



C.M.A. Nos.1971 of 2020 & 1752 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.Nos.1971 of 2020 & 1752 of 2021
and C.M.P.No.14546 of 2020

C.M.A.No.1971 of 2020

Cholamandalam MS General Insurance Co. Ltd.,
“Harinivas Tower”
2nd Floor, No.163-A,
Thambu Chetty Street,
Chennai 600 001.

.. Appellant

Vs.

1.Nirmala @ Kala Manoharan
2.Minor Vinoth Kumar @ Karthikeyan
(Minor rep. By his mother Nirmala @ Kala Manoharan)
3.G.Ramachandran

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.



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For Appellant : Mrs.R.Sree Vidhya

For RR1 & 2 : Mrs.M.Malar

C.M.A.No.1752 of 2021

1.Nirmala @ Kala Manoharan
2.Minor Vinoth Kumar @ Karthikeyan .. Appellants
(Minor rep. By his mother
Nirmala @ Kala Manoharan)

Vs.

1.G.Ramachandran
(R1 remained exparte before the Tribunal.
Hence, notice may be dispensed with)

2.Cholamandalam MS General Insurance Co. Ltd.,
“Harinivas Tower”
2nd Floor, No.163-A,
Thambu Chetty Street,
Chennai 600 001. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.



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For Appellants : Mrs.M.Malar

For R2 : Mrs.R.Sreevidhya

COMMON JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

C.M.A.No.1971 of 2020 has been filed by the appellant-Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

C.M.A.No.1752 of 2021 has been filed by the appellants-claimants, seeking enhancement of compensation granted by the Tribunal in the award dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

2.Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment.



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3.The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.4255 of 2016, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal) Small Causes Court, Chennai, claiming a sum of Rs.99,00,000/- as compensation for the death of one Manoharan who died in the accident that took place on 01.07.2014.

5.According to the claimants, on the date of accident, at about 22.15 hours, when the deceased Manoharan was travelling as a passenger in Volkswagen Polo Car bearing Registration No.TN-22-CU-7221 from Thiruthani to Chennai direction at Pattarai Perumbudur Bus Stop, the 1st respondent, driver-cum-owner of a TATA Ace Van bearing Registration No.TN-20-CA-9198, who was driving the same in a rash and negligent manner, came at a dangerous speed from Tiruvallur to Thiruthani direction and dashed against the Volkswagen Polo Car and caused the accident. In the



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accident, the said Manoharan sustained fatal injuries. The accident occurred only due to rash and negligent driving of Tata Ace Van by the 1st respondent and hence, the claimants filed the claim petition claiming compensation for the death of Manoharan, against the respondents who are the owner-cum-driver and insurer of the said Tata Ace Van respectively.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to the 2nd respondent, the claimants have to prove that the accident occurred only due to the negligence of the 1st respondent, driver-cum-owner of the Tata Ace Van and the 1st respondent possessed valid driving license to ply the vehicle at the time of accident. In any event, the claim petition is bad for non-joinder of owner and insurer of the Car in which the deceased Manoharan travelled as a passenger. The claimants also have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.



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7.Before the Tribunal, the 1st claimant examined herself as P.W.1, examined one Ravichandran, eye-witness to the accident as P.W.2 and marked 10 documents as Exs.P1 to P10. The 2nd respondent-Insurance Company did not let in any oral or documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Tata Ace Van and directed the 2nd respondent, as insurer of the said vehicle, to pay a sum of Rs.17,70,000/- as compensation to the claimants.

9.Not being satisfied with the amounts awarded by the Tribunal in the award dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, the claimants have filed C.M.A.No.1752 of 2021, seeking enhancement of compensation.

10.Questioning the quantum of compensation granted by the Tribunal in the award dated 25.09.2019, made in M.C.O.P. No.4255 of 2016, the 2nd



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respondent-Insurance Company has come out with C.M.A.No.1971 of 2020.

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11.The learned counsel appearing for the claimants submitted that at the time of accident, the deceased Manoharan was aged 48 years, doing business as Partner of 'Sri Soorya Carbide Manufacturing Company' and was earning a sum of Rs.30,000/- per month. The claimants proved the avocation and income of the deceased by marking the Partnership deed as Ex.P5. The Tribunal, without considering Ex.P5, fixed only a meagre sum of Rs.12,000/- per month as notional income of the deceased. The Tribunal erred in deducting 1/3rd towards personal expenses of the deceased, without considering that the claimants are depending on the earnings of the deceased. The Tribunal has only granted 25% enhancement towards future prospects. The claimants are entitled to more amount towards future prospects. The Tribunal failed to award any amount towards transport expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the same.



