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C.M.A.Nos.2135, 2138 and 2141 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.Nos.2135, 2138 and 2141 of 2021

and

C.M.P.Nos.11789, 11809 and 11812 of 2021

C.M.A.No.2135 of 2021 :

M/s.IFFCO-TOKIO General
Insurance Company Limited,
New No.128, Old No.195,
North Usman Road,
T-Nagar,
Chennai-600 017.

... Appellant

vs.

1.Parvathi

2.Minor.Devakrishnan
Represented by his mother and
next friend Parvathi.

3.Minor. Dhanshika
Represented by her mother and
next friend Parvathi.

4.B.Maheswaran

... Respondents



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C.M.A.No.2138 of 2021 :

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M/s.IFFCO-TOKIO General
Insurance Company Limited,
New No.128, Old No.195,
North Usman Road,
T-Nagar,
Chennai-600 017.

... Appellant

vs.

1.Chithra

2.Minor.N.Rajagani
Represented by her mother and
next friend Chithra.

3.Minor. N.Vignesh,
Represented by his mother and
next friend Chithra.

4.B.Maheswaran

... Respondents

C.M.A.No.2141 of 2021 :

M/s.IFFCO-TOKIO General
Insurance Company Limited,
New No.128, Old No.195,
North Usman Road,
T-Nagar,
Chennai-600 017.

... Appellant

vs.

1.Vembarasi



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2.Minor.Dakshinamoorthy
Represented by his mother and
next friend Vembarasi.

3.Minor. Devamoorthy
Represented by his mother and
next friend Parvathi.

4.Saradambal

5.B.Maheswaran ... Respondents

COMMON PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgment dated 08.11.2019, passed in M.C.O.P.Nos.6618, 5638 and 5720 of 2016 by the Motor Accident Claims Tribunal(the II Court of Small Causes), Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.K.Varadha Kamaraj [R1]
in C.M.A.Nos.2135 and 2138 of 2021

R4 - Served - No Appearance

COMMON JUDGMENT

The above three appeals arise out of a single accident.

2. C.M.A.No.2138 of 2021 is filed challenging the award in M.C.O.P.No.5638 of 2016 which is a claim petition filed by the deceased



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rider of the motor cycle bearing Reg.No.TN-03-J-4881.

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3. C.M.A.No.2141 of 2021 is filed challenging award in M.C.O.P.No.5720 of 2016 which is a claim petition filed by the first wife and two sons of the deceased D.Sivakumar who was riding pillion in the motor cycle bearing Reg.No.TN-03-J-4881.

4. C.M.A.No.2135 of 2021 is filed challenging award in M.C.O.P.No.6618 of 2016 which is a claim petition filed by the second wife of the deceased Sivakumar, Parvathi and the two children born to her through the said Sivakumar.

5. The brief facts which gives rise to the three claim petitions are as follows:

On 04.01.2016, at about 15.20 hours, the deceased Nagarajan was riding the motor cycle bearing Reg.No.TN-03-J-4881 with the deceased Sivakumar riding pillion on the Manali express road, when the rider of the motor cycle had neared Sathankadu (Ernavoor) as they took a turn to the right towards Jothi nagar, a Van bearing Reg.No.TN-28-X-1080 proceeding



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on the same road towards Sathankadu driven by its driver in a rash and negligent manner at a high speed, hit the motor cycle on its rear. By reason of the impact, both the rider as well as pillion rider had been thrown out of the motor cycle and the rider of the motor cycle had died immediately and the pillion rider was immediately given first aid at Sugam Hospital, Tiruvottiyur and transferred to Stanley Medical College Hospital, where he succumbed to injuries eight days later on 12.01.2006 at about 5.00 a.m.

6. The claimants in M.C.O.P.No.5638 of 2016 who are the wife and children of the deceased Nagarajan, 41 years, had claimed a sum of Rs.50,00,000/- as compensation. They would contend that the said Nagarajan was working as a mason and earning about Rs.20,000/- p.m.

7. The claimants in M.C.O.P.No.5720 of 2016 (1st wife and children) would also claims a sum of Rs.50,00,000/- as compensation stating that the deceased Sivakumar was a mason, age about 32 years and earning a monthly income of Rs.20,000/-.

8. The claimants in M.C.O.P.No.6618 of 2016 would also claiming a



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sum of Rs.40,00,000/- but would state that the deceased was aged about 32

years and working as mason and earning a monthly income of Rs.20,000/-.

9. The Insurance Company had filed a counter denying the age, occupation and monthly income of the deceased. They had also denied the manner of the accident as well as the fatal injury sustained by Nagarajan and Sivakumar. They would also state that since the accident had occurred on account of negligence on the part of the rider of the motor cycle, in which both the deceased Nagarajan and Sivakumar had travelled, they were not entitled to any compensation.

