IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.2604 and 2605 of 2021
and C.M.P.Nos.14933 & 14942 of 2021

DM, the New India Assurance Co. Ltd.
DO, 30 J.N.Road
Puducherry-605 001. ... Appellant in both CMAs.

Vs.

1.V.Ravikumar

2.V.R.Naveenkumar

3.V.R.Praveenkumar

4.A.Sankar

Rajaveni (died)

5.DM, United India Insurance Co. Ltd.
D.O.13A, Nethaji Road
Cuddalore – 607 001.

6.Shanmugam

(Respondents 4 and 6 were set exparte in the lower Court and hence, notice to them is dispensed with) ... Respondents in C.M.A.No.2604 of 2021

1.V.Ravikumar

2.A.Sankar

Rajaveni (died)

3.DM, United India Insurance Co. Ltd.
D.O.13A, Nethaji Road
Cuddalore – 607 001.

4.Shanmugam
(Respondents 2 and 4 were set exparte in the lower Court and hence, notice to them is dispensed with) ... Respondents in C.M.A.No.2605 of 2021

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.09.2020 made in M.C.O.P.Nos.2526 and 2530 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

In C.M.A.No.2604 of 2021

For Appellant : Mr.R.Sivakumar

For R1 to R3 : Ms.Ramya V.Rao

For R5 : Mr.D.Bhaskaran

In C.M.A.No.2605 of 2021

For Appellant	:	Mr.R.Sivakumar
For R1	:	Ms.Ramya V.Rao
For R3	:	Mr.D.Bhaskaran

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

These Civil Miscellaneous Appeals have been filed by the appellant/New India Assurance Company against the judgment and decree dated 02.09.2020 made in M.C.O.P.Nos.2526 and 2530 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

3.The New India Assurance Company is the 2nd respondent in M.C.O.P.Nos.2526 and 2530 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. The claimants filed

M.C.O.P.No.2526 of 2014 claiming a sum of Rs.1,10,00,000/- as compensation for the death of one Niraimathi, who died in the accident that took place on 11.06.2014. The injured claimant Ravikumar filed M.C.O.P.No.2530 of 2014 claiming a sum of Rs.60,00,000/- as compensation for the injuries sustained by him in the very same accident.

4.The respondents 1 and 3 are the owners of Tavera car & bus and respondents 2 and 4 are insurers of the Tavera car & bus respectively. Pending Claim Petition, the 3rd respondent, owner of the bus died and her son Shanmugam was impleaded as 5th respondent.

5.According to the claimants, on the date of accident i.e., on 11.06.2014 at about 00.10 hours, while the deceased Niraimathi was proceeding in a Chevrolet Tavera car bearing Registration No.TN-61-C-3000 belonging to the 1st respondent, along with her husband, the claimant in M.C.O.P.No.2530 of 2014 and others, from Ariyalur to Chennai, near Mundiyambakkam Bus stand, the driver of the said car drove the same in a rash and negligent manner, hit behind the bus bearing Registration No.PY-01-

S-3993 belonging to the 5th respondent, as the driver of the bus suddenly stopped the bus without giving any signal or indicator and caused the accident. In the accident, the said Niraimathi died on the spot and her husband, the injured claimant Ravikumar sustained grievous injuries all over the body. Therefore, the husband and two sons of the deceased Niraimathi filed M.C.O.P.No.2526 of 2014 claiming compensation for her death and the injured claimant Ravikumar filed M.C.O.P.No.2530 of 2014 claiming compensation for the injuries sustained by him in the accident against the respondents 1 & 3, owners of Tavera car & bus and respondents 2 & 4, insurers of the Tavera car & bus respectively.

6.The respondents 1 & 5, owners of the Tavera car & bus remained exparte before the Tribunal.

7.The 2nd respondent/New India Assurance Company, appellant herein filed counter statement denying the averments made in the claim petitions and stated that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 5th respondent, who suddenly stopped the bus without any indication in the night hours. At the time of accident, more persons travelled in the car than the permitted capacity. Therefore, the 2nd respondent is not liable to pay any compensation to the claimants. In any event, the compensation claimed by the claimants in both the claim petitions are excessive and prayed for dismissal of the claim petitions.

8.The 4th respondent/United India Insurance Company, filed counter statement denying the averments made in the claim petitions and stated that the accident has occurred only due to rash and negligent driving by the driver of the Tavera car belonging to the 1st respondent. F.I.R. has been registered only against the driver of the car. Therefore, the 4th respondent is not liable to pay any compensation to the claimants. In any event, the compensation claimed by the claimants in both the claim petitions are excessive and prayed for dismissal of the claim petitions.

