



WEB COPY



C.M.A. Nos.1666 & 1769 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.1666 & 1769 of 2023

Jamuna .. Appellant in CMA No.1666 of 2023

1.Malliga

2.Deepak (Minor)

3.Thansika (Minor)

4.Suseela

Venkatesan (Died) .. Appellants in CMA No.1769 of 2023

Vs.

1.S.Devi

2.The United India Insurance Company Ltd.,

No.134, Greams Road,

Chennai – 600 006.

..

Respondent in both CMAs

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.10.2021 made in M.C.O.P. Nos.4581 & 4583 of 2016 on the file of the Special Sub Court No.2, Motor Accident Claims Tribunal, Small Causes Court, Chennai.



C.M.A. Nos.1666 & 1769 of 2023

In both CMAs

For Appellants : Ms.G.Anitha
For Respondents : Mr.P.Krishnan for R1
Mr.D.Bhaskaran for R2

COMMON JUDGMENT

These appeals have been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 27.10.2021 made in M.C.O.P. Nos.4581 & 4583 of 2016 on the file of the Special Sub Court No.2, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

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

3. The appellants in the both the appeals filed the above said claim petitions claiming compensation for the injuries sustained by the appellant in CMA No.1666 of 2023 and CMA No.1769 of 2023 for the death of one Boopathy who died in the accident that took place on 11.03.2016.



C.M.A. Nos.1666 & 1769 of 2023

WEB COPY 4. According to the appellants, on the date of accident, at about 6.00 hrs. while the deceased was riding his motorcycle bearing Regn.No.TN07 AP 9556 alongwith the appellant in CMA No.1666 of 2023 as pillion rider, on the Valapuram – Arakonam Road, near Ammarvanthangal, a tractor bearing Regn.No.TN73 V 5473 driven in a rash and negligent manner, came and dashed against the motorcycle and caused the accident. Hence, the appellants filed the above said claim petitions claiming compensation against the respondents.

5. The first respondent remained exparte before the Tribunal.

6. The second respondent filed counter statement and denied all the averments made in the claim petitions including the involvement of the alleged vehicle. According to the second respondent, the accident occurred only due to the negligent act of the rider of the motorcycle; hence, the second respondent is not liable to pay compensation to the appellants and prayed for dismissal of the claim petitions.



C.M.A. Nos.1666 & 1769 of 2023

WEB COPY 7. Before the Tribunal, the appellant in CMA No.1666 of 2023 examined herself as PW1 and 1st appellant in CMA No.1769 of 2023 was examined as PW2 and two other witnesses were examined as PW3 & PW4. Forty Six documents were marked as Exs.P.1 to P.46. Neither document was marked nor witness was examined on the side of the second respondent.

8. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the tractor belonging to the first respondent and directed the second respondent to pay compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel appearing for the appellants in CMA No.1666 of 2023 submitted that the appellant had suffered fracture in the femur bone and on account of the injuries she is unable to stand and work for a long time; that due to the injuries sustained by her in the accident she has lost her earning



C.M.A. Nos.1666 & 1769 of 2023

capacity; that the Tribunal ought to have adopted multiplier method for awarding compensation towards disability; that the compensation awarded under different heads are also meagre and prayed for enhancement of compensation.

10. The learned counsel for the appellants in CMA No.1769 of 2023 submitted that the deceased was a B.A. (Tamil Literature) graduate and the appellants have marked Exs.P16, 17 & 18 provisional and convocation certificate issued by Tamil Nadu Teachers Education University to show that the deceased was a qualified B.Ed teacher. The deceased was working temporarily in a company in which PW4 was the Manager. They had marked Ex.P29-salary certificate and Ex.P44 – appointment order which reveals that the deceased was earning Rs.11,000/- per month at the time of accident. The learned counsel submitted that considering the fact that the deceased was a B.Ed graduate and that there was every possibility of the deceased getting employment on the basis of the educational qualification the Tribunal ought to have fixed notional income more than Rs.11,000/- earned by the deceased and prayed for enhancement of compensation.



C.M.A. Nos.1666 & 1769 of 2023

WEB COPY 11. The learned counsel for the second respondent, per contra, submitted that in the absence of any evidence to show that the appellant in CMA No.1666 of 2023 suffered functional disability, the Tribunal, rightly awarded compensation towards disability by adopting percentage method. The learned counsel further submitted that even according to the appellants in CMA No.1769 of 2023, the deceased was earning only Rs.11,000/- per month. The Tribunal therefore rightly fixed the notional income of the deceased as Rs.11,000/- per month; that the compensation awarded by the Tribunal under different heads in both the appeals are also just and reasonable; hence no interference is called for in the award passed by the Tribunal and prayed for dismissal of both the appeals.



