

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA Nos. 717 & 718 of 2018

And

C.M.P.Nos. 6176 & 6177 of 2018

C.M.A.No. 717 of 2018:

United India Insurance Co. Limited.,
R.P.R.Complex, By-pass Road
Near Government Hospital
Dharmapuri.

... Appellant/2nd Respondent

Vs

1. Perumayee
2. Minor Mahendran
Dhasanadar (died) (deleted as per order dated 29.10.2014 made
in I.A.No.1404 of 2014)
3. Minor. Pavithra
(Minors 2 and 3 respondents are represented by their Mother and
Next Friend Ist Respondent)

4. Sellammal
5. Saminathan

... Respondents 1 to 5/
Ist Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the M.V. Act, 1988 against the award and decree dated 14.07.2017
made in M.C.O.P.No. 694 of 2009 on the file of the Motor
Accidents Claims Tribunal (Sub Court), Sankari.

C.M.A.No. 718 of 2018:

United India Insurance Co. Limited.,
R.P.R.Complex, By-pass Road
Near Government Hospital
Dharmapuri.

... Appellant/2nd Respondent

Vs

1. Sarasa
2. Minor Krishnamurthi
(declared major as per order dated 19.11.2015 made in I.A.No.2056/2015)
3. Minor. Deepa (Rep. by 1st Respondent)
4. Chellammal
5. Saminathan ... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the award and decree dated 14.07.2017 made in M.C.O.P.No. 693 of 2009 on the file of the Motor Accidents Claims Tribunal (Sub Court), Sankari.

For Appellant in
both C.M.As. : Mr. D.Bhaskaran

For RR 1 to 4 in
both C.M.As. : Mr. C.Kulanthaivel

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

A common Judgment is delivered in both the Civil Miscellaneous Appeals in view of the fact that arguments were advanced in unison with respect to both the Appeals by the learned counsel for the appellant Mr.D.Bhaskaran and also by the learned counsel for the respondents Mr.C.Kulanthaivel.

2. It is also to be mentioned that though two Civil Miscellaneous Appeals have been filed, they also arise from a common Judgment dated 14.07.2017 passed by the Sub Court, Sankari / Motor Accident Claims Tribunal in M.C.O.P.No. 693 of 2009 and M.C.O.P.No. 694 of 2009.

3. Questioning the quantum of compensation granted in M.C.O.P.No. 693 of 2009, the second respondent, United India Insurance Company had preferred C.M.A.No. 718 of 2018. Similarly, questioning the quantum of compensation granted in M.C.O.P.No. 694 of 2009, the second respondent, United India Insurance Company had preferred C.M.A.No. 717 of 2018.

4. As stated in the preamble portion, the appellant is deeply aggrieved by the quantum of compensation granted. They have also taken a stand in the grounds of Appeals and which

aspect was also urged by Mr.D.Bhaskaran that though there was a motor cycle involved in the accident apart from the Lorry which was the insured vehicle, the driver of the said motor vehicle did not have a valid driving license. The motor cycle was also not insured.

5. But however since the tortfeasor vehicle is the vehicle insured by the appellant herein, this ground raised in the grounds of appeal pales into insignificance.

6. A brief examination on the facts which necessitated the filing of M.C.O.P.Nos. 693 & 694 of 2009 by the respective claimants, would reveal that the deceased in M.C.O.P.No. 693 of 2009 Periyannan, aged about 43 years and the deceased in M.C.O.P.No. 694 of 2009 Senthil, aged about 33 years were working as Cleaner / Agriculturalist and driver/agriculturalist respectively, and had both suffered grievous injuries to which they succumbed and died.

7. Periyannan was the pillion rider in an Enfield Bullet, motor cycle, bearing Registration No. TCJ 9218 on 18.08.2009 at around 2 p.m., near Murrkukara Selaththan House, Konganapuram to Omalur Main Road. Senthil was the driver of the aforementioned Enfield Bullet. To their misfortune, the Lorry bearing Registration No. TN -28-H-7077, which according to the claimants, and which finding had also been affirmed by the Tribunal was driven in a rash and negligent manner, collided with the aforementioned Enfield Bullet cycle and both the driver Senthil and the pillion rider Periyannan suffered serious injuries all over the body. They were taken to Government Hospital at Edappadi. Senthil was also shifted to Government Hospital, Salem. Unfortunately, both died.

