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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1870, 1871 & 1872 of 2015 &
M.P.Nos.1, 1 & 1 of 2015

The New India Assurance Company Ltd.,
Patullous Road Branch,
2nd floor B wing,
No.21, Patullous Road,
Chennai - 600 001.

... Appellant in all CMAs./2nd
Respondent in all CMA's

Vs

1.Krishnaveni
2.Munusamy
3.D.Ravindra Reddy

...Respondents in CMA.No.1870 of 2015/
Petitioners R1

1.S.Vasantha
2.S.Thulasi
3.S.Dhana Bakkiyam
4.S.Poovazhagi
5.S.Rajeswari
6.S.Bhuvaneswari

(R4 & R5 declared as major
and discharge the
guardianship vide order of
this Court dated 15.06.2017
in CMP.Nos.10805 & 10806 of
2016)

7.D.Ravindra Reddy ... Respondents in CMA.No.1871 of 2015/
1 to 6 Petitioner/7th Respondent/1st Respondent

1.V.Malliga
2.M.Vellu
3.V.Nandhini

(R3 declared as major and
discharge the guardianship
vide order of this Court
dated 15.06.2017 in



CMP.No.10807 of 2016)

4.D.Ravindra Reddy ... Respondents in CMA.No.1872 of 2015/
4th Respondent/1st Respondent/Petitioner 1 to 3

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act against the decree and judgment dated 12.09.2014 made in MCOP.Nos.1900, 1901 & 1904 of 2010 on the file of the Motor Accident Claims Tribunal No.VI Small Causes Court, Chennai.

For Appellant : Mr.R.Neethi Perumal

For Respondents 1 & 2
in CMA.No.1870 of 2015,
for respondents 1 to 6
in CMA.No.1871 of 2015 &
for respondents 1 to 3
in CMA.No.1872 of 2015 : Mr.R.Kalaiarasan

COMMON JUDGMENT

(These cases are heard through Video Conferencing)

These appeals have been filed by the Insurance Company challenging the common award dated 12.09.2014 passed by the Motor Accident Claims Tribunal (VIth Court of Small Causes, Chennai) in MCOP.Nos.1900, 1901 & 1904 of 2010.

2. The Appellant/Insurance Company has challenged the impugned common award on the ground that (a) the Tribunal failed to fix any contributory negligence on the part of the respective deceased also and (b) the quantum of compensation awarded to the respective claimants is also excessive.

3. Heard Mr.R.Neethi Perumal, learned counsel for the Appellant and Mr.R.Kalaiarasan, learned counsel for the respondents 1 & 2 in C.M.A.No.1870 of 2015, for respondents 1 to 6 in C.M.A.No.1871 of 2015 & for respondents 1 to 3 in CMA.No.1872 of 2015. The owner of the vehicle viz., Mr.D.Ravindra Reddy has remained exparte in all these appeals both before the Tribunal as well as this Court.

4. The details of the compensation awarded by the Tribunal to the respective claimants in MCOP.Nos.1900, 1901 & 1904 of 2010 are as follows:



CMA.No.1870 of 2015 corresponds to MCOP.No.1900 of 2010

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits	10,53,000/- (6,500 x 12 = 78,000 + 50% = 117000 - $\frac{1}{2}$ = 58500 x 18)
Funeral Expenses	25,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-
Total	12,78,000/-

CMA.No.1871 of 2015 corresponds to MCOP.No.1901 of 2010

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits	14,04,000/- (6,500 x 12 = 78,000 + 50% = 117000 - $\frac{1}{3}$ = 78000 x 18)
Funeral Expenses	25,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-
Total	16,29,000/-

CMA.No.1872 of 2015 corresponds to MCOP.No.1904 of 2010

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefits	10,53,000/- (6,500 x 12 = 78,000 + 50% = 117000 - $\frac{1}{2}$ = 58500 x 18)
Funeral Expenses	25,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-
Total	12,78,000/-



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5. The accident happened on 23.05.2010 as a result of a collision between a motor cycle bearing registration No.TN20 BU 5495 and a stationery lorry bearing registration No TN09V5499 insured with the Appellant.

6. The case of the claimants in all the three claims is that only due to the fault of the insured lorry which was parked in the middle of the road without any indicator lamps, the accident had happened which resulted in the death of the respective deceased. The respective deceased were the rider and the pillion riders in the motor cycle bearing registration No.TN20BU5495 who died on the spot as a result of the accident.

7. The main grievance of the Insurance company in these appeals are that the deceased were also at fault as the insured lorry was stationery at the time of the accident.

