



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.04.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S. SUNDAR**

AND

THE HONOURABLE **MR. JUSTICE P.B. BALAJI**

C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

C.M.A.No.2823 of 2015

United India Insurance Co. Ltd.,
“Silinghi Buildings, 4th Floor,
No.134, Greams Road,
Thousand Lights, Chennai-6.

.. Appellants

Vs.

1.S. Lingeswaran
2.K.Navida Feroz

.. Respondents

C.M.A.No.2159 of 2015

S. Lingeswaran

.. Appellant

vs

1. K. Navida Feroz
[Remained ex-parte before the trial Court]

2. United India Insurance Co. Ltd.,
“Silinghi Buildings, 4th Floor,
No.134, Greams Road,
Thousand Lights, Chennai-6.

.. Respondents



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

C.M.A.No.2160 of 2015

1. S. Anbararasu (died)
2. Senthamarai
3. A. Kamatchi
4. Minor. Akshaya
5. Minor. Nithyasri
[Appellants 2 to 5 brought on record as
LRs of the deceased Sole Appellant vide
order dated 19.09.2022 made in CMP.
No.5063, 5068 and 5070 in 2022]
[minor Respondents 4 and 5 represented
by natural guardian/mother 3rd Appellant]

.. Appellants

Vs.

1. K. Navida Feroz
[Remained ex-parte before the trial Court]

2. United India Insurance Co. Ltd.,
“Silinghi Buildings, 4th Floor,
No.134, Greams Road,
Thousand Lights, Chennai-6.

.. Respondents

C.M.A.No.2824 of 2015

- United India Insurance Co. Ltd.,
“Silinghi Buildings, 4th Floor,
No.134, Greams Road,
Thousand Lights, Chennai-6.

.. Appellants

Vs.

1. S. Anbararasu (died)
2. K. Navida Feroz
3. Senthamarai



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

4. A. Kamatchi

5. Minor. Akshaya

6. Minor. Nithyasri

[Respondents 3 to 6 brought on record as
LRs of the deceased 1st Respondent vide
order dated 25.11.2022 made in CMP.

Nos.18482, 18486 and 18487 in 2022]

[minor Respondents 5 and 6 represented
by natural guardian/mother 4th Respondent]

.. Respondents

Prayer in C.M.A.Nos.2823 & 2159 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of Motor Accident Claim Tribunal, II Court of Small Causes, Chennai dated 25.07.2014 passed in M.C.O.P.No.1371 of 2011.

Prayer in C.M.A.Nos.2160 & 2824 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of Motor Accident Claim Tribunal, II Court of Small Causes, Chennai dated 25.07.2014 passed in M.A.C.T.O.P.No.1406 of 2011, to enhance the compensation.

For Appellants : Mr. S. Arunkumar
in CMA.Nos.2823 &
2824 of 2015 and
For Respondent No.2
in CMA.Nos.2159 &
2160 of 2015

For Respondent No.1 : Mr. N.M. Muthurajan
in CMA.Nos.2823/2015
and For Appellants
in CMA.Nos.2159 &
2160 of 2015

Respondent No.2 in : No appearance
CMA.Nos.2823/2015



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

2824/2015

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For Respondent No.1 in
CMA.No.2824/2015

: died (steps taken)

For R3 & R6 in
CMA.No.2824/2015

: Mr. Eswar Kumar & Rao

Respondent No.1 in
CMA.Nos.2159 &
2160 of 2015

: Remained Ex-parte
before Trial Court

COMMON JUDGMENT

[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

All the four Appeals arise out of the Judgment and Decree passed in M.C.O.P.Nos.1371 of 2011 and 1406 of 2011 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai. Both the claim petitions arise out of single accident.

2. On 17.01.2011, the petitioners in the respective claim petitions were riding in a motor cycle from Thammal Village to Kizhambi Village along NH4(GWT) from east to west direction. It is the case of the Claimants that a bus bearing Registration No.TN-23-AX-2791 which was driven in a



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

rash and negligent manner came and hit the two wheeler on the back side, resulted in serious injuries to the claimants.

3. In M.C.O.P.No.1371 of 2011, the claimant sustained multiple fracture in the right Femur, right Femoral Condyle, right Tibia, right knee and other injuries. It is the case of the claimant in M.C.O.P.No.1406 of 2011 that the he has suffered compound fractures and other injuries, resulting in amputation of his right leg, below knee.

