



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.3085, 3086, 3472 & 3605 of 2014
and M.P.Nos.1, 1 of 2014

C.M.A.No.3085 of 2014

1.K.Shakila

2.P.Kothandaraman

.. Appellants/Petitioners

Vs.

1.M/s.Niruban Wood Furniture,
No.1/1, 6th Street,
Gopal Reddy Nagar,
Korukkupet,
Chennai.

2.M/s.New India Assurance Co. Ltd.,
251, T.H. Road,
Thiruvottiyur,
Chennai 600 021.

.. Respondents/Respondents

C.M.A.No.3472 of 2014

M/s.New India Assurance Co. Ltd.,
251, T.H. Road,
Thiruvottiyur,
Chennai 600 021.

.. Appellant/2nd Respondent

Vs.

1.K.Shakila

2.P.Kothandaraman

... Respondents 1 & 2/Petitioners

3.M/s.Niruban Wood Furniture,
No.1/1, 6th Street,
Gopal Reddy Nagar,
Korukkupet,
Chennai.

.. 3rd Respondent/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment



and decree dated 21.04.2014, made in M.C.O.P.No.1786 of 2010, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

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(In C.M.A.No.3085/2014)

For Appellants : Mr.F.Terry Chella Raja
for M/s.V.Velu

For Respondents : No appearance (For R1)
Mr.J.Chandran (For R2)

(In C.M.A.No.3472/2014)

For Appellant : Mr.J.Chandran

For Respondents : Mr.F.Terry Chella Raja (For RR1 & 2)
for M/s.V.Velu
No appearance (For R3)

C.M.A.No.3086 of 2014

1.Jothi
2.Varadharajan
3.Rajesh

4.Minor Saravanan
(Rep. By his mother, Jothi as NG & NF) .. Appellants/Petitioners

Vs.

1.M/s.Niruban Wood Furniture,
No.1/1, 6th Street,
Gopal Reddy Nagar,
Korukkupet, Chennai.

2.M/s.New India Assurance Co. Ltd.,
251, T.H. Road,
Thiruvottiyur,
Chennai 600 021.

.. Respondents/Respondents

C.M.A.No.3605 of 2014

M/s.New India Assurance Co. Ltd.,
251, T.H. Road,
Thiruvottiyur,
Chennai 600 021.

.. Appellant/2nd Respondent



Vs.

1.Jothi

2.Varadharajan

3.Rajesh

4.Minor Saravanan ... Respondents 1 to 4/Petitioners
(Rep. By his mother, Jothi as NG & NF)

5.M/s.Niruban Wood Furniture,
No.1/1, 6th Street,
Gopal Reddy Nagar,
Korukkupet,
Chennai.

...5th Respondent/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.04.2014, made in M.C.O.P.No.1787 of 2010, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

(In C.M.A.No.3086/2014)

For Appellants : Mr.F.Terry Chella Raja
for M/s.V.Velu

For Respondents : No appearance (For R1)
Mr.J.Chandran (For R2)

(In C.M.A.No.3605/2014)

For Appellant : Mr.J.Chandran

For Respondents : Mr.F.Terry Chella Raja (For R1 to R4)
for M/s.V.Velu
R5 Not Ready in notice

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

(The matter is heard through "Video Conferencing/Hybrid mode".)

C.M.A. No.3085 of 2014 is filed for enhancement of the compensation and C.M.A. No.3472 of 2014 is filed to set aside the award dated 21.04.2014, made in M.C.O.P.No.1786 of 2010, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.



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C.M.A. No.3086 of 2014 is filed for enhancement of the compensation and C.M.A. No.3605 of 2014 is filed to set aside the award dated 21.04.2014, made in M.C.O.P.No.1787 of 2010, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.All the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P.Nos.1786 & 1787 of 2010, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.15,00,000/- each as compensation for the death of one Sathish and Madan @ Loganathan respectively, who died in the accident that took place on 14.04.2010.

5.According to the claimants, on the date of accident, when deceased Sathish was riding the Motorcycle bearing Registration No.TN-05-U-2830 on EC Road, Therkupamu, Kancheepuram District along with deceased Madan @ Loganathan as pillion rider, the driver of the Tata Ace bearing Registration No.TN-22-AM-3054, owned by the 1st respondent and insured with the 2nd respondent drove the Lorry in a rash and negligent manner, dashed against the Motorcycle and thus, the accident occurred. In the accident, deceased Sathish and Madan @ Loganathan sustained multiple grievous injuries and died on the spot. The accident occurred only due to rash and negligent driving by driver of the Tata Ace owned by the 1st respondent and hence, the claimants in both the claim petitions filed the said claim petitions, claiming compensation for the death of Sathish and Madan @ Loganathan, against the respondents as owner and insurer of the offending vehicle respectively.

