



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. Nos.3093 and 3094 of 2014

1. D.David Ravi @ Ravi
2. Minor Manohar @ Manova
3. Minor Samuel @ Raga .. Appellants in CMA.No.3093 of 2014/
Appellant/Claimants

*[Minors are rep. by their father and
next friend, D.David Ravi @ Ravi]

D.David Ravi @ Ravi Appellant in CMA.No.3094 of 2014
Appellant/Claimant

Versus

1. N.Murugan
2. National Insurance Company Limited,
Vijay Plaza Building II Floor,
C-32 Second Avenue,
Anna Nagar, Chennai 600 040. .. Respondents in both the
petitions/
Respondents/Respondents

PRAYERS: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP.Nos.3058 and 3059 of 2008, dated 13.11.2013 on the file of Motor Accident Claims Tribunal, I Special Judge, Small Causes Court, Chennai.

For appellant : Mr.T.G.Balachandran
(in both the petitions)

For respondents
(in both the petitions)

for R1 : set ex-parte before the Tribunal
for R2 : M/s.N.B.Surekha

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

The appeals are heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/I Special Judge, Small Causes Court, Chennai, in MCOP.Nos.3058 and 3059 of 2008,



dated 13.11.2013, the present appeals in C.M.A. Nos.3093 and 3094 of 2014, respectively, have been filed by the claimants for enhancement of the compensation amount.

3. For the sake of convenience, the parties are referred to as per the rankings before the Tribunal. The first claimant in CMA.No.3093 of 2014, who is also the claimant in CMA.No.3094 of 2014, is the husband of the deceased Beula Devamani and the claimants 2 and 3 in CMA.No.3093 of 2014 are their children.

4. It is the case of the claimants that on 05.05.2008 at about 09.00 hours, the deceased Beula Devamani was travelling as a pillion rider in a Motor Cycle Bearing Registration No.TN-21-M-9878 driven by first claimant/her husband David Ravi @ Ravi, on Thiruneermalai 200 feet bye pass Road from North to South direction to go to Kelambakkam. While he was nearing Anakaputhur at Srinivasapuram, a Sand Lorry bearing Registration No.TMH-1437 belonging to the first respondent and insured with the second respondent/Insurance Company, came in a rash and negligent manner from opposite direction on wrong side and hit the Motor Cycle, causing fatal injury to the deceased and grievous injury to the first claimant/David Ravi @ Ravi. Therefore, the legal heirs of the deceased Beula Devamani filed a claim petition in MCOP.No.3058 of 2008 seeking a compensation for a sum of Rs.8,50,000/- for the death of Beula Devamani. The injured claimant/David Ravi @ Ravi filed a claim petition seeking a compensation of Rs.6,00,000/- for the injuries sustained by him in the said accident.

5. The said claim petitions were resisted by the Insurance Company by filing a detailed counter statement denying the manner of accident as projected by the claimants. They also denied the age, salary and avocation of the deceased Beula Devamani and the first appellant/D.David Ravi @ Ravi. Thus, they sought for dismissal of both the claim petitions.

6. Both the claim petitions were taken together and a joint trial was conducted. In order to prove the claim on the side of the claimants, the first claimant examined himself as PW1 and Exs.P1 to P12 were marked. On the side of the Insurance Company, neither any oral evidence was adduced nor any document was marked.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the said Lorry. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.6,86,000/- to the claimants in MCOP.No.3058 of 2008 and Rs.91,500/- to the claimant in MCOP.No.3059 of 2008.