4. Though the Claimant in M.C.O.P.No.1371 of 2011 claimed a sum of Rs.22,00,000/- as compensation and the Claimant in M.C.O.P.No.1406 of 2011 claimed a sum of Rs.45,00,000/- by way of compensation, the Tribunal has awarded a sum of Rs.14,54,200/- in favour of the Claimant in M.C.O.P.No.1371 of 2011 and a sum of Rs.24,18,000/- in the case of Claimant in M.C.O.P.No.1406 of 2011.

5. Aggrieved by the quantum awarded by the Motor Accidents Claims Tribunal, the Insurance Company filed C.M.A.Nos.2823 of 2015 and 2824



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

of 2015 as against the Award passed in M.C.O.P.Nos.1371 and 1406 of 2011. The Claimant in M.C.O.P.No.1371 of 2011 filed C.M.A.No.2159 of 2015 and the Claimant in M.C.O.P.No.1406 of 2011 filed C.M.A.No.2160 of 2015.

6. This Court having regard to the facts recorded by the Tribunal finds that the nature of the injuries caused to the Claimant, is supported by substantial evidence and reasons. As regards the quantum, in the case of M.C.O.P.No.1406 of 2011, the Tribunal has reached a sum of Rs.24,18,000/- as per the following table:

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
1	Loss of Income for 9 months	1,08,000/-
2	Transport to Hospital and Future transport	35,000/-
3	Extra nourishment	35,000/-
4	Damage to Clothes	1,000/-
5	Medical Expenses	5,85,000/-
6	Future Medical Expenses	50,000/-
7	Attender charges	30,000/-
8	Mental Agony to the Petitioner	40,000/-
9	Loss of amenities of life	50,000/-
10	Loss of proper marital alliance	75,000/-
11	Pain and suffering	75,000/-



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C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
12	Disability of 55% at the rate of Rs.2,000/- per disability	1,10,000/-
13	Loss of earning power Rs.12,000/- x 12 x 17 x50	12,24,000/-
	Total	24,18,000/-

7. There cannot be a serious dispute with regard to the Medical Expenses and the compensation awarded under the heads, Damage to Clothes, Extra Nourishment, Transport to Hospital and Future Transport, Loss of Income for 9 months. Similarly this Court is unable to disagree with the findings of the Tribunal awarding a sum of Rs.30,000/- towards attender charges, Rs.40,000/- towards Mental Agony and Rs.50,000/- towards loss of amenities. However, the Tribunal has awarded a sum of Rs.75,000/- towards loss of proper marital alliance and a sum of Rs.50,000/- towards future Medical Expenses. Similarly, having awarded a sum of Rs.12,24,000/- towards loss of earning power and under the head Loss of Income, a sum of Rs.1,10,000/- has been awarded towards 55% of the disability by calculating Rs.2,000/- per disability, which is not permissible. The claimant was working as an Electrician and therefore, the



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

Tribunal has taken the income of the injured at the rate of Rs.12,000/- per month and taken 50% of the sum towards disability by adopting multiplier 17.

8. Learned counsel appearing for the Claimant would submit that the income of the deceased cannot be less than Rs.8,000/- per month and the Claimant is entitled to 40% towards Future Prospects and therefore, the learned counsel appearing for the claimant submitted that the loss of earning power cannot be less than Rs.11,42,400/- ($\text{Rs.8,000} \times 40/100 \times 12 \times 17 \times 50/100$).

9. It is also submitted that the Claimant died during the pendency of the Appeal, therefore, his legal heirs are brought on record. Since the Claimant is no more, there cannot be any award towards 'Future Medical Expenses', unless there is document or evidence to show additional medical expenses arising out of the accident after the disposal of the M.C.O.Ps. Similarly, there cannot be a claim towards 'Loss of Marital Alliance'. Therefore this Court is inclined to award a sum a Rs.21,01,400/- by



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

reducing the Award from Rs.24,18,000/- as per the following table:

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<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
1	Loss of Income for 9 months	1,08,000/-
2	Transport to Hospital and Future transport	35,000/-
3	Extra nourishment	35,000/-
4	Damage to Clothes	1,000/-
5	Medical Expenses	5,85,000/-
6	Future Medical Expenses	Nil
7	Attender charges	30,000/-
8	Mental Agony to the Petitioner	40,000/-
9	Loss of amenities of life	50,000/-
10	Loss of proper marital alliance	Nil
11	Pain and suffering	75,000/-
12	Disability of 55% at the rate of Rs.2,000/- per disability	Nil
13	Loss of earning power (Rs.8,000/- x 40/100 x 12 x 17 x 50/100)	11,42,400/-
	Total	21,01,400/-

