



WEB COPY



CMA.Nos.2404 of 2013 & 2772 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.2404 of 2013 & 2772 of 2015
and
M.P.No.1 of 2013 & M.P.No.1 of 2015

[CMA.No.2404 of 2013]

United India Insurance Company Limited,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 13.

... Appellant / 2nd Respondent
Vs.

1.S.Gopikrishnan (died)

... 1st respondent

2.G.Nirmala

... 3rd Respondent

3.G.Vinothkumar

... 4th Respondent

4.G.Yuvaraj

... 5th Respondent

5.G.Kumaran

... 6th Respondent

6.S.Suseela

... 7th Respondent

(Respondents 3 to 7 brought on record as LR's of the deceased R.1 viz;
S.Gopikrishnan vide Court order dated 17.03.2022 made in CMP
No.4590,4594 and 4598 of 2022 in CMA No.2404 of 2013)



CMA.Nos.2404 of 2013 & 2772 of 2015

WEB COPY [CMA.No.2772 of 2015]

1.S.Gopikrishnan (died) ... 1st Petitioner

2.G.Nirmala ... 2rd Petitioner

3.G.Vinothkumar ... 3rd Petitioner

4.G.Yuvaraj ... 4th Petitioner

5.G.Kumaran ... 5th Petitioner

6.S.Suseela ... 6th Petitioner

(Petitioners 2 to 6 brought on record as LR's of the deceased sole petitioner viz; S.Gopikrishnan vide Court order dated 17.03.2022 made in CMP No.8038,8041 and 8045 of 2022 in CMA No.2772 of 2015)

Vs.

1.Mr.S.Govindan

2.United India Insurance Company Limited,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 13.
(Now operating from Silingi Buildings,
No.134, Greaves Road,
Chennai - 600006). ... Respondents/ Respondents



CMA.Nos.2404 of 2013 & 2772 of 2015

WEB COPY

PRAYER in CMA.No.2404 of 2013 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 14.06.2012 made in MCOP No.933 of 2008 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Petitioner : M/s.S.Arun Kumar

For Respondents : Mr.S.Gangaram Prasad [R.3 to R.7]

: [R.1 -died]

: No appearance [R.2]

PRAYER in CMA.No.2772 of 2015 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, from the Judgment and decree dated 14.06.2012 made in MCOP No.933 of 2008 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Petitioners : M/s.S.Gangaram Prasad

For Respondents : M/s.S.Arun Kumar [R.2]

: Ex parte [R.1]



WEB COPY



CMA.Nos.2404 of 2013 & 2772 of 2015

COMMON JUDGEMENT

The petitioner before the Tribunal and the 2nd respondent therein have filed two separate appeals challenging the award passed by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in MCOP No.933 of 2018 in CMA Nos.2772 of 2015 and 2404 of 2015 respectively. The brief facts which are necessary for disposing of the above appeals are herein below narrated.

2. The petitioner who is aged about 50 years and working as a Sub-Inspector of Survey with the Assistant Director, District Survey Land Records, Government of Tamil Nadu had met with an accident on 23.09.2007. On the said date at about 17.15 hours, when he was riding his motor cycle bearing Registration No.TN.20 V 1067 along with his colleague A.B.Boopathy riding pillion and proceeding on the Ponneri Redhills Road in a south to north direction, the driver of the tractor bearing Registration No TN.20 W 2463 belonging to the 1st respondent and insured with the 2nd respondent coming from the opposite direction in a rash and negligent



manner had hit the petitioner's motor cycle as a result of the which the petitioner has sustained grievous injuries.

3. In the original petition the petitioner by an oversight has shown his age 52 years and had claimed a compensation of a sum of Rs.50,00,000/-. Thereafter the same was amended by orders in M.P.No.4416 of 2009 in and by which the age of the deceased was rightly modified as 50 years and the compensation enhanced to a sum of Rs.66,55,000/-.

4. The 1st respondent/ owner of the tractor had remained absent and was set ex parte and it was the 2nd respondent/ insurance company who had challenged the claim petition on the ground that the accident was not the result of the negligence on the part of the tractor's driver and that the petitioner has also contributed to the same. They had also put the petitioner to strict proof of his age, occupation and monthly income. The insurance company had further contended that the amount claimed was on the higher side.



WEB COPY

5. The Tribunal below after considering the evidence on record fastened the liability entirely upon the driver of the 1st respondent vehicle. With reference to the quantum of compensation, the Tribunal had arrived at a compensation of a sum of Rs.26,11,220/-. The Tribunal had taken the last drawn salary from which a sum of Rs.10,000/- was deducted and the monthly income was fixed at a sum of Rs.15,145/- and applying a multiplier of '11' a total sum of Rs.19,19,140/- was granted under the head of loss of earning capacity. That apart, amounts were granted under the head of disability at 75% calculating the same at Rs.2,000/- per percentage and also a sum of Rs.53,970/- towards loss of income for three months.