C.M.A. Nos.1666 & 1769 of 2023

WEB COPY 12. Heard the learned counsel appearing for the appellants as well as first and second respondent and perused the materials available on record.

13. The only issue involved in both the appeals is “whether the amount of compensation awarded by the Tribunal is just and reasonable”.

CMA No.1666 of 2023

14. From the materials on record, it is seen that the compensation awarded by the Tribunal under all the heads are just and reasonable except the compensation under the heads transportation and loss of earnings. Considering the nature of injuries, compensation under the head transportation is enhanced from Rs.4,000/- to Rs.10,000/-. As regards compensation under loss of earnings, this court is of the view that since the appellant had suffered “Grade IIIB Open Comminuted Fracture shaft of Femur Right. PCL Bony Avulsion Fracture Right Knee”, the appellant would not have attended her work atleast for a period of four months. Thus, the compensation towards loss of earnings is enhanced from 22,250/- to Rs.44,500/-. The compensation



C.M.A. Nos.1666 & 1769 of 2023

awarded under other heads are just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,22,600/- to Rs.2,50,900/- break-up as follows -

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000/-	1,00,000/-	Confirmed
2.	Pain & Sufferings	25,000/-	25,000/-	Confirmed
3.	Medical expenses	17,133/-	17,133/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Transportation	4,000/-	10,000/-	Enhanced
6.	Attender charges	4,200/-	4,200/-	Confirmed
7.	Future treatment expenses	40,000/-	40,000/-	Confirmed
8.	Loss of earnings	22,250/-	44,500/-	Enhanced
	Total	2,22,583/- rounded off to Rs.2,22,600/-	2,50,833/- rounded off to Rs.2,50,900/-	Enhanced by Rs.28,300/-

CMA No.1769 of 2023

15. In so far as quantum of compensation in CMA No.1769 of 2023 is concerned, admittedly the deceased was employed and was earning only Rs.11,000/- per month as seen from Ex.P29-salary certificate and the evidence of PW4. It is also the fact that the deceased was a B.Ed Graduate. This court



C.M.A. Nos.1666 & 1769 of 2023

is conscious of the fact that when there is an income proof, the Tribunal had to compute loss of income on that basis. However, in the peculiar facts of this case, this court is of the view that in order to award just compensation, the educational qualification of the deceased has to be considered for the purpose of fixing the notional income although she was earning only Rs.11,000/- per month at the time of accident. Considering the educational qualification, age and the year of accident, this court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.13,000/- per month. Thus, the loss of dependency is calculated as follows -

$$13,000 + 5200 (13000 \times 40\%) \times 12 \times 17 \times \frac{3}{4} = \text{Rs.27,84,600/-}$$

The compensation awarded under other heads are just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.25,46,200/- to Rs.29,74,600/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
--------	-------------	---------------------------------	-----------------------------------	---



C.M.A. Nos.1666 & 1769 of 2023

1.	Loss of dependency	23,56,200/-	27,84,600/-	Enhanced
2.	Loss of consortium	1,60,000	1,60,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	25,46,200/-	29,74,600/-	Enhanced by Rs.4,28,400/-

16. In the result -

(a) C.M.A No.1666 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.2,22,600/- is hereby enhanced to Rs.2,50,900/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

(b) C.M.A No.1769 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.25,46,200/- is hereby enhanced to Rs.29,74,600/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

(c) The second respondent / Insurance Company is directed to deposit the enhanced award amount in both the appeals, now determined by this Court along with interest and costs, less the



C.M.A. Nos.1666 & 1769 of 2023

amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment.

(d) On such deposit, the appellant in CMA No.1666 of 2023 and the appellants 1 & 4 in CMA No.1769 of 2023 are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 & 3 in CMA No.1769 of 2023 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. The 1st appellant in CMA No.1769 of 2023 is permitted to withdraw the accrued interest once in three months. The appellants in both the appeals are directed to pay the necessary court fee, if any, on the enhanced award amounts. No costs.

21.08.2023

rgr

Index: Yes/No

SUNDER MOHAN, J

rgr

To

1. The Special Subordinate Judge,

11/12



C.M.A. Nos.1666 & 1769 of 2023

Motor Accident Claims Tribunal,
Tiruvannamalai.

WEB COPY

2.The Section Officer,
VR Section, High Court,
Madras.

C.M.A.Nos.1666 & 1769 of 2023

Dated: 21.08.2023