



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1595 of 2020 & 363 of 2021
and
C.M.P.No.2431 of 2021

C.M.A.No.1595 of 2020:

- 1.R.Muniyammal
- 2.R.Manivannan
- 3.R.Kokila
- 4.R.Janakiraman
- 5.Minor. R.Yogeswari

(Minor 5th appellant represented by her Mother,
Next Friend, R.Muniyammal, 1st appellant herein)

6.M.Palaniyammal ..Appellants/Petitioners

Vs.

1. R.Kamaraj
2. M/s.Reliance General Insurance Company Limited,
Zonal Office, Commercial Claims,
6th Floor, No.6, Haddows Road,
Chennai - 600 006. ..Respondents/Respondents

C.M.A.No.363 of 2021:

M/s.Reliance General Insurance Company Limited,
Zonal Office, Commercial Claims,
6th Floor, No.6, Haddows Road,
Chennai - 600 006. ..Appellant/2nd Respondent

Vs.

- 1.R.Muniyammal
- 2.R.Manivannan
- 3.R.Kokila
- 4.R.Janakiraman
- 5.Minor. R.Yogeswari



(Minor 5th respondent represented by her Mother,
Next Friend, R.Muniyammal, 1st respondent herein)

6.M.Palaniyammal

..Respondent 1to6/Petitioners 1to 6

7.R.Kamaraj

..7th Respondent/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2020 made in M.C.O.P.No.1718 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

In C.M.A.No.1595 of 2020:

For Appellants : Mr.R.Mohan Babu

For R1 : No appearance

For R2 : Mr.S.Arun Kumar

In C.M.A.No.363 of 2021:

For Appellant : Mr.S.Arun Kumar

For RR 1 to 6 : Mr.R.Mohan Babu

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

These Civil Miscellaneous Appeals have been filed against the award dated 02.03.2020 made in M.C.O.P.No.1718 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the above said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 17.02.2018 against the respondents, being the owner and insurer of the motorcycle bearing Registration No.TN 14 J 1486.

4.According to the claimants, on 17.02.2018 at about 06.00 P.M., while the said Ramesh was riding his motorcycle bearing Registration No.TN 20 Y 2868 from Chennai to Chittoor near Puligundram to Malagunta Road, the rider of the motorcycle



bearing Registration No.TN 14 J 1486 belonging to 1st respondent came in a rash and negligent manner from the opposite direction, dashed against the motorcycle rode by the deceased Ramesh and caused the accident. In the accident, the said Ramesh fell down from the motorcycle, sustained severe head injury and died in the Hospital on 20.02.2018. Therefore, the claimants filed the above said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of said Ramesh against the respondents, being the owner and insurer of the motorcycle bearing Registration No.TN 14 J 1486.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 14 J 1486 belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.21,15,000/- as compensation to the claimants.

6.Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with an appeal in C.M.A.No.1595 of 2020 seeking enhancement of compensation. Questioning the quantum of compensation awarded by the Tribunal in the award dated 02.03.2020 made in M.C.O.P.No.1718 of 2018, the 2nd respondent-Insurance Company has come out with an appeal in C.M.A.No.363 of 2021.

7.The learned counsel appearing for the claimants contended that the deceased was aged 42 years, working as Cooking Master for Functions and was earning a sum of Rs.18,000/- per month at the time of accident. The Tribunal fixed a meagre sum of Rs.12,000/- per month as notional income of the deceased. The wife of the deceased, the 1st claimant has lost her husband and the amount awarded by the Tribunal towards loss of consortium to the 1st claimant is meagre. The Tribunal failed to award any amount towards mental agony. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and prayed for dismissal of C.M.A.No.363 of 2021 filed by the 2nd respondent-Insurance Company and for enhancement of compensation.

8.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimants failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.12,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The claimants 2 to 4 are not dependants of the deceased and hence, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th towards personal expenses of the deceased. The claimants are not entitled to any enhancement



towards future prospects of the deceased as there is no future loss at all. The amount awarded by the Tribunal towards loss of love and affection is excessive. The total compensation awarded by the Tribunal at Rs.21,15,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.1595 of 2020 filed by the claimants.

9.Though notice has been served on the 1st respondent in C.M.A.No.1595 of 2020 and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

10.Heard the learned counsel appearing for the claimants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

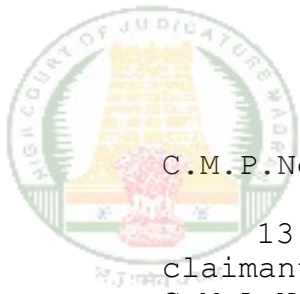
11.It is the case of the claimants in the claim petition that the deceased was aged 42 years, working as Cooking Master for Functions and was earning a sum of Rs.18,000/- per month at the time of accident. They failed to let in any acceptable evidence to substantiate their case. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased. The accident occurred in the year 2018 and the monthly income fixed by the Tribunal is meagre. Considering the date of accident, nature of work done by the deceased, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. The claimants filed Ex.P5/Aadhar card copy and Ex.P6/Driving License copy of the deceased. As per Exs.P5 & P6, the age of the deceased was mentioned as 41 years. The Tribunal considering Exs.P5 & P6, fixed the age of the deceased as 41 years and granted 25% enhancement towards future prospects and the same is not excessive as claimed by the 2nd respondent-Insurance Company. The further contention of the 2nd respondent-Insurance Company that except claimants 1, 5 & 6, others are not dependants of the deceased is concerned, the claimants 2 to 4, are the daughter and 2 sons of the deceased, aged 22 years, 20 years and 18 years respectively. The 2nd respondent-Insurance Company has not disproved that the claimants 2 to 4 are children of the deceased. It is well settled that even married son and daughters are also entitled to get compensation for the death of their father. The Tribunal considering Ex.P8/legalheirship certificate, held that claimants are entitled to compensation for the death of their father viz., Ramesh. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.23,62,500/- {Rs.18,750/- [(Rs.15,000/- + Rs.3,750/- (25% of Rs.15,000/-)] X 12 X 14 X 3/4}. The Tribunal considering the fact that claimants 2 to 5 have lost their father and 6th claimant has lost her son, granted a sum of Rs.30,000/- each towards loss of love and affection. The amounts



awarded by the Tribunal towards loss of love and affection is not excessive. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	18,90,000/-	23,62,500/-	Enhanced
2.	Loss of consortium to 1 st claimant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to claimants 2 to 6	1,50,000/-	1,50,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
	Total	Rs.21,15,000 /-	Rs.25,87,500 /-	Enhanced by Rs.4,72,500/-

12.The compensation awarded by the Tribunal at Rs.21,15,000/- is hereby enhanced to Rs.25,87,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment, to the credit of M.C.O.P.No.1718 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. On such deposit, the claimants 1 to 4 & 6 are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 5th claimant is directed to be deposited in any one of the Nationalized Banks, till the minor 5th claimant attains majority. On such deposit, the 1st claimant, being the mother of the minor 5th claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 5th claimant. The claimants are directed to pay the necessary Court fee as per the order of this Court dated 08.10.2020 made in



C.M.P.No.11198 of 2020 in C.M.A.No.SR.56248 of 2020.

13.In the result, C.M.A.No.1595 of 2020, filed by the claimants is partly allowed and in view of the same, C.M.A.No.363 of 2021, filed by the Insurance Company is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.R.Mohanbabu, Advocate, S.R.No.10577
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.10530

C.M.A.Nos.1595 of 2020 & 363 of 2021

SRA(CO)
RGA(27/08/2021)