8. The break-up details of the amounts awarded by the Tribunal in MCOP.No.3058 of 2008, under various heads are as follows:

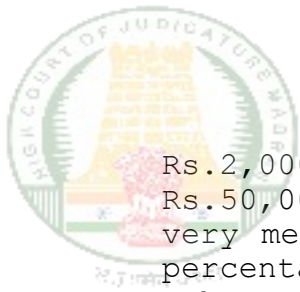
S.No.	Heads under which amounts are awarded	Amount in Rs.
1.	Pecuniary Loss	5,76,000
2.	Loss of Consortium	50,000
3.	Loss of Love and Affection	50,000
4.	Funeral Expenses	10,000
	Total	6,86,000

9. The break-up details of the amounts awarded by the Tribunal in MCOP.No.3059 of 2008, under various heads are as follows:

S.No.	Heads under which amounts are awarded	Amount in Rs.
1.	Loss of Earning	13,500
2.	Transport to Hospital	3,000
3.	Extra Nourishment	5,000
4.	Damages to articles, dress and medical treatment	5,000
5.	Pain and Sufferings	15,000
6.	Permanent Disability	50,000
	Total	91,500

10. It is the case of the appellants/claimants in MCOP.No.3058 of 2008 (CMA.No.3093 of 2014) that at the time of the accident, the deceased was doing tiffin stall business and earning Rs.5,000/- per month. Though PW1, in his evidence, has categorically proved the same, the Tribunal without any basis fixed Rs.4,500/- as the monthly income of the deceased. Thereafter, by applying multiplier method, the Tribunal awarded a sum of Rs.5,76,000/- under the head "Pecuniary Loss". It is the submission of the learned counsel for the claimants that the sum of Rs.5,76,000/- awarded by the Tribunal under the head "Pecuniary Loss" is an inadequate compensation. Hence, the monthly income of the deceased may be fixed at Rs.5,000/- and consequently, the compensation amount may be enhanced.

11. It is the case of the claimant in MCOP.No.3058 of 2008 (CMA.No.3094 of 2014) that he is a semi skilled worker and earning a sum of Rs.5,000/- per month. Due to the accident, the claimant suffered severe head injury and the Tribunal fixed the disability at 25%. However, the Tribunal has taken only a sum of



Rs.2,000/- per percentage of disability and awarded a sum of Rs.50,000/- under the head "Permanent Disability", which is a very meagre amount. Hence, a sum of Rs.3,000/- may be fixed per percentage of disability and the amount under such head may be enhanced. Further, the amounts awarded by the Tribunal under all the other heads are paltry and the same needs appropriate enhancement.

12. Per contra, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal.

13. Heard both sides and perused the materials available on record.

In CMA.No.3093 of 2014 (MCOP No.3058 of 2008)

14. Considering the fact that the accident had occurred in the year 2008 and the cost of living prevalent at that point of time and also taking note of the business of the deceased, this Court fixes the monthly income of the deceased at Rs.5,000/-. Further, the Supreme Court in the decision in Pranay Sethi and others vs. National Insurance Company Limited [(2017) 16 SCC 680], has held that a certain percentage has to be added towards future prospects with the monthly income based on the age of the deceased. In the present case, the deceased was aged about 35 years at the time of accident and hence, 40% has to be added towards future prospects. The compensation payable under the head "pecuniary loss" is recalculated as follows:

Monthly Income	:	Rs.5,000/-
Add: Future Prospects at 40%	:	
40% of 5,000		Rs.2,000/-

		Rs.7,000/-
Annual Income (7,000 x 12)	:	Rs.84,000/-
Multiplier	:	x 15

		Rs.12,60,000/-
Less:1/3 Deduction towards personal expenses	:	Rs. 4,20,000/-

Pecuniary Loss		Rs. 8,40,000/-

Thus, a sum of Rs.8,40,000/- is awarded under the head "Pecuniary Loss".



15. Further, this Court finds that the Tribunal has awarded a sum of Rs.50,000/- under the head "Loss of Consortium" to the first claimant being the husband of the deceased. But, as per the dictum of National Insurance Company Limited vs. Pranay Sethi and others, reported in 2017 (16) SCC 680, the first claimant is entitled only to get a sum of Rs.40,000/- under the head "Loss of Consortium". Hence, a sum of Rs.40,000/- is awarded under the head "Loss of Consortium".

16. Similarly, this Court finds that the Tribunal had awarded only a sum of Rs.50,000/- under the head "Loss of Love and Affection" to the claimants 2 and 3. However, the claimants 2 and 3, being the minor son of the deceased, they are entitled to Rs.40,000/- each, towards parental consortium. Hence, a sum of Rs.80,000/- is awarded under the head "Loss of Love and Affection".