8. In this connection, a case has been registered by the Edappadi Police Station in Crime No. 690 of 2009 under Sections 279, 338 & 304(A) IPC against the driver of the Lorry bearing Registration No. TN-28-H-7077. It had been affirmed as a fact that it was the said Lorry which caused the accident having been driven in a rash and negligent manner.

9. Let me again reiterate what was stated earlier that though grounds had been raised by the appellant regarding the fact that Senthil did not have driving license and that Enfield Bullet motor cycle was not covered by an insurance policy, let me again state that the said grounds cannot be countenanced since, it was the insurer of the offending lorry, who has to

abide by the contract to indemnify the owner of the lorry for any accident which occurred since a clear finding had been given that the lorry was the tortfeasor vehicle.

10. Seeking compensation for the death of Periyannan, his widow and minor son, minor daughter and mother had filed M.C.O.P.No. 693 of 2009 and claiming compensation for the death of Senthil, his widow and minor son, minor daughter and his parents had filed M.C.O.P.No. 694 of 2009.

11. A common Judgment was rendered by the Tribunal in both the petitions. The discussions ofcourse were made independently. The respective age of the two deceased were taken into consideration, the probable income which they would have earned was also taken into consideration and the loss of income was also determined.

12. It was found that Periyannan, was aged about 43 years at the time of the accident and it was claimed that he was a driver and also did agricultural work. The claimants stated that he earned Rs.10,000/- per month. The Tribunal however proceeded to determine the notional monthly income at Rs.6,500/- per month. With respect to Senthil, the Tribunal determined that his age was 33 years at the time of accident and the claimants therein also claimed that he earned about Rs.10,000/- per month in his capacity as a cleaner and also an agricultural coolie but there again the Tribunal interfered and adjudged that the monthly income would be Rs.6,500/- per month. Having decided the age and monthly income, the Tribunal then proceeded to deduct $\frac{1}{4}^{\text{th}}$ from the monthly income and stated that the balance $\frac{3}{4}^{\text{th}}$ might be utilised by the family members, had they been alive. Thereafter the Tribunal adopted a multiplier of '14' for Periyannan, taking into consideration his age and multiplier of '16' for Senthil taking into consideration his age. The Tribunal also added 30% as future prospectus for Periyannan and 50% for Senthil, taking into consideration their age. The Tribunal therefore calculated the pecuniary loss or the notional income loss at Rs.6,500/- + 30% = 8,450/- - $\frac{1}{4}^{\text{th}}$ x 12 x 14 and granted a total amount of Rs.10,65,000/- for the deceased Periyannan and for Senthil at Rs. Rs.6,500/- + 50% = 9,750/- - $\frac{1}{4}^{\text{th}}$ x 12 x 16 and granted a total amount of Rs.14,05,000/-. The compensation under various other heads including loss of consortium, loss of love and affection, loss of estate, funeral expenses, medical expenses, pain and sufferings and transport expenses were also granted.

13. Mr.D.Bhaskaran, learned counsel for the appellant did not take serious umbrage on the quantum awarded under such heads. With respect to the income, they worked not only as driver/cleaner but were also engaged as agriculturalists. In and around Salem, practically in the western belt of the State, the field of agriculture provides quite lucrative income raising demand for workers to work as agriculturalists. Demand is more for agriculture coolies in that particular area.

14. I would therefore interfere with the monthly income of the deceased persons and grant uniformly at Rs.7,000/- to both of them. With respect to the future prospectus, let me grant 25% for Periyannan, which would come to Rs.7,000/- + 25% = Rs.8,750/- and with respect to Senthil, 40% can be granted for future prospectus, which would come to Rs.7,000/- + 40% = 9,800/-. After deducting $1/4^{\text{th}}$ from the monthly income and adopting multiplier of '14', the pecuniary loss for Periyannan can be determined at Rs.11,02,584/- [Rs.7,000/- + 25% - $1/4^{\text{th}}$ = Rs.6,563/- x 12 x 14] and after deducting $1/4^{\text{th}}$ from the monthly income and adopting multiplier of '16', the pecuniary loss for Senthil can be determined at Rs.14,11,200/- [Rs.9,800/- + 40% - $1/4^{\text{th}}$ = Rs.7,350/- x 12 x 16].

