



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2022

PRONOUNCED ON : 08.04.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal Nos.2417 & 2443 of 2018

Andal

C.Thukkaram (Died)

...Appellants in CMA No.2417/2018/
Petitioner

Anandan

...Appellant in CMA No.2443/2018/
Petitioner

Vs.

1.G.Vimala

[R1 remained ex-parte before the Tribunal.

2. The New India Assurance Company Ltd.,
45, Moore Street,
Chennai - 1.

...Respondents in both appeals/
Respondents

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.10.2014 made in M.C.O.P.Nos.1132 & 1133 of 2010 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellant in both appeals : Mr. Amar D. Pandiya
For Mr. R. Sreedhar

For R1 in both appeals : No Appearance

For R2 in both appeals : Mrs. R. Srividhya

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants against the common award dated 29.10.2014 made in M.C.O.P.Nos.1132 & 1133 of 2010 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

2.Both the appeals arises out of the same accident and same award and hence, they are disposed of by this common Judgement.

3.For the sake of convenience, the parties to these appeals



are referred to as per their respective ranks in the claim petition.

4. The appellants are the claimants in M.C.O.P.Nos.1132 & 1133 of 2010 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai. The appellants have filed the said claim petitions claiming a sum of Rs.8,00,000/- and Rs.3,00,000/- respectively as compensation for the death of Sathish Chandran and Vijayalakshmi in the accident that took place on 04.06.2009.

5. According to the claimants, on 04.06.2009 at about 01.30 hour, while the deceased Sathish Chandran and Vijayalakshmi and another Govindarajan were travelling in a car bearing registration No.TN 05 K 3150 at GST Road near Nallikuppam Coot Road, Guduvancherry, which belonged to first respondent, the driver of the car drove it in a rash and negligent manner and hit the centre median of the road. In the impact the car capsized and the said Sathish Chandran and Vijayalakshmi sustained fatal injuries and died on the spot, while the other occupant Govindarajan sustained injuries. Therefore, the claimants filed the above said claim petitions claiming a sum of Rs. 8,00,000/- and Rs.3,00,000/- respectively as compensation for the death of the said Sathish Chandran and Vijayalakshmi.

6. The second respondent/Insurance Company filed counter affidavit and denied all the averments made by the claimants. The second respondent/Insurance Company denied the manner of accident as alleged by the claimants. It is stated that the Insurance Company is not responsible for the accident as there was no valid insurance policy and driver of the vehicle bearing registration No.TN 05 K 3150 had no valid and effective driving licence at the time of accident. Further, the Insurance Policy of the said vehicle is liability only policy i.e., Act Policy and the passengers in the offending vehicle are not at all covered under the policy at the time of accident. Therefore, the Insurance Company is not liable to pay compensation to the appellants. It is further stated that the owner of the car has not paid any separate premium to cover the passengers in the car. Therefore also, the Insurance Company is not liable to pay compensation to the appellants. In any event, the quantum of compensation claimed by the claimants are highly excessive and prayed for dismissal of the claim petitions.

7. Before the Tribunal, common evidence was let in the three claim petitions. The respective claimants examined themselves as P.W.1 and P.W.2 and one Govindaraj and Dr.K.J.Mathiazhagan were examined as P.W.3 and P.W.4 respectively and 14 documents were marked as Exs.P1 to P14. On the side of the 2nd respondent/Insurance Company one witness was examined as R.W.1



and 5 documents were marked as Exs.R1 to R5.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the car belonging to the first respondent in the claim petition exonerated the Insurance Company from the liability to pay compensation to the claimants and directed the first respondent/owner of the car to pay a sum of Rs.4,87,000/- as compensation to the appellant in C.M.A.No.2417 of 2018 (M.C.O.P. No. 1132/2010) and to pay a sum of Rs.1,45,000/- as compensation to the appellant in C.M.A.No.2443 of 2018 (M.C.O.P.No.1133/2010).

9.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeals seeking enhancement of compensation.

10. As against the award passed by the Tribunal, the first respondent/owner of the car did not file any appeal. This appeal is filed by the claimants seeking enhancement.

11.The learned counsel appearing for the appellant in C.M.A.No.2417 of 2018 would contend that the compensation of Rs.4,87,000/- awarded by the Tribunal is very meager and it was not in consonance with the age and occupation of the deceased. According to the appellant in C.M.A.No.2417 of 2018, the deceased was 33 years old at the time of accident. He was an Electrical Contractor and was earning a sum of Rs.25,000/- per month. Even though the appellant could not produce any documentary evidence, fixing of Rs.4,500/- per month as income for the purpose of awarding compensation under the head of loss of dependency is very low. In such circumstances, the Tribunal ought to have fixed atleast a sum of Rs.6,500/- per month to award a reasonable amount as compensation. Further the Tribunal has not awarded any amount towards loss of future prospects. Taking into account the age of the deceased the Tribunal could have fixed atleast 40% towards future prospects but failed to award any amount thereof. On the above submissions, the learned counsel for the appellant in C.M.A.No.2417 of 2018 prayed for enhancement of the compensation amount.

