor has assessed his hip movement restriction upto 10 degrees. The disability certificate given by the doctor indicates that the disability at 40%. However the Tribunal considering the part of the body injured has fixed the disability at 20% for whole body. In this case Court finds that the compensation for pain and suffering is very low and it has to be enhanced to Rs.30,000/- from Rs.10,000/- Accordingly, the award of the Tribunal is modified as below:

|                                               |               |
|-----------------------------------------------|---------------|
| Partial permanent disability<br>(Rs.2,000x20) | Rs. 40,000/-  |
| Nutritious Food                               | Rs. 10,000/-  |
| Medical bills                                 | Rs.2,45,590/- |
| For pain and sufferings                       | Rs. 30,000/-  |
| Total                                         | Rs.3,25,590/- |

8. C.M.A.No.248 of 2016 (M.C.O.P.No.228 of 2012) is filed by K.Indhumathi for the injury sustained on the left shoulder humerus bone and fracture of left thumb. The doctor has assessed 35% disability, whereas, the Tribunal has fixed at 10% and awarded a sum of Rs.1,08,495/-. The claimant being the unmarried girl, scare and the injury on her shoulder bone will affect her marriage prospects and it has not been taken into account by the Tribunal. Hence the compensation of Rs.25,000/- for loss of marriage prospects and additional sum of Rs.20,000/- for pain and suffering is awarded. Hence the award of the Tribunal is modified as below:

|                                               |               |
|-----------------------------------------------|---------------|
| Partial permanent disability<br>(Rs.2,000x10) | Rs. 20,000/-  |
| Nutritious Food                               | Rs. 5,000/-   |
| Medical bills                                 | Rs. 78,495/-  |
| For pain and sufferings                       | Rs. 25,000/-  |
| Loss of marriage prospects                    | Rs. 25,000/-  |
| Total                                         | Rs.1,53,495/- |

9. C.M.A.No.249 of 2016 (M.C.O.P.No.229 of 2012) is filed by the dependants of the deceased Rajam, who was a home maker. The



deceased Rajam was travelling along with her husband and children at the time of accident, lost her life. The Tribunal has fixed Rs.4,000/- as notional income and after deducting 1/3<sup>rd</sup> for personal expenditure, multiplier has been applied to compute the loss of income. Ex.P-38 relied on by the learned counsel for the appellants to canvas that the deceased Rajam was not only home maker, was also a LIC agent and earning commission.

10. The Tribunal while considering the said Ex.P-38 has held that the claimants have not produced any documents to show the income of the deceased Rajam through LIC agency. Therefore, notional income of Rs.4,000/- per month has been taken by the Tribunal for consideration. This Court on considering the fact that the deceased Rajam at the time of death who was around 46 years old, she had a driving license and was earning livelihood through assisting her husband Kumar, who was running a driving school, besides as an agent in LIC. The Tribunal while fixing the loss of income has not taken into consideration of her future prospects at 25%. Therefore, this Court is bound to interfere with the award by fixing the monthly income of the deceased Rajam at Rs.5,000/- per month and adding future prospects of Rs.1,250/-. Accordingly, the compensation awarded by the Tribunal for the claimants for the death of Rajam is modified as below:

|                                                                          |               |
|--------------------------------------------------------------------------|---------------|
| Loss of income<br>((Rs.5,000+1250)x2/3x12x13)                            | Rs.6,50,000/- |
| Funeral expenses                                                         | Rs. 15,000/-  |
| Loss of consortium for the 1 <sup>st</sup> claimant                      | Rs. 40,000/-  |
| Loss of love and affection for the claimants 2 and 3<br>Rs.15,000/- each | Rs. 30,000/-  |
| Loss of Estate                                                           | Rs. 15,000/-  |
| Total                                                                    | Rs.7,50,000/- |

11. In the results,

(i) C.M.A.No.246 of 2016 is partly allowed. The award passed by the Tribunal in M.C.O.P.No.226 of 2012 is enhanced from Rs.12,05,831/- to Rs.13,49,431/-. No costs.

(ii) C.M.A.No.247 of 2016 is partly allowed. The award passed by the Tribunal in M.C.O.P.No.227 of 2012 is enhanced from Rs.3,05,590/- to Rs.3,25,590/-. No costs.



(iii) C.M.A.No.248 of 2016 is partly allowed. The award passed by the Tribunal in M.C.O.P.No.228 of 2012 is enhanced from Rs.1,08,495/- to Rs.1,53,495/-. No costs.

(iv) C.M.A.No.249 of 2016 is partly allowed. The award passed by the Tribunal in M.C.O.P.No.229 of 2012 is enhanced from Rs.4,31,052/- to Rs.7,50,000/-. No costs.

12. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the additional compensation awarded by this Court in these four appeals with interest at the rate of 7.5% from the date of petition till the date of deposit within a period of twelve weeks from the date of receipt of copy of this order. On such deposit the claimant shall withdraw the same on filing appropriate petition.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Motor Accident Claims Tribunal,  
(Sub court), Namakkal.
2. The Section Officer,  
VR Section, Madras High Court,  
Chennai-104.

+4ccs to Mr.L.Chandrakumar, Advocate, S.R.No.33212,  
33211, 33209, 33210

C.M.A.Nos.246 to 249 of 2016

CNR(CO)  
CS/06/05/2021