9.Before the Tribunal, the injured claimant Ravikumar, husband of the deceased Niraimathi, examined himself as P.W.1, other claimants, who travelled in the car filed separate claim petitions, were examined as P.W.2 to

P.W.4, one Mr.Rajeswaran, NLC Deputy Manager was examined as P.W.5 & one Mr.Kandhavel, NLC Assistant Personal Manager was examined as P.W.6 and 43 documents were marked as Exs.P1 to P43. The respondents 2 and 4/Insurance Companies did not let in any oral and documentary evidence. The Disability Certificate of Amarjothi, one of the injured claimants, was marked as Court document Ex.C1. The Disability Certificate of the claimant Ravikumar in M.C.O.P.No.2530 of 2014 was marked as Court document Ex.C2.

10.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of Tavera car as well as the bus belonging to the respondents 1 and 5 respectively and awarded a sum of Rs.98,05,336/- as compensation to the claimants in M.C.O.P.No.2526 of 2014 for the death of Niraimathi and Rs.46,39,680/- as compensation to the claimant Ravikumar in M.C.O.P.No.2530 of 2014 and directed both the 2nd respondent/New India Assurance Company, the insurer of the Tavera car and 4th respondent, the insurer of the bus/United India Insurance Company to pay the said amounts equally.

11.Against the said award dated 02.09.2020 made in M.C.O.P.Nos.2526 and 2530 of 2014, the 2nd respondent/New India Assurance Company has come out with the present appeals.

M.C.O.P.No.2526 of 2014 (C.M.A.No.2604 of 2021)

12.Though the learned counsel appearing for the 2nd respondent/New India Assurance Company raised various grounds with regard to negligence and liability, at the time of arguments, restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and submitted that the case of the claimants is that the deceased Niraimathi was aged 48 years at the time of accident, she was working as Deputy Manager in Neyveli Lignite Corporation Limited (NLC) and was earning a sum of Rs.72,007/- per month. The Tribunal having fixed monthly income of the deceased at Rs.72,007/- and granted 30% towards future prospects, failed to deduct Income Tax from the annual income of the deceased. The amounts awarded by the Tribunal under other heads are excessive and prayed for allowing the appeal and setting aside the award of the Tribunal.

M.C.O.P.No.2530 of 2014 (C.M.A.No.2605 of 2021)

13.The learned counsel appearing for the 2nd respondent/New India Assurance Company contended that the Tribunal failed to note that the claimant Ravikumar was working as Deputy Manager in NLC, he was earning a sum of Rs.70,359/- per month at the time of accident and his last month salary at the time of voluntary retirement was Rs.1,24,103.74 and there is no loss of income due to the injuries sustained by the claimant Ravikumar. The Tribunal erred in granting compensation towards loss of income by fixing a sum of Rs.8,000/- per month and applying multiplier '11'. Further, the Tribunal erred in granting a sum of Rs.5,00,000/- towards loss of earned leave and Rs.21,60,000/- towards attendant charges by fixing a sum of Rs.1,20,000/- per annum and applying multiplier '18'. The amounts awarded by the Tribunal under other heads are excessive and prayed for allowing the appeal and setting aside the award of the Tribunal.

14.Per contra, the learned counsel appearing for the claimants made submissions in support of the award passed by the Tribunal and contended that both the Insurance Companies did not let in any evidence to disprove the case of the claimants. The Tribunal after considering the materials on record, awarded compensation in M.C.O.P.No.2526 of 2014 (C.M.A.No.2604 of 2021), which is not excessive. In M.C.O.P.No.2530 of 2014 (C.M.A.No.2605 of 2021), the learned counsel appearing for the claimant contended that the claimant Ravikumar suffered fractures in C3 to C6 neck bones, left leg tibia bone and permanent disability. He was unable to stand, sit and walk as he was doing earlier. He could not do his day-to-day activities without any assistance. The Tribunal following the judgment of the Hon'ble Apex Court reported in **2020 (1) TNMAC 328 (SC) (Kajal vs. Jagdish Chand and others)**, rightly awarded compensation towards attendant charges by adopting multiplier method. The claimant has taken his earned leave for treatment. If he has not sustained the injuries in the accident, he would have surrendered the said earned leave and earned income. The compensation granted by the Tribunal is not excessive and prayed for dismissal of both the appeals. In support of her contentions, the learned counsel relied on the following judgments:

(i) 2020 (1) TNMAC 449 (Mad) (Manikandan vs. P.Palani and others);

(ii) 2021 SCC Online SC 983 (Jithendran vs. New India Assurance Co. Ltd. and another);

(iii) 2022 SCC Online SC 238 (Benson George vs. Reliance General Insurance Co. Ltd. and another);

(iv) 2022 SCC Online SC 793 (Abhimanyu Partap singh vs. Namita Sekhon and another);

15.The learned counsel appearing for the 4th respondent/United India Insurance Company adopted the arguments of learned counsel appearing for the 2nd respondent/Insurance Company.

