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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NOS.3700, 3701, 1775 AND 1776 OF 2021
AND

CMP.NOS.9473 AND 9476 OF 2021

In CMA.No.3700 of 2021

S.Raja Suganya

... Appellant in CMA.No.3700 of 2021/
Petitioner

Vs.

1. Muniswamy
2. The United India Insurance Co. Ltd.,
MO 1st Floor, R.V.Reddy Complex,
Bangarpet, Kolar City, Kolar District,
Karnataka State, Pincode 563 114.

... Respondents in CMA. No.3700 of 2021/
Respondents

Prayers: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the decree and judgment dated 19.09.2019 made in MCOP.No.5200 of 2016 on the file of Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents

for R1 : Set ex-parte before the Tribunal
for R2 : Mr.D.Baskaran

In CMA.No.3701 of 2021

Rajesh @ Shankavaram Rajesh

... Appellant in CMA.No.3701 of 2021/Petitioner



Vs.

1. Muniswamy
2. The United India Insurance Co. Ltd.,
MO 1st Floor, R.V.Reddy Complex,
Bangarpet, Kolar City, Kolar District,
Karnataka State, Pincode 563 114.

... Respondents in CMA. No.3701 of 2021/
1 & 2 Respondents

Prayers: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the decree and judgment dated 19.09.2019 made in MCOP.No.5220 of 2016 on the file of Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents

for R1 : Set ex-parte before the Tribunal
for R2 : Mr.D.Baskaran

In CMA.No.1775 of 2021

The United India Insurance Co. Ltd.,
MO 1st Floor, R.V.Reddy Complex,
Bangarpet, Kolar City, Kolar District,
Karnataka State, Pincode 563 114.

... Appellant in CMA.No.1775 of 2021/
2nd Respondent

Vs.

1. S.Raja Suganya
2. Muniswamy

... Respondents in CMA.No.1775 of 2021/
Petitioner & 1st Respondent

Prayers: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award dated 19.09.2019 made in MCOP.No.5200 of 2016 on the file of Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents

for R1 : Mr.K.Varadhakamaraj
for R2 : Set ex-parte before the Tribunal



In CMA.No.1776 of 2021

The United India Insurance Co. Ltd.,
MO-1st Floor, R.V.Reddy Complex,
Bangarpet, Kolar City, Kolar District,
Karnataka State, Pincode 563 114.

... Appellant in CMA.No.1776 of 2021/
2nd Respondent

Vs.

1. Rajesh @ Shankavaram Rajesh
2. Muniswamy

... Respondents in CMA.No.1776 of 2021/
Petitioner & 1st Respondent

Prayers: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award dated 19.09.2019 made in MCOP.No.5220 of 2016 on the file of Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents

for R1 : Mr.K.Varadhakamaraj

for R2 : Set ex-parte before the Tribunal

COMMON JUDGMENT

[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

The appeals are heard through video conferencing.

2. Being not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai in MCOP.Nos.5200 and 5220 of 2016, dated 19.09.2019 the claimants have preferred CMA.Nos.3700 and 3701 of 2021, respectively for enhancement of the compensation.

3. Challenging the award passed by the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai in MCOP.Nos.5200 and 5220 of 2016 dated 19.09.2019, the Insurance Company has filed CMA.Nos.1775 and 1776 of 2021, respectively.

4. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.



5. The brief facts of the case are that, on 29.06.2016 at about 10.45 hours, the deceased Anandha Ranganathan was riding a Motorcycle bearing Registration No. TN-10-AA-5015 with one Rajesh as a pillion rider. When they were nearing Velappanchavadi in front of S.S.Thirumanamandapam at Pallikuppam, a Lorry bearing Registration No.KA-01-AE-4315 came on the same direction in a rash and negligent manner, dashed against the Motorcycle. Due to the impact, the deceased Anandha Ranganathan died on the spot and Rajesh sustained multiple injuries.

6. The legal heirs of the deceased Anandha Ranganathan filed MCOP.No.5200 of 2016 seeking compensation of Rs.82,00,000/- and the injured Rajesh filed MCOP.No.5220 of 2016 seeking compensation of Rs.92,00,000/-.

7. The Insurance Company resisted the claims, disputing the manner of accident, age, occupation and income of the deceased and the injured and their liability to pay the compensation.

8. To substantiate the case, on the side of the claimants, PW1 and PW2 were examined and Exs.P1 to P28 were marked. On the side of the Insurance Company, neither oral evidence was adduced nor documentary evidence was marked.

9. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the Lorry and awarded compensations of Rs.27,55,000/- and Rs.40,26,000/- to the claimant in MCOP.No.5200 and 5220 of 2016 respectively along with 7.5% interest and directed the Insurance Company to pay the above compensations. Challenging the same, the present appeals have been filed before this Court.

i) The break-up details of the amounts awarded by the Tribunal in MCOP.No.5200 of 2016 are as under:

S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.
1.	Loss of Dependency	27,00,000
2.	Loss of Consortium	40,000
3.	Funeral Expenses	15,000
	Total	27,55,000

ii) The break-up details of the amounts awarded by the Tribunal in MCOP.No.5220 of 2016 are as under:



