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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A.NOS.2449 & 2450 OF 2012

In CMA.No.2449 of 2012:

K.R.Ramesh

... Appellant/Petitioner

..Vs..

1.Shymala.K

2.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014.

(R1 set ex-parte in the lower Court) ... Respondents

Prayer in CMA.2449 of 2012: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Chief Judge, Small Causes Court, Chennai, (MACT), in M.C.O.P.No.2516 of 2007 dated 27.07.2011.

In CMA.No.2450 of 2012:

1. K.R.Ramesh

2.R.R. Deepajothi

3.N.R.Manirathinam (Minor)

[2nd appellant declare as major and his father & next friend 1st appellant K.R.Ramesh discharged from guardianship vide Court order dated 08.02.2021 made in CMP.No.1758 & 1759 of 2021 in CMA.2450 of 2012 (DKKJ)]

... Appellants/Petitioners

..Vs..



1.Shymala.K

2.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014.

(R1 set ex-parte in the lower Court)

... Respondents/
Respondents

Prayer in CMA.2450 of 2012: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Chief Judge, Small Causes Court, Chennai, (MACT), in M.C.O.P.No.2761 of 2007 dated 27.07.2011.

For Appellant(s) : Mr.R.Ramakrishnan
in both appeals

For Respondent-2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan
in both appeals

R1 : Notice un served

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

Being aggrieved over the award passed by the learned Chief Judge, Small Causes Court, Chennai, (MACT), in M.C.O.P.Nos.2516 & 2761 of 2007 dated 27.07.2011, the present appeals have been preferred by the appellants for enhancement of compensation.

2. Heard Mr.R.Ramakrishnan, learned counsel for the appellants and Mr.E.Rajadurai, learned counsel for the second respondent.

3. The germane facts which leads to the filing of the present appeals are as follows:-

a) On 10.03.2006 at about 13.50 hrs., when the appellant/K.R.Ramesh along with his wife Nalini and his minor son were riding in his two wheeler bearing registration No.TN-22-M-3318 to Tiumpuliyur for attending a function, a tipper lorry bearing registration No.TN-10-F-5527 which was driven by its driver in a rash and negligent manner, dashed behind the two wheeler. In the said accident, the tipper lorry ran over the wife /deceased Nalini and she died on the spot whereas the appellant/K.R.Ramesh had sustained grievous injuries. Hence, the appellant/Ramesh had filed a claim petition before the Tribunal, claiming a sum of Rs.3 lakhs as compensation for the injuries sustained by him in the accident insofar as MCOP No.2516 of 2007



is concerned, whereas the husband K.R.Ramesh and two children of the deceased Nalini had filed a claim petition in MCOP.No.2761 of 2007, claiming a sum of Rs.17 lakhs as compensation on the death of the deceased Nalini.

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b) Before the Tribunal, witnesses P.W.1 and P.W2 were examined and documents P1 to P24 were marked as exhibits on the side of the claimants whereas RW1 was examined and Exs.R1 and R2 were marked on the side of the respondents. After analysing the oral and documentary evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tipper lorry which was insured with the second respondent herein/Insurance Company and directed the second respondent to pay a sum of Rs.65,000/- in respect of MCOP.No.2516 of 2007 and Rs.6,42,000/- in regard to MCOP.No.2761 of 2007, with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation to the claimants.

c) (i)The break-up details of the award passed by the Tribunal in MCOP.No.2516 of 2007 is as follows:-

S. No.	Heads	Amount (Rs.)
1	Loss of earning during treatment period	5,000
2	Transportation	5,000
3	Extra nourishment	5,000
4	Pain and sufferings	10,000
5	Permanent Disability	40,000
	Total	65,000

c) (ii)The break-up details of the award passed by the Tribunal in MCOP.No.2761 of 2007 is as follows:-

S. No.	Heads	Amount (Rs.)
1	Loss of income	6,12,000
2	Loss of consortium	10,000
3	Loss of love and affection	10,000 (Rs.5000/- for each child)
4	Funeral expenses	10,000
	Total	6,42,000



4. Heard the learned counsels appearing for the parties concerned and perused the materials available on record.

5. When the matter is taken up today, the parties on either side affirmed for the compensation arrived by this Court on 29.01.2021. Hence, this Court disposes both the appeals by way of a common judgment.