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12.The learned counsel appearing for the 2nd respondent-Insurance Company contended that except marking the Partnership deed, the claimants did not file any document to prove the avocation and income of the deceased Manoharan. In the absence of any proof with regard to avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is excessive. The amounts awarded by the Tribunal towards loss of love and affection and loss of parental consortium are legally unsustainable and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.1752 of 2021, filed by the claimants.

13.Heard the learned counsel appearing for the claimants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

14.It is the case of the claimants that the deceased Manoharan was doing business as a partner in “Sri Soorya Carbide Manufacturing Company”



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and was earning a sum of Rs.30,000/- per month. The Tribunal erroneously fixed only a meagre sum of Rs.12,000/- per month as notional income of the deceased. On the other hand, it is the case of the 2nd respondent-Insurance Company that except marking the Partnership Deed as Ex.P5, the claimants have not filed any document to prove the avocation and income of the deceased. The Tribunal erroneously fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is in the absence of any proof with regard to avocation and income. The amount fixed by the Tribunal is excessive and the claimants are not entitled for any enhancement.

15.From the materials available on record, it is seen that the claimants have not filed any document to substantiate their contention with regard to avocation and income of the deceased. They have only filed Partnership deed as Ex.P5. They have not filed any Bank Statement and other documents to prove the income of the deceased. The Tribunal, taking into consideration the fact that the claimants have not filed the Bank Statement of the deceased and Income Tax Returns to prove the income, following the judgment of the



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Hon'ble Apex Court reported in **2019 (1) TN MAC 54 (DB) [Andal and**

others Vs. Avinav Kannan and other], fixed a sum of Rs.12,000/- per month as notional income of the deceased. Considering the age and date of accident, we are of the opinion that the monthly income fixed by the Tribunal is meagre and the same is enhanced to Rs.12,500/-. The deceased was aged 48 years at the time of accident and there are two dependents of the deceased. The Tribunal considering the same, rightly granted 25% enhancement towards future prospects, applied the multiplier '13' and deducted 1/3rd towards personal expenses of the deceased. Fixing the notional income of the deceased at Rs.12,500/-, the amount granted by the Tribunal towards loss of dependency is modified to Rs.16,25,000/- {[Rs.12,500/- + Rs.3,125/- (25% of Rs.12,500/-)] x 12 x 13 x 2/3}. The Tribunal has granted a sum of Rs.40,000/- to the 1st claimant, towards loss of consortium and Rs.40,000/- to the minor 2nd claimant, towards loss of parental consortium. In addition to that, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the 2nd claimant. The same is erroneous and hence, the sum of Rs.1,00,000/- granted towards loss of love and affection is set aside. The



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amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,60,000/-	16,25,000/-	Enhanced
2.	Loss of parental consortium to 2 nd claimant	40,000/-	40,000/-	Confirmed
3.	Loss of consortium to 1 st claimant	40,000/-	40,000/-	Confirmed
4.	Loss of love and affection to 2 nd claimant	1,00,000/-	-	Set aside
5.	Loss of estate	15,000/-	15,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	17,70,000/-	17,35,000/-	Reduced by Rs.35,000/-

16. In the result, C.M.A.No.1752 of 2021 is partly allowed in respect of the head, loss of dependency and C.M.A.No.1971 of 2020 is partly allowed. The compensation awarded by the Tribunal at Rs.17,70,000/- is modified to Rs.17,35,000/- together with interest at the rate of 7.5% per annum from the



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date of petition till the date of deposit. The 2nd respondent-Insurance

Company is directed to deposit the award amount, now determined by this

Court, along with interest and costs, within a period of six weeks from the

date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.4255

of 2016. On such deposit, the 1st claimant is permitted to withdraw her share

of the award amount, now determined by this Court, along with proportionate

interest and costs, as per the ratio of apportionment fixed by the Tribunal,

after adjusting the amount, if any, already withdrawn, by filing necessary

applications before the Tribunal. The share of the minor 2nd claimant is

directed to be deposited in any one of the Nationalized Bank, till the minor

attains majority. The 1st claimant, mother of the minor 2nd claimant is

permitted to withdraw the accrued interest, once in three months for the

welfare of the minor 2nd claimant. The 2nd respondent-Insurance Company is

permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.

4255 of 2016, if the entire award amount has already been deposited by them.

It is made clear that if the claimants have already withdrawn the entire award

amount, the 2nd respondent-Insurance Company is not entitled to recover the



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same from the claimants. Consequently, connected Miscellaneous Petition is

closed. No costs.

(V.M.V., J) (S.S., J)

14.06.2022

gsa

To

1.The Special Subordinate Judge-II,
(Motor Accident Claims Tribunal),
Small Causes Court, Chennai.

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



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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

(gsa)

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