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CMA.Nos.1893 of 2021 & 2295 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.1893 of 2021 & 2295 of 2022

and

C.M.P.No.10246 of 2021

[CMA.No.1893 of 2021]

Reliance General Insurance,
Plot No.2024, 2nd Avenue, 2nd Floor
Anna Nagar, Chennai-40

... Appellant / 2nd Respondent

Vs.

1.Sivagami
2.Minor Sanjiv
3.Annamalai
4.Kaliammal

... Respondents / Petitioners

5.Mrs.Annes Banu ... Respondent / 1st Respondent

(Minor Sanjiv Rep. by his mother, Sivagami)



CMA.Nos.1893 of 2021 & 2295 of 2022

[CMA.No.2295 of 2022]

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1.Sivagami

2.Minor Sanjiv

3.Annamalai

4.Kaliammal

(Minor Sanjiv Rep. by his mother, Sivagami)

... Appellants / Petitioners

Vs.

1.Mrs.Annes Banu

2.Reliance General Insurance,

Plot No.2024, 2nd Avenue, 2nd Floor

Anna Nagar, Chennai-40

... Respondents/ Respondents

PRAYER in CMA.No.1893 of 2021 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the decree and judgment dated 11.03.2020 made in MCOP No.4451 of 2015 on the file of the Motor Accidents Claims Tribunal in the IV Court of Small Causes, Chennai.

For Petitioner : Mr.K.Vinod

For Respondents : Mr.K.Varadha Kamaraj [R.1, R.3 and R.4]

: [R.2 -Minor rep. by R.1]

: Not ready in notice [R.5]



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PRAYER in CMA.No.2295 of 2022 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the amount awarded in MCOP No.4451 of 2015 dated 11.03.2020 on the file of the Motor Accidents Claims Tribunal in the IV Court of Small Causes, Chennai.

For Petitioner : Mr.K.Varadha Kamaraj

For Respondents : Mr.K.Vinod [R.2]

COMMON JUDGEMENT

The above two appeals arise against the order passed by the Motor Accidents Claims Tribunal before the IV Court of Small Causes, Chennai in MCOP.No.4451 of 2015.

2. The Insurance company is aggrieved by the fact that despite the negligence on the part of the deceased in crossing the road at a place not designated for the same and that too by squeezing into a gap in the central median no contributory negligence has been fastened on the deceased. On the contrary, the entire liability has been mulcted on the insurance company. The insurance company would also question the quantum of compensation stating



that the amount granted under the head of loss of income, consortium, love and affection etc; was on the higher side. The insurance company had therefore filed CMA.No.1893 of 2021.

3. The claimants are also aggrieved by the award in as much as, according to them, the same was inadequate as the Tribunal has only adopted a notional income of Rs.8,000/-

4. Heard both the counsel.

5. The deceased admittedly was crossing the road at a point not allocated for pedestrian crossing. Not stopping with that the deceased along with his cycle was trying to squeeze in between a gap in the central median when the accident took place. Therefore, by crossing the road at a point not provided for the same and on account of which the driver of the JCB was taken by surprise, contributory negligence of 15% has to be fastened on the deceased. The petitioner claimed that the deceased was a saloon shop owner, however, the same has not been proved. The Tribunal has adopted a notional income of Rs.8,000/-. Considering the year of the accident and the age of the



deceased as also the age of his wife and children, the notional income can be revised to a sum of Rs.10,000/- to which 40% has to be added towards future prospects. The monthly income would therefore be a sum of Rs.14,000/-. The annual income would be a sum of Rs.1,68,000/- from out of which 1/4th has to be deducted towards personal expenses. Therefore, the deceased would be contributing an annual income of Rs.1,26,000/- to the family. Considering his age the appropriate multiplier to be adopted is '16'. Therefore, the total amount due under the head of loss of income/loss of dependency would be as sum of Rs.20,16,000/-. The Tribunal has awarded a sum of Rs.1,25,000/- under the head of loss of love and affection in addition to a sum of Rs.40,000/- granted to the wife under the head of loss of consortium. Therefore, the sum of Rs.1,25,000/- granted under the head of loss of love and affection has to be reduced to a sum of Rs.1,20,000/-. Therefore, the enhanced compensation would be a sum of Rs.22,11,000/-. The 2nd respondent/insurance company [in CMA.No.2295 of 2022] has been fastened with 85% liability, therefore, the insurance company is bound to pay a sum of Rs.18,79,350/- .



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6. Therefore, the compensation stands enhanced to a sum of Rs.22,11,000/-, which is as follows:-

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	16,12,800/-	20,16,000/-	Enhanced
2.	Loss of Consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	1,25,000/-	1,20,000/-	Reduced
6.	Transportation Expenses	5,000/-	5,000/-	Confirmed
	TOTAL	18,12,800/-	22,11,000/-	enhanced by Rs.3,98,200/-

7. Therefore, the Civil Miscellaneous Appeal No.1893 of 2021 is partly allowed and the Civil Miscellaneous Appeal No.2295 of 2022 is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.22,11,000/- from Rs.18,12,800 /- 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.2295 of 2022] is directed to deposit the amount [(Rs.18,79,350/-) 85% of Rs.22,11,000] to the credit of MCOP No.4451 of



2015 on the file of the Motor Accidents Claims Tribunal in the IV 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. The petitioners [in CMA.No.2295 of 2022] shall forfeit the remaining 15% of the award amount due to the deceased's contributory negligence On such deposit being made, the petitioners/claimants 1, 3 and 4 [in CMA.No.2295 of 2022] are permitted to withdraw their respective shares from the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn as apportioned by the Tribunal. Since the 2nd appellant being a minor in MCOP.No.4451 of 2015, his respective share of award amount as apportioned by the Tribunal shall be deposited in an interest bearing fixed deposit in any Nationalized bank till he attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the mother/1st petitioner [in CMA.No.2295 of 2022] once in 3 months directly from the bank. If the minor has attained the age of majority, it is open to him to file a formal petition before the Tribunal to get his share of apportionment. The petitioners/appellants [in CMA.No.2295 of 2022] shall



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

20.10.2022

Index : Yes/No
Internet: Yes/No
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To

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



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P.T. ASHA, J,

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