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C.M.A.Nos.3798 and 3547 of 2019

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 13.07.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.3798 and 3547 of 2019

C.M.A.No.3798 of 2019:

1.S.Suriya

2.Minor S.Sathya
rep. By mother and next friend
Mrs.S.Suriya

Kanaka (since deceased)

3.Muniyan ... Appellants/Petitioners

Vs.

1.N.Thirumaran

2.ICICI Lombard General Insurance Company Limited,
No.140, Nungambakkam High Road,
II Floor, Chottabhai Centre,
Chennai – 600 034.

3.R.Kaliyammal



C.M.A.Nos.3798 and 3547 of 2019

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4.Shriram General Insurance Company Limited,
No.66, II Floor,
City Ventre Complex,
Thirumalaipillai Road,
T.Nagar,
Chennai – 600 017.

... Respondents/Respondents

C.M.A.No.3547 of 2019:

S.Suriya

... Appellant/Petitioner

Vs.

1.N.Thirumaran

2.ICICI Lombard General Insurance Company Limited,
No.140, Nungambakkam High Road,
II Floor, Chottabhai Centre,
Chennai – 600 034.

3.R.Kaliyammal

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No.66, II Floor,
City Ventre Complex,
Thirumalaipillai Road,
T.Nagar,
Chennai – 600 017.

... Respondents/Respondents



C.M.A.Nos.3798 and 3547 of 2019

Prayer in C.M.A.No.3798 of 2019: : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 16.07.2018 in M.C.O.P.No.2290 of 2015 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

Prayer in C.M.A.No.3547 of 2019: : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 16.07.2018 in M.C.O.P.No.2292 of 2015 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj
in C.M.A.No.3798 of 2019

Mr.V.Mohan Choudary
in C.M.A.No.3547 of 2019

For Respondents : Mr.K.Poomalai for R2
in C.M.A.Nos.3798 and 3547 of 2019

Ms.V.Pushpa for R4
in C.M.A.Nos.3798 and 3547 of 2019



C.M.A.Nos.3798 and 3547 of 2019

Mr.S.ShrenikRaj
for R1 in SR Stage – No appearance
in C.M.A.No.3798 of 2019

Not ready in notice regarding R1
in C.M.A.No.3547 of 2019

R3 -Served – No appearance
in C.M.A.Nos.3798 and 3547 of 2019

COMMON JUDGMENT

C.M.A.No.3547 of 2019 is filed against the Award in M.C.O.P.No.2292 of 2015 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, seeking compensation for the death of a four year old S.Sadhana.

2.C.M.A.No.3798 of 2019 is filed against the Award in M.C.O.P.No.2290 of 2015 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, claiming



C.M.A.Nos.3798 and 3547 of 2019

compensation for the death of one M.Selvam, the father of the deceased Sadhana.

3.The facts in brief are as follows:-

MCOP. No. 2290 of 2015 is filed by the wife and children and the parents of the deceased Selvam whereas MCOP. No 2292 of 2015 is filed by the mother of the minor child who died in the accident. It is the case of the claimant in both the original petitions that on 05.01.2015, the deceased Selvam was riding his motor cycle bearing Registration No. TN 22CY 9054 along with his minor daughter Sadhana on the Avadi to Veerapuram road near Vellanur from South to North direction. While so, the motor cycle bearing Registration No. TN.20 BP 9174 belonging to the 1st Respondent which was driven in a rash and negligent manner came from the opposite direction on the wrong side of the road hit the deceased the motor cycle, as a result of the which, the deceased Selvam and his daughter Sadhana fell down on



the road and at that time, a lorry bearing Registration No. TN 31 H 7167 belonging to the 3rd respondent and insured with the 4th respondent ran over the two causing their death. The claimants in M.C.O.P.No.2290 of 2015 claimed a sum of Rs.25,00,000/- as compensation for the death of Selvam. The claimant in M.C.O.P.No.2292 of 2015 claimed a sum of Rs.10,00,000/- as compensation for the death of minor Sadhana.

4.The learned counsel for the appellant would submit that the deceased Selvam was a car driver by profession and aged about 27 years. He would earn a sum of Rs. 400/- per day. As regards, minor Sadhana, she was just 4 years old and a compensation Rs.10,00,000/- has been claimed. The 1st Respondent is the owner of the motor vehicle bearing registration No.TN 20 BP 9174 and the 2nd Respondent is the insurer of the vehicle.



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5. The 3rd respondent though served did not appear before this Court and were therefore set *ex parte*.

6. The 2nd respondent Insurance Company, insurer of the motor cycle filed their counter *inter alia* contending that the appellant should prove that she is the legal representative of the deceased child. They had denied the negligence on the part of the rider of the motor cycle and would submit that the deceased had also contributed to the accident. They would further contend that the quantum of compensation under various heads that was sought for by the appellants were very high. The 4th respondent, the insurer of the lorry would also state that the accident had not occurred on account of the negligence of the driver. They had questioned the quantum of compensation.