15. Let me also interfere with the compensation granted under the other heads uniformly and grant loss of consortium to the widows at Rs.40,000/-, the loss towards love and affection, for the minor children and the mother/father at Rs.40,000/- each and towards loss of estates at Rs.15,000/- and towards funeral expenses at Rs.15,000/- and grant a sum of Rs.10,000/- for transport charges. This expense would arise owing to reluctance of any vehicle to transport, in the absence of ambulance a dead body or even an injured person from the accident place.

16. Accordingly, the compensation awarded by the Tribunal stands modified as follows:-

(I) M.C.O.P.No. 693 of 2009:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary Loss:	Rs.10,65,000/-	Rs.11,02,584/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Notional monthly income by adopting multiplier '14'		
2	Loss of Consortium to wife	Rs. 1,00,000/-	Rs. 40,000/-
3	Love and affection Rs.40,000/- each for claimants 2 to 4	Rs. 3,50,000/-	Rs. 1,20,000/-
4	Loss of estate	Nil	Rs. 15,000/-
5	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
6	Transport Expenses	Nil	Rs. 10,000/-
	Total	Rs.15,40,000/-	Rs. 13,02,584/-

17. Accordingly, this Court finds that the award of the Tribunal to the extent of Rs.15,40,000/- is reduced to Rs.13,02,584/-.

(I) M.C.O.P.No. 694 of 2009:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary Loss: Notional monthly income by adopting multiplier '14'	Rs.14,05,000/-	Rs.14,11,200/-
2	Loss of Consortium to wife	Rs. 1,00,000/-	Rs. 40,000/-
3	Love and affection Rs.40,000/- each for claimants 2 to 5	Rs. 3,50,000/-	Rs. 1,60,000/-
4	Loss of estate	Nil	Rs. 15,000/-
5	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
6	Medical expenses	Rs. 90,000/-	Rs. 90,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
7.	Pain and sufferings	Rs. 50,000/-	Rs. 50,000/-
8.	Transport Expenses	NIL	Rs. 10,000/-
	Total amount	Rs.20,20,000/-	Rs. 17,91,200/-

18. Accordingly, this Court finds that the award of the Tribunal to the extent of Rs.20,20,000/- is reduced to Rs.17,91,200/-.

19. It is brought to the notice of this Court by Mr.D.Bhaskaran, learned counsel appearing for the appellant that entire award passed by the Tribunal was deposited along with interest @ 7.5% per annum.

20. Accordingly, the Civil Miscellaneous Appeals are partly allowed as follows:-

(i) The award of the Tribunal is redetermined as aforesaid.

(ii) The excess amount deposited by the appellant/Insurance Company shall be refunded along with proportionate interest.

(iii) The first respondent/claimant is at liberty to withdraw her share as apportioned by the Tribunal along with accrued interest from the Claims Tribunal without filing any formal application seeking permission.

(iv) The shares of the minors are directed to be deposited in an interest bearing fixed deposit in any one of the nationalised banks till they attain majority and the first respondent/claimant is permitted to withdraw the interest once in six months for maintenance of the minors.

(v) The interest granted by the Tribunal at 7.5% per annum for the date of petition is confirmed.

(vi) The apportionment as stated by the Tribunal is confirmed.

(vii) There will be no order as to costs in these appeals.

(viii) Consequently, connected Miscellaneous
Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vsg
To

The Motor Accident Claims Tribunal,
Sub Court,
Sankari.

Copy to

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

+1cc to Mr.C.Kulanthaivel, Advocate Sr.14424

CMA Nos. 717 & 718 of 2018
And
C.M.P.Nos. 6176 & 6177 of 2018

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srg 30/03/2022