8. Before the Tribunal, the claimants who are the dependants of the respective deceased have filed twenty documents which were marked as Ex.P1 to Ex.P20 and six witnesses were examined as PW1 to PW6. On the side of the Appellant Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

9. The FIR was registered only against the insured lorry which was marked as Ex.P1 before the Tribunal. The charge sheet was also filed subsequently only against the driver of the insured lorry which was marked as Ex.P20 before the Tribunal. The Rough Sketch which was marked as Ex.19 before the Tribunal, discloses the details of the accident. The Tribunal has taken into consideration the aforementioned documents and has held that the entire fault is on the part of the driver of the insured lorry and the Appellant Insurance Company was directed to pay the determined compensation amount to the respective claimants. Admittedly, the insured lorry was in a stationery position, when the two wheeler in which the respective deceased were travelling and dashed against it. The deceased could have very well avoided the accident, if the rider of the said two wheeler was cautious while driving the vehicle. Therefore, it is clear that there is some amount of negligence on the part of the motor cycle also. The Tribunal under the impugned award failed to take note of this fact. But instead held that the entire responsibility for the cause of the accident is only on the part of the driver of the insured lorry which in the considered view of this court is not a correct assessment. The Rough Sketch which was marked as Ex.P19 before the Tribunal also reveals that the motor cycle in which



the deceased were travelling was coming from west to east direction and dashed against the lorry from behind which will clearly indicate that the rider of the motorcycle could have avoided the accident, if he was little more cautious and therefore, he is also to some extent responsible for the cause of the accident. Hence, this Court fixes the contributory negligence of the rider of the motorcycle bearing registration No.TN20BU5495 at 10% and the driver of the insured lorry at 90%.

10. With regard to the quantum of compensation awarded by the Tribunal to the respective claimants is concerned, this Court is of the considered view that under certain heads, the Tribunal has awarded excessive amounts which is not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (16) SCC 680.

11. Coming to the first claim viz., MCOP.No.1900 of 2010, the Tribunal has awarded a compensation of Rs.12,78,000/- to the claimants. The deceased was a Bachelor and his parents are the claimants. The deceased was a painter by profession. The Tribunal has awarded 50% towards loss of future prospects to the claimants which is not in accordance with Pranay Sethi's Judgment referred to supra as the deceased was only 23 years old at the time of the accident. Instead of awarding 40% towards loss of future prospects, the Tribunal has erroneously awarded 50% which is excessive. Accordingly, this Court reduces the loss of future prospects to the claimants to 40%. The Tribunal has rightly deducted 50% towards personal expenses of the deceased, since the deceased was a bachelor at the time of the accident. The Tribunal has also rightly deducted the correct multiplier of 18, since the deceased was aged 23 years at the time of the accident. Hence the loss of pecuniary benefits and loss of estate of the deceased is reduced to Rs.9,82,800/- from Rs.10,53,000/- fixed by the Tribunal as detailed hereunder:

$$(6,500 \times 12 = 78,000 + 40\% = 1,09,200 - \frac{1}{2} = 54,600 \times 18)$$

12. Insofar as the compensation towards loss of love and affection awarded by the Tribunal at Rs.2,00,000/- is concerned, the same is also excessive and not in accordance with Pranay Sethi's Judgment referred to supra. The dependants of the deceased are his parents and hence, the Tribunal ought to have awarded only Rs.80,000/- calculated at Rs.40,000/- for each of the claimants and not Rs.2,00,000/-. Hence, the compensation awarded by the Tribunal towards loss of love and affection is reduced to Rs.80,000/- from Rs.2,00,000/- by this Court.



13. The Tribunal has erroneously failed to award any compensation towards loss of estate of the deceased which the claimants are legally entitled to as per Pranay Sethi's Judgment referred to supra. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- towards loss of estate of the deceased to the claimants.

14. With regard to the compensation towards funeral expenses is concerned, the Tribunal has awarded an excess amount of Rs.25,000/- which is also not in accordance with Pranay Sethi's Judgment referred to supra. Accordingly, this Court reduces the same to Rs.15,000/- from Rs.25,000/- fixed by the Tribunal.

15. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants in MCOP.No.1900 of 2010 which corresponds to CMA.No.1870 of 2015 is reduced to Rs.9,83,520/- from Rs.12,78,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of pecuniary benefits	10,53,000/- (6,500 x 12 = 78,000 + 50% = 117000 - ½ = 58500 x 18)	9,82,800/- (6,500 x 12 = 78,000 + 40% = 1,09,200 - ½ = 54,600 x 18)
Funeral Expenses	25,000/-	15,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-	80,000/-
Loss of estate	---	15,000/-
Total	16,29,000/-	10,92,800/-
Less: Contributory negligence of the deceased at 10%	--	1,09,280/-
Award Amount	16,29,000/-	9,83,520/-

16. Insofar as CMA.No.1871 of 2015 which corresponds to MCOP.No.1901 of 2010 is concerned, this Courts assessment are as follows:

(a) The Tribunal has awarded a total compensation of Rs.16,29,000/- to the claimants who are six in number and they



are the mother and five sisters of the deceased out of which 3 of them were minors at the time of the accident.

(b) Here also, the deceased was a painter by profession, and aged 20 years at the time of the accident. In this case also, the Tribunal has erroneously awarded 50% towards loss of future prospects which will have to be reduced to 40% as per Pranay Sethi's judgment referred to supra. Accordingly, the loss of future prospects to the claimants is reduced to 40% from 50% fixed by the Tribunal. The Tribunal has rightly deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased. The Tribunal has also rightly adopted the multiplier of 18 after giving due consideration to the age of the deceased who was 20 years at the time of the accident. For the foregoing reasons, the loss of pecuniary benefits to the claimants in respect of MCOP.No. 1901 of 2010 is reduced by this court to Rs.13,10,400/- from Rs.14,04,000/- in the following manner:

$(6,500 + 40\% = 9,100 \times 12 = 1,09,200 - 1/3^{\text{rd}} = 72,800 \times 18)$

(c) As in the earlier case in MCOP.No.1900 of 2010, the Tribunal has awarded an excess amount of Rs.25,000/- towards funeral expenses. In this case also, it has to be reduced to Rs.15,000/- in accordance with Pranay Sethi's Judgment referred to supra. Accordingly, the compensation awarded towards funeral expenses is reduced to Rs.15,000/- by this Court.

(d) Here, there are six claimants namely the mother and five unmarried sisters of the deceased out of which three were also minors at the time of the accident. But instead of awarding total compensation of Rs.2,40,000/- to the claimants towards loss of love and affection in accordance with Pranay Sethi's Judgment referred to supra calculated at Rs.40,000/- for each of the claimants, the Tribunal has awarded a lesser compensation of Rs.2,00,000/- towards loss of love and affection. Accordingly, this Court fixes the compensation towards loss of love and affection at Rs.2,40,000/- instead of Rs.2,00,000/- fixed by the Tribunal.

(e) Similarly, as in the earlier case, the Tribunal has committed error by not awarding any compensation towards loss of estate of the deceased which the claimants are legally entitled to as per the settled law. Therefore, this Court awards a compensation of Rs.15,000/- towards loss of estate of the deceased to the claimants.

(f) As in the earlier case, 10% contributory negligence is also fixed on the part of the deceased as he was also travelling in the very same motor cycle which dashed against the stationery lorry insured with the Appellant.

17. For the foregoing reasons, the compensation awarded by the Tribunal at Rs.16,29,000/- is reduced to Rs.14,22,360/- by



this Court as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of pecuniary benefits	14,04,000/- (6,500 x 12 = 78,000 + 50% = 117000 - 1/3 = 78,000 x 18)	13,10,400/- (6,500 x 12 = 78,000 + 40% = 1,09,200 - 1/3 = 72,800 x 18)
Funeral Expenses	25,000/-	15,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-	2,00,000/-
Loss of estate	---	15,000/-
Total	16,29,000/-	15,80,400/-
Less: Contributory negligence of the deceased at 10%	--	1,58,040/-
Award Amount	16,29,000/-	14,22,360/-

18. Insofar as the third claim namely MCOP.No.1904 of 2010 which corresponds to CMA.No.1872 of 2015 is concerned, this Courts assessment are as follows:

(a) In this case also, the deceased was a painter by profession and aged 19 years at the time of the accident. However, the Tribunal has erroneously awarded 50% towards loss of future prospects, though the claimants are only entitled to 40% in accordance with Pranay Sethi's Judgment referred to supra. Accordingly, this Court reduces the compensation towards loss of future prospects to the claimants from 50% to 40%. The Tribunal has rightly deducted 50% towards personal expenses of the deceased, since the deceased was bachelor at the time of the accident. The Tribunal has also rightly adopted the multiplier of 18, since the age of the deceased at the time of the accident was 19 years. In view of the reduction of loss of future prospects from 50% to 40% by this court, the compensation towards loss of pecuniary benefits is reduced from Rs.10,53,000/- to Rs.9,82,800/- by this Court in the following manner:

$$(6,500 \times 12 = 78,000 + 40\% = 1,09,200 - \frac{1}{2} = 54,600 \times 18)$$

(b) In this case also, the compensation awarded by the Tribunal towards funeral expenses at Rs.25,000/- is not in accordance with Pranay Sethi's judgment referred to supra and



hence, the same is reduced to Rs.15,000/- by this court.