16.Heard the learned counsel appearing for the 2nd respondent/New India Assurance Company as well as the learned counsel appearing for the claimants, learned counsel appearing for the 4th respondent/United India Insurance Company and perused the entire materials on record.

M.C.O.P.No.2526 of 2014 (C.M.A.No.2604 of 2021)

17.From the materials on record, it is seen that it is the case of the claimants that at the time of accident, the deceased Niraimathi was aged 48 years at the time of accident, she was working as Deputy Manager in NLC and was earning a sum of Rs.72,007/- per month. To substantiate their case, they have produced and marked Exs.P39 and P40, Service Register and DA particulars of the deceased. The Tribunal considering the same, fixed a sum of Rs.72,007/- as monthly income of the deceased, which is proper. The deceased was aged 48 years at the time of accident as per Ex.P2/Post-mortem certificate. The Tribunal, following the judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** has rightly granted 30% enhancement towards future prospects and applied multiplier '13'. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses.

17(i) The Tribunal failed to deduct any amount towards income tax. The accident has occurred on 11.06.2014. During the financial year 2014-2015, upto Rs.2,50,000/-, there is nil tax. Thus, by fixing a sum of

Rs.72,007/- as monthly income of the deceased, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.72,007.00
30% enhancement towards future prospects	...	Rs.21,602.10

		Rs.93,609.10

Annual income (93,609.10 x 12)	...	Rs.11,23,309.20 rounded off to Rs.11,23,309/-

<u>Income Tax Slab for financial year 2014-2015</u>

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,001/- to Rs.5,00,000/- (10%) [Rs.2,50,000/- X 10%]	-	Rs.25,000.00
From Rs.5,00,001/- to Rs.10,00,000/- (20%) [Rs.5,00,000/- X 20%]	-	Rs.1,00,000.00
Above Rs.10,00,000/- (30%) [Rs.11,23,309/- (-) Rs.10,00,000/-] Rs.1,23,309/- X 30%	-	Rs.36,992.70

		Rs.1,61,992.70

Annual income after deducting income tax

(Rs.11,23,309/- (-) Rs.1,61,992.70) - Rs.9,61,316.30 rounded off to Rs.9,61,316/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.83,31,405/- (Rs.9,61,316/- X 13 X 2/3). The amounts awarded by the Tribunal under all other heads 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 or reduced
1.	Loss of dependency	97,35,336	83,31,405	Reduced
2.	Loss of love and affection	15,000	15,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Transportation	5,000	5,000	Confirmed
5.	Loss of estate	15,000	15,000	Confirmed
6.	Loss of consortium	20,000	20,000	Confirmed
	Total	**98,05,336**	**84,01,405**	**Reduced by Rs.14,03,931/-**

M.C.O.P.No.2530 of 2014 (C.M.A.No.2605 of 2021)

18.From the reading of the award of the Tribunal, it is seen that the claimant Ravikumar has taken treatment as in-patient in Apollo Hospital, Chennai, from 11.06.2014 to 30.10.2014, 02.12.2014 to 12.12.2014, 21.01.2015 to 28.01.2015, 01.04.2015 to 10.04.2015, 06.07.2015 to 12.07.2015, 13.10.2015 to 19.10.2015, 23.02.2016 to 27.02.2016, 08.08.2016 to 12.08.2016 and totally, for a period of 195 days in eight different spells. To prove the same, he marked the discharge summaries as Exs.P14 to P21. The Assistant Personal Officer, Neyveli Lignite Corporation, who was examined as P.W.6, in his evidence deposed that the claimant Ravikumar took earned leave for 115 days and medical leave for 266 days. According to the claimant Ravikumar, had he not taken earned leave for treatment, he could have surrendered the said earned leave and got a sum of Rs.5,00,000/- for surrendering the said leave. The claimant Ravikumar has not produced any material to show that as per the Rules of Neyveli Lignite Corporation, he could accumulate the number of days earned leave during his service and whether earned leave would not lapse after expiry of certain years. P.W.6, Assistant Personal Officer has not deposed that due to taking earned leave for treatment by the claimant Ravikumar, he lost Rs.5,00,000/-. In the absence of any evidence with regard to surrender of earned leave salary, the claimant is not entitled to Rs.5,00,000/- granted by the Tribunal towards loss of earned leave, the same is liable to be set aside and is hereby set aside.