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7.The Tribunal by its Award dated 16.07.2018 held that the accident had occurred on account of the rash and negligent driving of the motor cycle as well as the lorry. The Tribunal has fixed the liability on the 1st respondent's vehicle at 75% and 25% on the 3rd respondent's vehicle. As regards the quantum of compensation for the minor child, the Tribunal has adopted a notional income of Rs.30,000/- per annum to which a multiplier of 15 was added and the amount detailed under the loss of dependency is Rs.4,50,000/-. Ultimately, a sum of Rs.5,00,000/- was awarded with reference to the claim related to the deceased Sadhana. As regards the quantum of compensation for the deceased Selvam, the Tribunal has adopted a notional income of Rs.8,000/-. The learned Judge has awarded compensation under the head of loss of estate, loss of consortium, loss of love and affection and towards the other conventional expenses. Ultimately, a sum of Rs.16,50,000/- was awarded with reference to the claim related to the



deceased Selvam. Being aggrieved by the Award has been on the lower side, the claimants are before this Court.

8.The learned counsel appearing on behalf of the appellant would rely on the judgment of this Court, wherein for a 10 year old child, the notional income of Rs. 10,000/- was adopted and the multiplier of 15% had been adopted. The learned counsel would submit that therefore in the instant case also a sum of Rs.7,000/- can be fixed as the notional income. With reference to the claim in C.M.A.No.3798 of 2019, the learned counsel for the appellants would submit that the Tribunal has fixed the notional income of Rs.8,000/- per month. Admittedly, the deceased was a Driver and would earn between 10,000/- to 12,000/- per month. He would further submit that the amounts under the conventional heads have not been awarded properly.



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9. Per contra, the learned counsel for the claimants would submit that the notional income of Rs.30,000/- per year is on the very higher side since the deceased child was not even a student. In the case relied upon by the appellants, the deceased was a 10 year old boy and the expectations of the parents would be much more and his potential is also high. As regards C.M.A.No.3798 of 2019, the Learned counsel would submit that the notional income of Rs.10,000/-was on the higher side. Since admittedly, the license of the deceased had been taken only two months prior to the accident and therefore, he was not a professional driver and therefore, adopting a sum of Rs.12,000/- is definitely on the higher side.

10. Heard the Learned counsel appearing on the either side and perused the papers.



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11. With the reference to C.M.A.No.3547 of 2019, the deceased being a 4 year old child, who was not a student, the Tribunal ought to have taken into account the above and fixed the notional income of Rs.5,000/- to which 40% have to be added towards future prospectus. On considering the age of the deceased, a multiplier of 15 had to be added. Therefore, the amount under the head of loss of dependency in MCOP No. 2292 of 2015 would work out to a sum of Rs.5,000/- X 40% X 12 X 15 = 6,30,000/- and the under head of loss of love of affection for a further sum of Rs.20,000/- has to be added. Therefore, the total amount payable for the death of the minor child is Rs.7,00,000/-.

12. With the reference to the claim in MCOP No.2290 of 2015, taking into account of the fact that the deceased was a driver by profession which statement has not been rebutted by the Insurance Company. Therefore, the notional income of Rs.10,000/- has been



adopted to which future prospectus 40% to be added and 1/3 towards personal expenses, the deceased would not contribute 2/3 of his income to the family and therefore, the amount under the above head will come to Rs.19,04,000/- (Rs.10,000/- X 12 X 17 X 2/3 + 40%). Further, under the head of loss of love and affection, the amount has to be enhanced to a sum of Rs.80,000/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:

C.M.A.No.3798 of 2019:

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 dependency (Rs.10,000/- X 12 X 17 X 2/3 + 40%)	Rs.15,23,200/-	Rs.19,04,000/-	Enhanced
2.	Loss estate	Rs.15,000/-	Rs.15,000/-	confirmed
3.	Loss of love and affection	Rs.56,800/-	80,000/-	Enhanced
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
5.	Loss of consortium	Rs.40,000	Rs.40,000/-	confirmed



C.M.A.Nos.3798 and 3547 of 2019

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
	TOTAL	Rs.16,50,000/-	Rs.20,54,000/-	

In view of the composite negligence, the 1st and 2nd respondents are liable to pay 75% of Rs.20,54,000/- i.e., Rs.15,40,500/- and the 3rd and 4th respondents are liable to pay 25% of Rs.20,54,000/- i.e., Rs.5,13,500/-.

C.M.A.No.3547 of 2019:

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 dependency (Rs.30,000/- X15)	Rs.4,50,000/-	Rs.6,30,000/-	Enhanced
2.	Loss estate	Rs.15,000/-	Rs.15,000/-	confirmed
3.	Loss of love and affection	Rs.20,000/-	Rs.40,000/-	Enhanced
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
	TOTAL	Rs.5,00,000/-	Rs.7,00,000/-	



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
		-		

In view of the composite negligence, the 1st and 2nd respondents are liable to pay 75% of Rs.7,00,000/- i.e., Rs.5,25,000/- and the 3rd and 4th respondents are liable to pay 25% of Rs.7,00,000/- i.e., Rs.1,75,000/-.

13. Accordingly, these Civil Miscellaneous Appeals are allowed. The 2nd and 4th respondents/Insurance Company are directed to deposit the entire compensation amount, as apportioned, with interest @ 7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.Nos.2290 and 2292 of 2015 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier.



C.M.A.Nos.3798 and 3547 of 2019

On such deposit, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal with proportionate accrued interest and costs, by making necessary applications. The share of the minor/2nd appellant shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor/2nd appellant shall be paid to the 1st appellant/mother of the minor, once in three months, till she attains majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

13.07.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

15/17



C.M.A.Nos.3798 and 3547 of 2019

The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.



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C.M.A.Nos.3798 and 3547 of 2019

P.T. ASHA, J,

mps

C.M.A.Nos.3798 and 3547 of 2019

13.07.2022