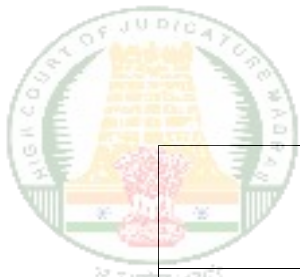
(c) In this case, the dependants are the parents and an unmarried sister of the deceased and they are three in number. Therefore, the Tribunal ought to have awarded only a compensation of Rs.1,20,000/- towards loss of Love and affection in accordance with Pranay Sethi's Judgment referred to supra calculated at Rs.40,000/- for each of the dependants, instead the Tribunal has erroneously awarded Rs.2,00,000/- under the said head. Hence, this Court reduces the compensation towards loss of love and affection from Rs.2,00,000/- to Rs.1,20,000/-.

(d) Here also, the Tribunal erroneously failed to award any compensation towards loss of estate of the deceased which the claimants are legally entitled to as per the settled law. In accordance with Pranay Sethi's Judgment, the claimants are entitled to Rs.15,000/- towards loss of estate of the deceased. Accordingly, the same is granted by this Court to the claimants.

(e) As in the earlier cases, the deceased who was also travelling in the very same motorcycle is also responsible for the cause of the accident and as in the earlier cases, the contributory negligence on the part of the deceased in this case also is fixed at 10%.

19. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is reduced from Rs.12,78,000/- to Rs.10,19,520/- as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of pecuniary benefits	10,53,000/- (6,500 x 12 = 78,000 + 50% = 117000 - ½ = 58500 x 18)	9,82,800/- (6,500 x 12 = 78,000 + 40% = 1,09,200 - ½ = 54,600 x 18)
Funeral Expenses	25,000/-	15,000/-
Loss of love and affection, mental agony and loss of companionship to the parents	2,00,000/-	1,20,000/-
Loss of estate	---	15,000/-
Total	12,78,000/-	11,32,800/-
Less: Contributory negligence of the deceased at 10%	--	1,13,280/-



Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Award Amount	12,78,000/-	10,19,520/-

20. In the result, these appeals are partly allowed by fixing the contributory negligence on the part of the respective deceased at 10% and also by modifying the award amount.

21. It is represented by the learned counsel for the Appellant that the Appellant Insurance Company has already deposited the entire amount awarded by the Tribunal. Since this Court has reduced the compensation amount awarded by the Tribunal, the Appellant Insurance Company is permitted to withdraw the excess amount deposited by them, if any, in all the three claims together with accrued interest if any, by filing appropriate applications.

22. The Tribunal shall transfer the amount lying to the credit of MCOP.No.1900 of 2010 to the bank account of the claimants/respondents 1 & 2 in C.M.A.No.1870 of 2015 through RTGS and the Tribunal shall also transfer the respective shares of compensation amount lying to the credit of MCOP.No.1901 of 2010 to the bank account of the claimants/respondents 1 to 5 in CMA.No.1871 of 2015 as per the ratio apportioned by the Tribunal through RTGS and the Tribunal shall also transfer the respective share of compensation amount lying to the credit of MCOP.No.1904 of 2010 to the bank account of the claimants/respondents 1 to 3 in CMA.No.1872 of 2015 through RTGS as per the ratio apportioned by the Tribunal within a period of one week. Since the sixth respondent in CMA.No.1871 of 2015 is a minor, her share of award amount shall be deposited in any one of the Nationalised Banks till she attains the age of majority. The guardian/her mother, the first respondent in CMA.No.1871 of 2015 is permitted to withdraw the interest accrued once in six months for the welfare of the minor. If she attains the age of majority, it is open for her to file a formal petition to declare her as major. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The VI Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court of Madras.

+3cc to Mr.R.Neethiperumal, Advocate SR.No.31365, 31362, 31363
+1cc to Mr.N.M.Muthurajan, Advocate SR.No.31226

C.M.A.Nos.1870, 1871 & 1872 of 2015

PP (CO)
CB (25/11/2021)