10. Similarly, in M.C.O.P.No.1371 of 2011 which is the subject matter of C.M.A.No.2159 of 2015 and C.M.A.No.2823 of 2015, the Tribunal has awarded Rs.14,54,200/- under the following heads:

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
1	Loss of Income for 9 months (8000 x 9)	72,000/-
2	Transportation	30,000/-



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C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
3	Extra nourishment	40,000/-
4	Damage to Clothes	1,000/-
5	Medical Expenses	3,25,000/-
6	Future Medical Expenses	50,000/-
7	Attender charges	25,000/-
8	Mental Agony to the Petitioner	35,000/-
9	Loss of amenities of life	50,000/-
10	Loss of proper marital alliance	75,000/-
11	Pain and suffering	60,000/-
12	Disability of 60% at the rate of Rs.2,000/- per disability	1,20,000/-
13	Loss of earning power (Rs.8,000/- x 12 x 17 x 35%)	5,71,200/-
	Total	14,54,200/-

11. Learned counsel appearing for the Insurance Company submitted that the amount involved towards transportation, extra nourishment and future medical expenses cannot be sustained in view of the evidence available on record. Learned counsel also submitted that there cannot be an award of Rs.75,000/- by the Tribunal under the head of 'Loss of Marital Alliance'. It is further contended that the amount awarded towards pain and sufferings cannot be granted; calculated the disability of 60% at the rate of Rs.2,000/- per disability cannot be given and the loss of earning power due to the accident cannot be granted as the claim under the head 'Loss of



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

'Income' has already been awarded by the Tribunal. This Court finds some justification in the submissions of the learned counsel appearing for the Insurance Company.

12. Considering the nature of evidence available and the submissions of the learned counsel appearing on either side, this Court is inclined to grant a sum of Rs.10,27,600/- by reducing the Award from Rs.14,54,200/- as per the following heads:

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by Tribunal</i>
1	Loss of Income for 9 months (8000 x 9)	72,000/-
2	Transportation	20,000/-
3	Extra nourishment	20,000/-
4	Damage to Clothes	1,000/-
5	Medical Expenses	3,25,000/-
6	Future Medical Expenses	25,000/-
7	Attender charges	10,000/-
8	Mental Agony to the Petitioner	Nil
9	Loss of amenities of life	Nil
10	Loss of proper marital alliance	25,000/-
11	Pain and suffering	40,000/-
12	Disability of 60% at the rate of Rs.2,000/- per disability	Nil
13	Loss of earning power (Rs.8,000/- x 12 x 17 x 30%)	4,89,600/-
	Total	10,27,600/-



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

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13. Both the Claimants and the legal heirs of the claimants in all the appeals are entitled to interest at the rate of 7.5% as awarded by the Tribunal except the modifications indicated as above.

14. In the result, Appeals filed by the Insurance Company, to set aside the Award passed by the Tribunal, in **C.M.A.Nos.2823 and 2824 of 2015 are Partly Allowed** by modifying the Award of the Tribunal by reducing the compensation as stated above. The Appeals filed by the Claimants to enhance the Award amount, in **C.M.A.Nos.2159 and 2160 of 2015 are Dismissed.**

15. Learned counsel appearing on either side submitted that the Claimants have already withdrawn 50% of the amount deposited by the Insurance Company. Since, this Court reduced the Award amount, the Appellant/Insurance Company in C.M.A.Nos.2823 and 2824 of 2015 are permitted to withdraw the balance amount.



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

16. It is reported that in C.M.A.No.2160 of 2015 and 2824 of 2015 the entire amount is deposited and 50% of the amount has already been withdrawn by the Appellant. Since the Appellant is no more and the legal heirs of the Appellant are brought on record, this Court while permitting the mother and children to withdraw the entire amount direct them to set apart a sum of Rs.5,00,000/- to be invested in the Fixed Deposit in the name of minors and the natural guardian mother is entitled to withdraw the interest accrued. As regards apportionment wife of the deceased, is entitled to withdraw a sum of Rs.2,50,000/-, and mother of deceased is entitled to Rs.1,00,000/-. The remaining amount shall be apportioned equally among all the parties namely, wife, mother and children of the deceased. No costs.

[S.S.S.R., J.] [P.B.B.,J.]
21.04.2023

Index : Yes/No.
Internet : Yes/No.
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S.S.SUNDAR, J.
AND
P.B.BALAJI, J.



C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

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The Motor Accident Claim Tribunal,
II Judge, Court of Small Causes,
Chennai 600104.

C.M.A.Nos.2823, 2159, 2160 and 2824 of 2015

21.04.2023