6.The 1st respondent, owner of the Tata Ace, remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed separate counter statements and denied all the averments made by the claimants in the claim petitions. According to the 2nd respondent, the accident occurred only due to contributory negligence of the deceased Sathish, who did not drive the Motorcycle properly. Moreover, the 1st respondent, who is the alleged owner of the Tata Ace, has not reported about the alleged accident to them and has not furnished the details



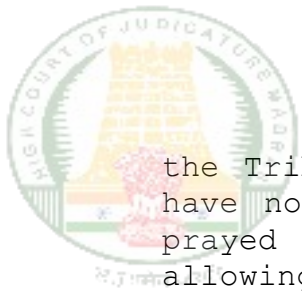
regarding the Registration Certificate, Fitness Certificate, driving license, permit and insurance. In the absence of any particulars, the 2nd respondent-Insurance Company denied the occurrence of accident on 14.04.2010 and also denied the possession of valid and effective driving license by both the driver of the Tata Ace as well as Sathish, at the time of accident. The claim petitions are bad for non-joinder of insurer of the Motorcycle. In any event, the claimants in both the claim petitions have to prove the age, avocation and income of the deceased persons to claim compensation. The total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

8.Before the Tribunal, the 1st claimant in both the claim petitions examined themselves as P.W.1 and P.W.2, one Kumar, eye-witness as P.W.3, one Antony Prabhu, employer of Lee Waterina Hotel as P.W.4, one Anandan, Proprietor of Mano Oxys as P.W.5 and marked 13 documents as Exs.P1 to P13. The 2nd respondent did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tata Ace owned by the 1st respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.5,80,000/- as compensation to the claimants in M.C.O.P.No.1786 of 2010 and a sum of Rs.5,80,000/- as compensation to the claimants 1 and 2 in M.C.O.P.No.1787 of 2010.

10.Challenging the liability fixed on the 2nd respondent by the Tribunal in the common award dated 21.04.2014, made in M.C.O.P.Nos.1786 & 1787 of 2010, the 2nd respondent - Insurance Company has filed C.M.A. Nos.3472 & 3605 of 2014 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A.Nos.3085 and 3086 of 2014, seeking enhancement of compensation.

11.Though the 2nd respondent-Insurance Company raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the 2nd respondent restricted his arguments only with regard to quantum of compensation awarded by the Tribunal in both the claim petitions. The learned counsel appearing for the 2nd respondent contended that the Tribunal having rejected the evidence of P.W.4 and P.W.5 and salary certificates produced by the claimants in both the claim petitions, erred in excessively fixing the monthly income at Rs.5,000/-. The amounts awarded by



the Tribunal under different heads are excessive. The claimants have not made out any case for enhancement of compensation and prayed for dismissal of C.M.A.Nos.3085 & 3086 of 2014 and allowing C.M.A.Nos.3472 and 3605 of 2014.

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12.Per contra, the learned counsel appearing for the claimants in M.C.O.P.No.1786 of 2010 contended that the deceased Sathish was working as a Server and was earning a sum of Rs.6,000/- per month along with Rs.4,000/- as incentive. The claimants in M.C.O.P.No.1786 of 2010 examined P.W.4-employer and marked Exs.P4 and P11 - salary certificates to prove the same. The deceased Madan @ Loganathan was working as a Electrician and was earning a sum of Rs.9,000/- per month. The claimants in M.C.O.P.No.1787 of 2010 examined P.W.5 - employer and marked Ex.P13- salary certificate to prove the same. The Tribunal fixed the monthly income of the deceased in both the claim petitions as Rs.5,000/- and granted meagre amount towards loss of pecuniary benefits. The amounts awarded by the Tribunal towards transportation, loss of love and affection and funeral expenses in both the claim petitions are meagre. The Tribunal failed to award any amount towards loss of estate. The total compensation awarded by the Tribunal are meagre and prayed for enhancement of compensation granted in both the claim petitions and dismissal of C.M.A.Nos.3472 and 3605 of 2014, filed by the 2nd respondent- Insurance Company.

13.Though notice has been served on the 1st respondent in C.M.A.Nos.3085 & 3086 of 2014 and 3rd respondent in C.M.A.No.3472 of 2014 and their name is printed in the cause list, there is no representation for them either in person or through counsel.

14.Heard the learned counsel appearing for the claimants as well as the 2nd respondent - Insurance Company in all the Civil Miscellaneous Appeals and perused the entire materials available on record.

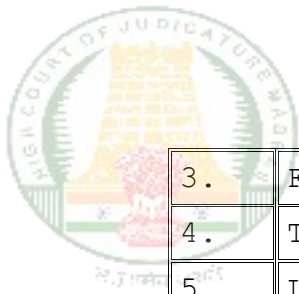
M.C.O.P.No.1786 of 2010 [C.M.A.Nos.3085 and 3472 of 2014]-

15.From the materials on record, it is seen that though the claimants have claimed that the deceased Sathish was aged 20 years at the time of accident, working as a Server in Lee Waterina Hotel and was earning a sum of Rs.9,000/- per month, P.W.1-mother of the deceased deposed that her son was earning a sum of Rs.6,000/- per month along with an incentive of Rs.4,000/- per month. Before the Tribunal, the claimants examined P.W.4 - Antony Prabhu, employer of the deceased and marked Exs.P4 and P11 - salary certificates to prove the same. P.W.4 deposed that the deceased Sathish was working in the said