6. Confabulations of the modification of the awards passed by the Tribunal are as follows:

(i) Insofar as the appeal filed in CMA.No.2449 of 2012 in respect of MCOP.No.2516 of 2007 is concerned, there is no dispute in regard to the injuries sustained by the appellant/K.R.Ramesh in the said accident. Considering the nature of injuries sustained and the treatment taken by the appellant, the amount awarded by the Tribunal for loss of earning during the treatment period is enhanced to Rs.30,000/- from Rs.5,000/- as against the amount awarded by the Tribunal, by fixing Rs.5000/- per month for a period of six months ($\text{Rs.}5000 \times 6 = \text{Rs.}30,000$). Likewise, the amount awarded by the Tribunal towards extra nourishment and pain & sufferings are enhanced to Rs.10,000/- and Rs.25,000/- respectively. No amount has been awarded towards loss of amenities. Hence, a sum of Rs.10,000/- has been granted under the said head. The amount awarded by the Tribunal towards permanent disability remains unaltered whereas the amount awarded towards transportation, the appellant is not entitled to. In all, a sum of Rs.1,15,000/- is granted to the appellant/K.R.Ramesh along with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The break-up details of the modified amount passed by this Court is as follows:-

S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Enhanced compensation granted by this Court (Rs.)
1	Loss of earning during treatment period	5,000	30,000 (5000 x 6)
2	Transportation	5,000	-
3	Extra nourishment	5,000	10,000
4	Pain and sufferings	10,000	25,000
5	Permanent Disability	40,000	40,000
6	Loss of amenities	-	10,000



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S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Enhanced compensation granted by this Court (Rs.)
	Total	65,000	1,15,000

(ii) Insofar as the appeal in CMA. No.2450 of 2012 pertaining to MCOP.No.2761 of 2007 is concerned, this Court by taking the monthly income of the deceased at Rs.4,500/- as per Ex.P24/Payment Register and by adding 40% to the monthly income towards future prospectus taking into account the age of the deceased as 28 years, the monthly income is arrived at Rs.6300/-. Considering the age of the deceased at the time of her death, the multiplier 17 adopted by the Tribunal is perfectly correct and the same is accepted by this Court. Deducting 1/3rd towards personal expenses of the deceased, the monthly income of the deceased comes to Rs.4200/- and accordingly, the loss of income of the deceased is arrived at Rs.8.56,800/- (4200 x 12 x 17). At the time of the accident, the deceased was only 28 years old, leaving behind her husband, two children at the tender age. Considering the age of the deceased at the time of accident, this Court opines that the amount awarded by the Tribunal is meagre towards the heads consortium and love & affection and hence, the same are enhanced to Rs.40,000/- and Rs.80,000/- (each children Rs.40,000/-) respectively. Likewise, the amount awarded under funeral expenses is enhanced to Rs.15,000/- from Rs.10,000/-. No amount has been awarded by the Tribunal towards loss of estate and therefore, a sum of Rs.15,000/- has been granted by this Court under the said head. In total, a sum of Rs.10,06,800/- has been granted by this Court as compensation along with interest at the rate of 7.5% interest to the appellants for the death of the deceased Nalini. The break-up details of the modified award amount is as follows:-

S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Enhanced compensation amount granted by this Court (Rs.)
1	Loss of income	6,12,000	8,56,800
2	Loss of consortium	10,000	40,000



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S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Enhanced compensation amount granted by this Court (Rs.)
3	Loss of love and affection	10,000 (Rs.5000/- for each child)	80,000 (Rs.40,000/- each child)
4	Funeral expenses	10,000	15,000
5	Loss of estate	-	15,000
	Total	6,42,000	10,06,800

7. In view of the above, the Civil Miscellaneous Appeals filed by the appellant(s) are partly allowed. It is brought to the notice of this Court by the learned counsel for the appellants/claimants that the Insurance company had deposited the entire award amount before the Tribunal. Hence, the second respondent herein/Insurance Company is directed to deposit the enhanced compensation amount along with 7.5% p.a interest granted by this Court, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant(s)/appellant(s) are entitled to withdraw their amounts along with interest on filing of appropriate petition before the Tribunal. In regard to the compensation awarded to the appellants in CMA.No.2450 of 2012, the appellants are entitled to withdraw their share amounts along with proportionate interest as per the apportionment made by the Tribunal.

8. In fine, the Civil Miscellaneous Appeals are allowed in part. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CCC)

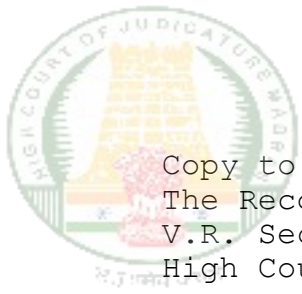
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Sub Assistant Registrar

DP

To

1.The Chief Court, Small Causes Court,
(The Motor Accident Claims Tribunal),
Chennai.



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High Court, Madras.

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C.M.A.Nos.2449 & 2450 of 2012

NRL (CO)
CB (01/10/2021)