10. As regards M.C.O.P.No.5638 of 2016, the Tribunal has awarded a sum of Rs.24,55,000/-. With reference to M.C.O.P.Nos.5720 and 6618 of 2016, the Tribunal had together awarded a sum of Rs.41,26,000/-. In both these petitions, as a whole, the award was as follows:

"The 1st petitioner in O.P.No.5720/16 being the first wife of the deceased is entitled to get Rs.6,00,000/- and the 2nd and 3rd petitioners being the minor sons of the



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deceased are entitled to get Rs.8,00,000/- each and 4th petitioner being the mother of the deceased at the time of accident is entitled to get Rs.75,000/-. The first petitioner in O.P.No.6618/16 being the second wife of the deceased is entitled to get Rs.2,51,000/- and the 2nd and 3rd petitioners being the minor son and daughter of the deceased are entitled to get Rs.8,00,000/- each."

11. The learned counsel for the Insurance Company particularly has objections to the second wife, who is the first petitioner in O.P.No.6618 of 2016 being granted compensation as she did not fall within the term "legal representative" of the deceased Sivakumar. Aggrieved by the notional income adopted in both the cases by the Tribunal below, the Insurance Company is before this Court.

12. The learned counsel for the respondents would however contend that a reasonable notional income has been fixed taking into account the fact that both the deceased were working as masons and the accident had taken place in the year 2016. However, the learned counsel for the



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Insurance Company would state that since the first wife is very much alive,

the first petitioner in M.C.O.P.No.6618 of 2016 would not be entitled to

any compensation but that the children should be entitled to compensation.

Therefore, the notional income in both the cases is reduced to a sum of

Rs.14,500/- p.m., taking into account the age of the deceased and the year

of the accident. To this, in the case of M.C.O.P.No.5638 of 2016

(C.M.A.No.2138 of 2021) 1/3rd should be deducted and future prospects of

25% is added. With reference to M.C.O.P.Nos.5720 and 6618 of 2016

(C.M.A.Nos.2141 and 2135 of 2021) the monthly income would be a sum

of Rs.14,500/- and taking into account the age of the deceased future

prospects of 40% is added and 1/4 is deducted towards personal expenses.

In all other aspects, the award of the Tribunal remains unaltered. Therefore,

the Compensation awarded by the Tribunal is reworked as below:

C.M.A.No.2138 of 2021:



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Loss of Future Earning / Dependency	Rs. 21,00,400/-	Rs. 20,30,000/-	Reduced
2	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Loss of Love and Affection	Rs. 2,00,000/-	Rs. 80,000/-	Reduced
4	Paternal Consortium	Rs. 1,00,000/-		Rejected
5	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	Loss of Estate		Rs. 15,000/-	Granted
	Total	Rs. 24,55,000/-	Rs. 21,80,000/-	

13. In the result, the Civil Miscellaneous Appeal No.2138 of 2011 is partly allowed and the compensation of **Rs.24,55,000/-** awarded by the Tribunal is hereby reduced to a sum of **Rs. 21,80,000/-**. Therefore, the Appellant / Insurance Company is directed to deposit the modified amount of **Rs.21,80,000/-** to the credit of M.C.O.P.No.5638 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai



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together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minors will be invested in any one of the nationalized bank till they attain majority and the first respondent/mother of the minors shall be permitted to withdraw quarterly interest from the said amount.

C.M.A.No.2135 and 2141 of 2021:



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Loss of Future Earning / Dependency	Rs. 34,56,000/-	Rs. 29,23,200/-	Reduced
2	Loss of Consortium	Rs. 80,000/-	Rs. 40,000/-	Reduced
3	Loss of Love and Affection(4 children)	Rs. 4,25,000/-	Rs. 1,20,000/-	Reduced
4	Loss of Love and Affection(Mother)		Rs. 40,000/-	Granted
5	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	Loss of Estate		Rs. 15,000/-	Granted
7	Parental Consortium	Rs. 1,00,000/-		Rejected
8	Filial Consortium	Rs. 25,000/-		Rejected
9	Medical Expenses	Rs. 25,000/-		Rejected
	Total	Rs. 41,26,000/-	Rs.31,53,200/-	

14. In the result, the Civil Miscellaneous Appeal Nos.2135 and 2141 of 2021 are partly allowed and the compensation of **Rs.41,26,000/-** awarded by the Tribunal is hereby reduced to a sum of **Rs. 31,53,200/-**. Therefore, the Appellant / Insurance Company is directed to deposit the modified



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amount of **Rs.31,53,200/-** to the credit of M.C.O.P.Nos.5720 and 6618 of

2016 on the file of the Motor Accident Claims Tribunal, II 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, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On the deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The said award would be shared by the petitioners in M.C.O.P.Nos.5720 of 2016 and petitioners 2 and 3 in M.C.O.P.No.6618 of 2016 equally. The 1st petitioner in M.C.O.P.No.6618 of 2016 is not entitled to any compensation. The share of the minors will be invested in any one of the nationalized bank till they attain majority and the first respondent/mother of the minors shall be permitted to withdraw quarterly interest from the said amount. No costs. Consequently, connected civil miscellaneous petitions are closed.

18.07.2022

Index : Yes/No

Speaking / Non-speaking order



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To

1. The II Judge,
Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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P.T.ASHA, J.,

ssn

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and
C.M.P.Nos.11789, 11809 and 11812 of 2021

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