12.In so far as C.M.A.No.2443 of 2018 is concerned, the learned counsel for the appellant would submit that the deceased was 65 years old at the time of her death. It was claimed that the deceased was a Saree Vendor and earning a sum of Rs.5,000/- per month. However, the Tribunal wrongly fixed a sum of Rs.3,000/- per month which is very low. The accident occurred in the year 2009 and therefore fixing of a sum of Rs.6,500/- per month would be proper and the Tribunal has not considered the said aspect in the matter. Similarly, under the non-conventional



head a sum of Rs.25,000/- was awarded by the Tribunal towards loss of love and affection which is very meagre. The Tribunal awarded a sum of Rs.25,000/- towards future expenses and Rs.5,000/- towards transport expenses. According to the learned counsel for the appellant these amounts awarded by the Tribunal are very low and therefore they are required to be scaled up by this Court.

13. On the above contention, the learned counsel appearing for the second respondent/Insurance Company would submit that what was awarded by the Tribunal in both the cases in M.C.O.P. Nos.1132 & 1133 of 2010 are fair and reasonable. The amounts awarded by the Tribunal are based on the material evidence made available before it. The amounts awarded is a fair and reasonable and it does not call for any interference by this Court. In any event, the Insurance Company was exonerated from payment of liability and therefore, the learned counsel for the second respondent/ Insurance Company prayed for dismissal of both the appeals.

14. Heard the learned counsel for both sides and perused the materials placed on record.

15. Admittedly, in the accident that had taken place on 04.06.2009 two persons died and another person suffered injuries. Therefore before the Tribunal three claim petitions have been filed which is inclusive of the M.C.O.P. Nos.1132 & 1133 of 2010 which are the subject matter of these two appeals before this Court.

16. M.C.O.P.No.1132 of 2010 corresponds to C.M.A.No.2417 of 2018. This claim petition was filed by the mother and father for the death of their son. Pending M.C.O.P. No. 1132 of 2010 the father died and therefore it was prosecuted only by the mother. According to the appellant/mother her son was 33 years old at the time of accident. He was a Bachelor. But the Tribunal in the absence of any material evidence has taken a notional income of Rs.4,500/- per month, deducted 50% thereof towards personal expenses of the deceased in as much as he was a bachelor at the time of his death. By applying multiplier '16' the Tribunal awarded a total sum of Rs.4,32,000/- towards loss of income. This according to the claimants/appellant is very meagre and it is required to be scaled up.

17. The accident took place on 04.06.2009. The deceased died at the age of 33 years and even in the absence of any proof of income, taking note of the age of the deceased, this Court considers it proper to fix a sum of Rs.5,500/- per month as notional income of the deceased. If so, $(Rs.5,500 \times 12 \times 16 \times \frac{1}{2})$ Rs.5,28,000/- can be fixed as loss of dependency as against



the sum of Rs.4,32,000/- fixed by the Tribunal and it is just and proper.

18.The Tribunal awarded a sum of Rs.25,000/- towards loss of love and affection and it requires interference by this Court and a sum of Rs.40,000/- was granted instead of Rs.25,000/-.

19.The Tribunal awarded a sum of Rs.25,000/- again for funeral expenses which is on the higher side. Therefore the sum of Rs.25,000/- is hereby scaled down to Rs.15,000/-.

20.A sum of Rs.5,000/- was awarded by the Tribunal towards transportation expenses which is meagre and this Court fixes a sum of Rs.10,000/- towards transportation expenses.

21.The Tribunal does not award any amount towards loss of estate. Since the appellant/mother lost her son at a young age, a sum of Rs.10,000/- is hereby granted by this Court under the head of loss of estate.