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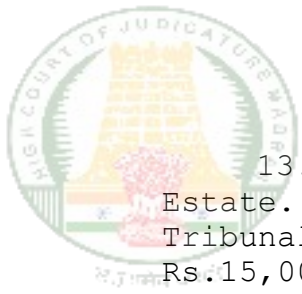
S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.
1.	Functional Disability	34,42,500
2.	Pain and Sufferings	1,00,000
3.	Extra Nourishment	1,00,000
4.	Transport to Hospital	75,000
5.	Damages to Clothes	1,000
6.	Attender Charges	12,200
7.	Medical expenses	1,00,250
8.	Future Medical Expenses	50,000
9.	Loss of Income	45,000
10.	Loss of Amenities	1,00,000
	Total	40,25,950

CMA.Nos.3700 & 1775 of 2021 (MCOP.No.5200 of 2016)

10. The main contention of the learned counsel for the Insurance Company is that the Tribunal, without any proof for avocation and income, had fixed the notional income of the deceased at Rs.15,000/- per month and arrived compensation, which is on the higher side. Opposing the same, the learned counsel for the claimant submitted that the monthly income taken by the Tribunal is very meagre.

11. Heard both sides and perused the materials available on record.

12. Though the claimant submitted that the deceased was working as Senior Makeup Man and Hair Stylist in cinema field and earning Rs.60,000/- per month, she did not produce any materials to prove the same. However, considering the cost of living prevalent at the time of the accident and the nature of work undertaken by the deceased, this Court fixes Rs.13,000/- as monthly income of the deceased. If 40% is added towards future prospects, the amount would be Rs.18,200/- [13,000 + 5,200]. Then, 1/3 is deducted towards personal expenses of the deceased, the contribution to the family comes to Rs.12,133/- [18,200 - 6,067]. Considering the age of the deceased, multiplier 15 is applied and the Loss of Dependency is assessed as Rs.21,83,940/- [12,133 x 12 x 15]. Thus the amount awarded by the Tribunal towards Loss of Dependency is reduced to Rs.21,83,940/-.



13. Further, a sum of Rs.15,000/- is awarded towards Loss of Estate. In addition to that, the amounts awarded by the Tribunal, viz., Rs.40,000/- towards Loss of Consortium; and Rs.15,000/- towards Funeral Expenses are confirmed. In total, the claimant is entitled to Rs.22,53,940/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	27,00,000	21,83,940
2.	Loss of Consortium	40,000	40,000
3.	Funeral Expenses	15,000	15,000
4.	Loss of Estate	-	15,000
	Total	27,55,000	22,53,940

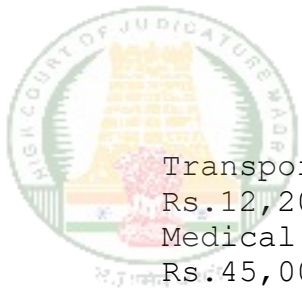
CMA.Nos.3701 & 1776 of 2021 (MCOP.No.5220 of 2016)

14. The learned counsel for the Insurance Company made similar argument that the Tribunal, without any proof for avocation and income, had fixed the notional income of the claimant at Rs.15,000/- per month and arrived compensation, which is on the higher side. According to the learned counsel for the claimant, the monthly income fixed by the Tribunal is very meagre.

15. Heard both sides and perused the materials available on record.

16. As rightly pointed out by the learned counsel for the appellant, no documentary evidence was produced to prove the income of the injured, however, taking note of the fact that he was a makeup man in the Television and cine field and also considering the cost of living prevalent at the time of the accident, this Court fixes Rs.13,000/- as the monthly income of the claimant. If 40% is added towards future prospects, the amount would be Rs.18,200/- [13,000 + 5,200]. Considering the age of the claimant, multiplier 15 is applied and the Functional Disability is assessed as Rs.27,84,600/- [18,200 x 12 x 15 x 85/100]. Thus the amount awarded by the Tribunal towards Functional Disability is reduced to Rs.27,84,600/-.

17. In addition to that, the amounts awarded by the Tribunal, viz., Rs.1,00,000/- towards Pain and Sufferings; and Rs.1,00,000/- towards Extra Nourishment; Rs.75,000/- towards



Transport to Hospital; Rs.1,000/- towards Damages to Clothes; Rs.12,200/- towards attender Charges; Rs.1,00,250/- towards Medical Expenses; Rs.50,000/- towards Future Medical Expenses; Rs.45,000/- towards Loss of Income; and Rs.1,00,000/- towards Loss of Amenities; are confirmed. In total, the claimant is entitled to Rs.33,68,050/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Functional Disability	34,42,500	27,84,600
2.	Pain and Sufferings	1,00,000	1,00,000
3.	Extra Nourishment	1,00,000	1,00,000
4.	Transport to Hospital	75,000	75,000
5.	Damages to Clothes	1,000	1,000
6.	Attender Charges	12,200	12,200
7.	Medical expenses	1,00,250	1,00,250
8.	Future Medical Expenses	50,000	50,000
9.	Loss of Income	45,000	45,000
10.	Loss of Amenities	1,00,000	1,00,000
	Total	40,25,950	33,68,050

18. In view of the above modifications, CMA.Nos.1775 & 1776 of 2021 are partly allowed and CMA.Nos.3700 & 3701 of 2021 are dismissed. The Insurance Company is directed to deposit the above modified award amounts with accrued interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants in both the petitions are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

pvs



To

1. The II Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+4ccs to Mr.K.Varadhakamaraj, Advocate, S.R.Nos.1364, 1365

C.M.A. Nos.3700, 3701,
1775 and 1776 of 2021

SR(CO)
RLP(08/04/2022)