17. Since no amount was awarded under the heads "Transportation" and "Loss of Estate", a sum of Rs.15,000/- is awarded under each of the heads.

18. The sum of Rs.10,000/- awarded by the Tribunal under the head "Funeral Expenses" appears to be just and fair and hence, the same is hereby confirmed.

19. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Pecuniary Loss	5,76,000	8,40,000
2.	Loss of Consortium	50,000	40,000
3.	Loss of Love and Affection	50,000	80,000
4.	Funeral Expenses	10,000	10,000
5.	Transportation	-	15,000
6.	Loss of Estate	-	15,000
	Total	6,86,000	10,00,000

20. Thus, the total compensation of Rs.6,86,000/- awarded by the Tribunal in MCOP No.3058 of 2008 is hereby enhanced to Rs.10,00,000/- (Rupees ten lakhs only), which shall carry



interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw his share of award. Insofar as the minor claimants 2 and 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/father once in three months. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

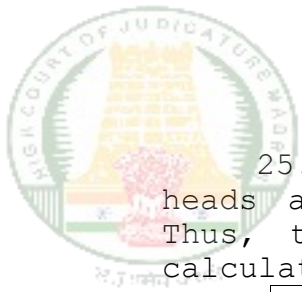
In CMA.No.3094 of 2014 (MCOP.No.3059 of 2008)

21. In the said accident, the claimant had sustained left temporal and right parietal contusion brain and the Tribunal fixed the disability of the claimant at 25%. In view of the above injury, the claimant is suffering from head ache, giddiness, fits and instability. Hence, the contention of the learned counsel for the claimant that the Tribunal ought to have awarded a sum of Rs.3,000/- per percentage of disability has some force. Thus, a sum of Rs.75,000/- [25 x 3,000] is awarded under the head "Permanent Disability".

22. Since the claimant could not attend work for a period of four months and also considering the nature of injuries sustained by him, this Court is of the view that the sum of Rs.13,500/- awarded by the Tribunal under the head "Loss of Earning Power" is on the lower side. Hence, by fixing a sum of Rs.5,000/- as monthly income of the claimant, the loss of earning power has to be granted to the claimant for a period of four months. If so, the "Loss of Earning Power" comes to Rs.20,000/- [5,000 x 4]. Accordingly, the same is awarded.

23. Considering the long duration of treatment undergone by the claimant, the sum of Rs.3,000/- awarded by the Tribunal under the head "Transport to Hospital" is hereby increased to "Rs.5,000/-". Similarly, the sum of Rs.15,000/- awarded by the Tribunal under the head "Pain and Sufferings" is hereby enhanced to Rs.20,000/-.

24. Since no amount was awarded under the head "Attender Charges", a sum of Rs.5,000/- is awarded under such head. Similarly a sum of Rs.10,000/- is awarded under the head "Loss of Amenities".



25. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of Earning	13,500	20,000
2.	Transport to Hospital	3,000	5,000
3.	Extra Nourishment	5,000	5,000
4.	Damages to articles, dress and medical treatment	5,000	5,000
5.	Pain and Sufferings	15,000	20,000
6.	Permanent Disability	50,000	75,000
7.	Attender Charges	-	5,000
8.	Loss of Amenities	-	10,000
	Total	91,500	1,45,000

26. Thus, the total compensation of Rs.91,500/- awarded by the Tribunal in MCOP.No.3059 of 2008 is hereby enhanced to Rs.1,45,000/- (Rupees one lakh and forty five thousand only), which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

27. With the above observations and directions, both the Civil Miscellaneous Appeals are partly allowed. No costs.

Sd/-

Deputy Registrar (CLAA)

//True Copy//

Sub Assistant Registrar



pvs

To

WEB COPY

1.The I Special Judge, Small Causes Court, Chennai/
The Motor Accident Claims Tribunal

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

+2cc to M/s.N.B.Surekha, Advocate, S.R.No.32275, 32276

C.M.A. Nos.3093 and 3094 of 2014

JP-II (CO)
CB(18/11/2021)