22.In all, a total sum of Rs.6,03,000/- is hereby awarded by this Court as compensation.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	Rs.4,32,000/-	Rs.5,28,000/-	Enhanced
2.	Loss of Love and affection	Rs.25,000/-	Rs.40,000/-	Enhanced
3.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
4.	Transportation Expenses	Rs.5,000/-	Rs.10,000/-	Enhanced
5.	Loss of Estate	---	Rs.10,000/-	Granted
	Total	Rs.4,87,000/-	Rs.6,03,000/-	Enhanced by Rs.1,16,000/-

23.In so far as M.C.O.P.No.1133 of 2010, corresponds to C.M.A. No.2443 of 2018 is concerned, it was filed by the son, for the death of his mother, who was aged about 65 years at the time of accident. It is claimed that the deceased was earning a sum of Rs.5,000/- per month as a saree vendor. However, no evidence was produced before the Tribunal to substantiate the same. Therefore, the Tribunal fixed a sum of Rs.3,000/- per month as notional income and given deduction of one half thereof



towards personal expenses of the deceased and awarded a sum of Rs.90,000/- as compensation. Though the notional income fixed by the Tribunal at Rs.3,000/- per month is fair and reasonable, the Tribunal erred in deducting one half thereof towards personal expenses of the deceased who was 65 years old at the time of accident. The Tribunal, ought to have given 1/3rd deduction for the deceased and if so, the notional monthly income of the deceased could be fixed at Rs.2,000/- per month. Resultantly, a sum of Rs.1,20,000/- (Rs.2,000 X 12 X 5) is awarded towards loss of income of the deceased, which will be a fair and reasonable compensation payable to the appellant for the death of his mother.

24.The Tribunal awarded a sum of Rs.25,000/- towards loss of love and affection, which in the opinion of this Court require interference and accordingly, this Court fixes a sum of Rs.40,000/- instead of Rs.25,000/-.

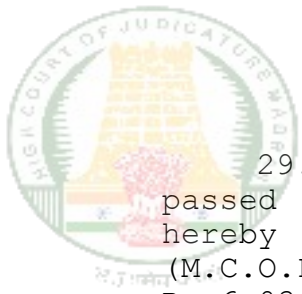
25.However, the Tribunal awarded a sum of Rs.25,000/- for funeral expenses which is unwarranted. Therefore, the sum of Rs.25,000/- towards funeral expenses is hereby scaled down to Rs.15,000/-.

26.The Tribunal awarded a sum of Rs.5,000/- towards transportation expenses which is meagre and hence, a sum of Rs.10,000/- is hereby granted instead of Rs.5,000/-.

27.The Tribunal does not award any amount towards loss of estate and hence, this Court is inclined to grant a sum of Rs.10,000/- towards loss of estate.

28.In all a total sum of Rs.1,95,000/- is hereby awarded by this Court as compensation payable to the sole appellant.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	Rs.90,000/-	Rs.1,20,000/-	Enhanced
2.	Loss of Love and affection	Rs.25,000/-	Rs.40,000/-	Enhanced
3.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
4.	Transportation Expenses	Rs.5,000/-	Rs.10,000/-	Enhanced
5.	Loss of estate	---	Rs.10,000/-	Granted
	Total	Rs.1,45,000/-	Rs.1,95,000/-	Enhanced by Rs.50,000/-



29. In the result, the Judgment and Decree dated 29.10.2014 passed by the Tribunal in M.C.O.P.Nos.1132 & 1133 of 2010 are hereby modified and the appellant in C.M.A.No.2417 of 2018 (M.C.O.P.No.1132/2010) is entitled to a total sum of Rs.6,03,000/- [Rupees Six Lakhs and Three Thousand only] as compensation. The sole appellant in C.M.A.No.2443 of 2018 (M.C.O.P.No.1133 of 2010) is entitled to a sum of Rs.1,95,000/- [Rupees One Lakh and Ninety Five Thousand only] as compensation. Accordingly both the Civil Miscellaneous Appeals are partly allowed. No costs. The first respondent/owner of the Car is directed to deposit the award amount now determined by this Court in these appeals to the credit of the respective Original Petitions before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant in both the appeals are permitted to withdraw the compensation amount.

30. Even though, the Tribunal apportioned the compensation amount payable to the deceased, the second claimant in M.C.O.P.No.1132 of 2010 (husband of the first claimant) payable to his other children, having regard to the totality of the facts and circumstances of this case, the sole surviving appellant namely Andal is hereby directed to withdraw the entire compensation amount with accrued interest and costs.

31. Since, this Court had enhanced the compensation amount, the respective appellant/claimant are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant/claimant in C.M.A.No.2417/2018 is not entitled to any interest for the delayed period as per the order of this Court dated 10.10.2018 made in C.M.P.No.14967 of 2018 in C.M.A.SR.No.65855 of 2018 and the appellant/claimant in C.M.A.No.2443/2018 is not entitled to any interest for the delayed period as per the order of this Court dated 30.10.2018 made in C.M.P.No.18605 of 2018 in C.M.A.No.2443 of 2018.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

ssi/rsh

To:

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



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

+1cc to Mrs.Sreevidhya, Advocate, S.R.No.24480

+2cc to M/s.Amar D.Pandiya, Advocate, S.R.No.24770, 24771

C.M.A.Nos.2417 & 2443 of 2018

BR (CO)
RGA (26/05/2022)