Hotel as Server and was earning a sum of Rs.6,000/- per month, apart from receiving Rs.2,000/- as tips. In view of the contradiction in the averments in the claim petition and the oral and documentary evidence let in by the claimants, the Tribunal did not accept the evidence of P.W.4 and fixed the notional income of the deceased at Rs.5,000/- per month. The accident is of the year 2010. The notional income fixed by the Tribunal is meagre. Considering the year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the deceased Sathish. The deceased was a bachelor, aged 20 years at the time of accident. The Tribunal rightly applied the multiplier '18' considering the age of the deceased, deducted 50% towards personal expenses, but failed to grant any enhancement towards future prospects. Considering the age of deceased, as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the claimants are entitled to 40% enhancement towards future prospects. By fixing the monthly income at Rs.7,500/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses, the amounts granted by the Tribunal for loss of pecuniary benefits is modified to Rs.11,34,000/- {[Rs.7,500/- + Rs.3,000/- (40% of Rs.7,500/-)] x 12 x 18 x 1/2}. The Tribunal has awarded meagre amount of Rs.25,000/- towards loss of love and affection to the parents of the deceased, who are the claimants. The claimants are entitled to Rs.40,000/- towards loss of love and affection. The amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate. The claimants are entitled to Rs.15,000/- towards loss of estate. The amount of Rs.5,000/- granted towards transportation charges is just and reasonable and hence, the same is 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 pecuniary benefits	5,40,000/-	11,34,000/-	Enhanced
2.	Loss of love and affection to the claimants 1 and 2	25,000/-	40,000/-	Enhanced



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3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	5,80,000/-	12,09,000/-	Enhanced by Rs.6,29,000 /-

M.C.O.P.No.1787 of 2010 [C.M.A.Nos.3086 and 3605 of 2014]-

16.From the materials on record, it is seen that the claimants claim that the deceased Madan @ Loganathan was aged 21 years at the time of accident, working as Electrician and was earning a sum of Rs.9,000/- per month. Before the Tribunal, the claimants examined P.W.5 - Anandan, Proprietor of Mano Oxy's, to prove the same. P.W.5 deposed that the deceased Madan @ Loganathan was working under him and was earning a sum of Rs.10,000/- per month. In view of the contradiction in the averments in the claim petition and the oral and documentary evidence let in by the claimants, the Tribunal did not accept the evidence of P.W.5 and fixed the notional income of the deceased at Rs.5,000/- per month. The accident is of the year 2010. The notional income fixed by the Tribunal is meagre. Considering the year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the deceased Madan @ Loganathan. The deceased was a bachelor, aged 21 years at the time of accident. The Tribunal rightly applied the multiplier '18' considering the age of the deceased, deducted 50% towards personal expenses, but failed to grant any enhancement towards future prospects. Considering the age of deceased, as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the claimants are entitled to 40% enhancement towards future prospects. By fixing the monthly income at Rs.7,500/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses, the amounts granted by the Tribunal for loss of pecuniary benefits is modified to Rs.11,34,000/- {[Rs.7,500/- + Rs.3,000/- (40% of Rs.7,500/-)] x 12 x 18 x 1/2}. The Tribunal has awarded meagre amount of Rs.25,000/- towards loss of love and affection to the parents of the deceased, who are the claimants 1 and 2. The claimants 1 and 2 are entitled to Rs.40,000/- towards loss of love and affection. The amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate. The



claimants 1 and 2 are entitled to Rs.15,000/- towards loss of estate. The amount of Rs.5,000/- granted towards transportation charges is just and reasonable and hence, the same is confirmed. The Tribunal considering the fact the claimants 3 and 4 are the younger brothers of the deceased who are not dependants of the deceased, rightly dismissed the claim petition as against the claimants 3 and 4 and awarded compensation to the claimants 1 and 2 who are the parents of the deceased Madan @ Loganathan. 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 pecuniary benefits	5,40,000/-	11,34,000/-	Enhanced
2.	Loss of love and affection	25,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	5,80,000/-	12,09,000/-	Enhanced by Rs.6,29,000/-

17. In the result, C.M.A.Nos.3472 and 3605 of 2014 are dismissed and C.M.A.Nos.3085 and 3086 of 2014 are partly allowed. The amounts awarded by the Tribunal at Rs.5,80,000/- each are enhanced to Rs.12,09,000/- each, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally directed to deposit the award amounts now determined by this Court along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos.1786 and 1787 of 2010 respectively. On such deposit, the claimants in M.C.O.P.No.1786 of 2010 and claimants 1 and 2 in M.C.O.P.No.1787 of 2010 are permitted to withdraw their respective share of the award amounts, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. C.M.A.No.3086 of 2014 is dismissed as against the claimants 3 and 4/appellants



3 and 4 herein. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+2cc to Mr.V.Velu, Advocate SR.No.64063 & 64062

+2cc to Mr.J.Chandran, Advocate SR.No.64015 & 64014

C.M.A.Nos.3085, 3086, 3472 & 3605 of 2014

VBM(CO)
GN(17/03/2022)