18(i) As far as compensation granted by the Tribunal for attendant charges is concerned, the Tribunal following the judgment of the Hon'ble Apex Court reported in **2020 (1) TNMAC 328 (SC) (Kajal vs. Jagdish Chand and others)**, fixed a sum of Rs.10,000/- per month for the attender and granted compensation for 18 years, awarded a sum of Rs.21,60,000/- for 18 years towards attendant charges. In that judgment, it was the case of young girl, who was totally disabled and the Hon'ble Apex Court granted attendant charges for 18 years at the rate of Rs.10,000/- per month. In the present case, the claimant was aged 55 years at the time of accident and he had voluntarily retired from service, when he is 58 years. In the judgments relied on by the learned counsel for the claimants, the injured claimants are totally disabled and bed ridden and not able to continue their service. In the present case, the claimant Ravikumar has joined service and continued his service and in October 2018, he has voluntarily retired from service. In view of the same, the judgments relied on by the learned counsel appearing for the claimant are not applicable to the facts of the present case.

18(ii) Considering the age of the claimant, award of the Tribunal granting compensation towards attendant charges to the claimant for 18 years is excessive. At the same time, the claimant has proved that he could not do his normal activities without attender and he is able to walk, limbing only with the help of stick. Considering the above materials and nature of injuries, the claimant is entitled to compensation for attendant charges to do his day-to-day normal activities. In view of the same, it would be just and proper to grant compensation for attendant charges for 7 years. The compensation granted by the Tribunal towards attendant charges is modified to Rs.8,40,000/- (Rs.10,000/- X 12 X 7 years). The Tribunal in addition to the amount granted under different heads, granted a sum of Rs.10,00,000/- towards future medical expenses. From the award of the Tribunal, it is seen that the claimant requires physiotherapy treatment throughout his life. Apart from this, the claimant has not produced any material to show that he requires any other medical treatment in future. Hence, the compensation granted by the Tribunal towards future medical expenses is hereby reduced from

Rs.10,00,000/- to Rs.7,50,000/-.

18(iii) According to the claimant, due to the injuries and disability, he could not attend the function, his normal life is affected and he lost certain amenities. The Tribunal has not granted any compensation towards loss of amenities. Hence, a sum of Rs.2,00,000/- is granted towards loss of amenities. The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of earned leave	5,00,000	-	Set aside
2.	Loss of income	4,54,080	4,54,080	Confirmed
3.	Pain and suffering	30,000	30,000	Confirmed
4.	Medical expenses	10,000	10,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Medical Bills	72,100	72,100	Confirmed
8.	Physiotherapy	3,60,000	3,60,000	Confirmed

	treatment			
9.	Medical equipments	38,500	38,500	Confirmed
10.	Attendant charges	21,60,000	8,40,000	Reduced
11.	Future medical expenses	10,00,000	7,50,000	Reduced
12.	Loss of amenities	-	2,00,000	Granted
	Total	**46,39,680**	**27,69,680**	**Reduced by Rs.18,70,000/-**

19.With the above modification, both the Civil Miscellaneous Appeals are partly allowed. The compensation of Rs.98,05,336/- granted by the Tribunal is hereby reduced to Rs.84,01,405/- (M.C.O.P.No.2526 of 2014) and Rs.46,39,680/- is hereby reduced to Rs.27,69,680/- (M.C.O.P.No.2530 of 2014) together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petitions till the date of deposit. Both the respondents 2 and 4/Insurance Companies are directed to deposit the award amount now determined by this Court equally, along with 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 M.C.O.P.No.2526 of 2014 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The claimant in M.C.O.P.No.2530 of 2014 viz., Ravikumar is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. Both the respondents 2 and 4/Insurance Companies are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.2526 and 2530 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.M.V., J) (S.M., J)
27.09.2022
(2/2)

Index : Yes / No
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V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal
Cuddalore.

2.The Section Officer
VR Section
High Court
Madras.

C.M.A.Nos.2604 and 2605 of 2021
and C.M.P.Nos.14933 & 14942 of 2021

27.09.2022
(2/2)