6. The insurance company has challenged the award seeking a reduction of the quantum of compensation and the claimant was seeking its enhancement. It is the case of the learned counsel appearing for the insurance company that the Tribunal has not deducted any amounts towards the tax payable and personal expenses and has also erred in calculating the



loss of earnings at Rs.15,145/- for 11 years, though, the claimant would be in service for another 8 years alone. On the other hand, the claimant would question the award by stating that the Tribunal has not taken into account the future prospects and that apart the Tribunal has wrongly adopted the multiplier of '11' instead of '13'.

7. Heard the counsels on either side.

8. As pointed out by the counsel for the claimant, the Tribunal has not granted any amount under the head of future prospects. The petitioner had suffered injuries as a result of which he was not able to continue his work and had to take voluntary retirement which is evidenced by Ex.P.15. This would clearly show that the petitioner has sustained a permanent disability and has suffered a loss of earning capacity. Therefore, he has to be provided with amounts under the head of future prospects as well. Further, though the insurance company would take the defence that the Tribunal has not deducted any amounts towards tax, it is seen that the Tribunal had arrived at



a monthly income of Rs.15,145/- after deducting a sum of Rs.8,000/- from the last drawn salary of Rs.23,145/-. Therefore, the question of deducting amounts under tax may not arise. Taking into consideration the arguments, this Court confirms the monthly income at a sum of Rs.15,145/- as fixed by the Tribunal, to which 30% shall be added towards future prospects. Therefore, the monthly income would be a sum of Rs.19,688.50/- rounded off to a sum of Rs.19,700/-. The annual income would be a sum of Rs.2,36,400/- to which a multiplier of '13' has to be added and the disability is fixed at 75%. Therefore, the amount under the head of future loss of income would be a sum of Rs.23,04,900/- ($\text{Rs.15,145/-} + 30\% \times 12 \times 13 \times 75\%$). In the light of the above, the amounts granted under the head of disability of 75% and loss of income has to be rejected. Therefore, the revised compensation would be a sum of Rs.27,13,010/-.

9. Therefore, the modified compensation in the tabulated form would work out as follows;-



CMA.Nos.2404 of 2013 & 2772 of 2015

WEB CODE

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income for 3 months	53,970/-	--	Rejected
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Damage to clothes	1,000/-	1,000/-	Confirmed
5.	Medical Expenses	3,52,110/-	3,52,110/-	Confirmed
6.	Pain and Sufferings	20,000/-	20,000/-	Confirmed
7.	Disability of 75% at the rate of Rs.2000/- per disability	1,50,000/-	--	Rejected
8.	Attender Charges	5,000/-	5,000/-	Confirmed
9.	Loss of amenities of life	10,000/-	10,000/-	Confirmed
10.	Loss of future earning capacity	19,99,140/-	23,04,900/-	Enhanced
	TOTAL	26,11,220/-	27,13,010/-	enhanced by Rs.1,01,790/-

10. Therefore, the Civil Miscellaneous Appeal filed by the claimant in CMA.No.2772 of 2015 is allowed and the Civil Miscellaneous Appeal filed by the Insurance Company in CMA No.2404 of 2013 is partly allowed and the award of the Tribunal be and hereby is enhanced to a sum of



CMA.Nos.2404 of 2013 & 2772 of 2015

Rs.27,13,010/- from Rs.26,11,220/- together with interest @ 7.5 % per

annum from the date of petition till the date of deposit. In all other respects

the award of the Tribunal is confirmed. The 2nd respondent/insurance company [in CMA.No.2772 of 2015] is directed to deposit the said amount

(Rs.27,13,010/-) to the credit of MCOP No.933 of 2018 on the file of the

Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai

together with interest @ 7.5% per annum from the date of claim petition till

the date of deposit and costs as awarded by the Tribunal, less, the amount, if

any already deposited, within a period of six weeks from the date of receipt

of a copy of this Judgement. On such deposit being made, the

claimants/petitioners [in CMA.No.2772 of 2015] are permitted to withdraw

the award amount. The award amount shall be apportioned equally amongst

all the claimants along with interest and costs. The amounts due towards the

share of the petitioners 3 to 5 [in CMA.No.2772 of 2015] shall be given to

the 2nd petitioner [in CMA.No.2772 of 2015] along with her share and the

remaining 1/5th share will go to S.Suseela/ the 6th petitioner [in

CMA.No.2772 of 2015]. The claimants/petitioners [in CMA.No.2772 of



CMA.Nos.2404 of 2013 & 2772 of 2015

2015] shall pay the court fee for the enhanced amount, if payable. The Trial Court shall not disburse the amount till such time as the certified copy showing proof of payment of the entire Court fee has been produced by the claimants/petitioners. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.10.2022

Index : Yes/No
Internet: Yes/No
shr

To

1. The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

11/12



WEB COPY



CMA.Nos.2404 of 2013 & 2772 of 2015

P.T. ASHA, J,

shr

CMA.Nos.2404 of 2013 & 2772 of 2015
and
M.P.No.1 of 2013 & M.P.No.1 of 2015

18.10.2022