IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **R. SUBRAMANIAN**
AND
THE HONOURABLE MR. JUSTICE **N.SENTHILKUMAR**

C.M.A.Nos.914, 926, 927 and 931 of 2023

1.P.Revathi
2.R.R.Dhivya ... Appellants in C.M.A.Nos.914 and 931 of 2023

R.R.Dhivya ... Appellant in C.M.A.No.926 of 2023

P.Revathi ... Appellant in C.M.A.No.927 of 2023

Vs.

1.R.Karpagavalli

2.New India Assurance Co. Ltd.,
Namakkal rep. By
New India Assurance Co. Ltd.,
TP Hub, Sethukrishna Trade Centre,
Gugai, Salem – 636 006. ... Respondents in all the four appeals

Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award passed in M.C.O.P. Nos.1274, 1272, 1275 and 1276 of 2020 on the file of the Special District Judge, MCOP Tribunal, Salem dated 04.08.2022.

For Appellants : Ms.J.Prithivi
in all the appeals

For Respondents : Mr.S.Arun Kumar
for R2 in all the appeals
R1 – exparte before the Tribunal

COMMON JUDGMENT

(Judgment of the Court was delivered by **R. SUBRAMANIAN, J.**)

All these four appeals arise out of the four claim petitions lodged by the claimants who happened to be the members of the same family. Out of four members of the same family, two died and the remaining two suffered multiple injuries in a road accident that took place on 25.12.2019. According to the claimants in all these claim petitions, while they were travelling in a car belonging to the family, which was driven by the head of the family one Rajendran on the Vellur-Thiruchengode Main Road near Pudupuliyampatti, a lorry bearing Regn. No.TN 28 AL 3989 driven by its driver in a rash and negligent manner, in the opposite direction, hit against the car and as a result of the said accident, the driver of the car Rajendran died on the spot. One of his daughters who was studying 11th standard in school also died after a few days of the accident. Wife and elder daughter of Rajendran, a second year medical student, suffered injuries which caused permanent disability. Terming the negligence on the part of the lorry driver as the sole cause of the accident, the claimants sought for compensation. The insurer of the lorry was impleaded as the second respondent in all the claim petitions.

2. In M.C.O.P.No.1272 of 2020, the injured claimant sought for a compensation of Rs.9,50,000/- on the ground that she had suffered disfigurement in her face due to the fracture sustained by her in the accident. She also suffered an eye defect.

3. In M.C.O.P. No.1274 of 2020, the claimants who are the mother and sister of the deceased Logavidya, a 11th standard student, aged about 16 years, claimed compensation for her death at Rs.30 lakhs.

4. In M.C.O.P. No.1275 of 2020, the claimant viz., the wife of the deceased Rajendran sought for a compensation of Rs.22,50,000/- for the injuries suffered by her. She had claimed that as a result of the injuries, she had suffered right renal artery thrombosis, as a result of which, her right kidney has become totally dysfunctional.

5. In M.C.O.P.No.1276 of 2020, the claimants, who are the wife and daughter of the deceased Rajendran sought for a compensation of Rs.80 lakhs for his death. The quantum of

compensation was sought to be supported by the fact that the deceased was aged 50 years at the time of his death and that he was earning a sum of Rs.70,000/- per month by his employment as Manager in petrol bunk and his business in running mini lorries. It was claimed that he was also a partner of finance business as well as tyre business. Contending that on his death, the family lost the income from various sources it was pleaded that the family is entitled to a sum of Rs.80 lakhs as compensation.

6. All these claim petitions were tried together by the Tribunal. Four witnesses were examined on the side of the claimants and Exs.P1 to P25 were marked. Exs.X1 to X6 and Exs.C1 and C2, the disability certificates issued by the Medical Board for the two injured claimants were also marked. There was no evidence on the side of the insurance company. The owner of the lorry remained exparte.

7. On the question of negligence, the Tribunal relied upon the evidence of P.W.1, who was a co-passenger, the FIR, which was marked as Ex.P1 and the Motor Vehicle Inspector's report of both vehicles which were marked as Exs.P3 and P4 to come to the conclusion that it was the negligence on the part of the driver of the lorry which was the sole cause of the accident.

8. On the quantum, the Tribunal took the monthly income of the deceased Rajendran at Rs.15,000/- including future prospects and after deducting 1/3rd towards his personal expenses applied multiplier of 11 and arrived at the loss of dependency at Rs.13,20,000/-. It awarded a sum of Rs.20,000/- each for loss of love and affection to the two claimants and Rs.40,000/- towards loss of consortium. A sum of Rs.25000/- was awarded towards transport expenses and Rs.25,000/- was awarded towards funeral expenses. Thus the total compensation worked out to Rs.14,27,500/-.

9. As regards the death of the minor Logavidya, the Tribunal took the notional income at Rs.10,000/- per month including the future prospects of 40%, adopted multiplier of 18, deducted 50% towards her personal expenses and arrived at a total loss of dependency at Rs.10,80,000/-. The Tribunal granted Rs.40,000/- towards medical expenses and Rs.40,000/- each towards loss of love and affection for the two claimants, Rs.25,000/- towards funeral expenses. The total compensation thus awarded worked out to Rs.11,85,000/-.

10. Insofar as M.C.O.P.No.1272 of 2020 is concerned, the

Tribunal took into account the assessment of the disability by the Medical Board at 10% and it also found that the disability may not translate into functional disability. Considering the nature of the injuries and the fact that the injured claimant was a medical student, the Tribunal awarded Rs.40,000/- as compensation for disability, Rs.15,000/- for pain and suffering and Rs.90,000/- towards medical expenses. The total compensation thus awarded worked out to Rs.1,45,000/-.

11. In M.C.O.P.No.1275 of 2020, the Tribunal took the disability at 30% as per the certificate of the Medical Board and awarded a sum of Rs.1,20,000/- towards the disability, a sum of Rs.30,000/- was awarded towards pain and suffering, medical expenses were awarded at Rs.1,75,000/-. The total compensation thus arrived at was Rs.3,25,000/-.

12. The claimants have come up with these appeals challenging the quantum of compensation while the insurance company has accepted the awards.

13. We have heard Ms.J.Prithivi, learned counsel appearing for the appellants and Mr.S.Arun Kumar, learned counsel appearing for the second respondent/insurance company.

14. Notice sent to the owner of the lorry has been returned unserved. Since the insurance company is not disputing its liability to pay compensation, notice to the owner is deemed to be unnecessary.

15. **C.M.A. No.931 of 2023:** Ms.J.Prithivi, learned counsel appearing for the appellants would vehemently contend that the Tribunal ought to have taken into account the income tax returns that were filed which demonstrate that the deceased was having income from other sources as partner of two finance firms and one tyre trading firm. The income from the transport business was also omitted to be considered. The Tribunal had taken the total income at Rs.15,000/- in the year 2019 for a person who is aged about 50 years, which according to the learned counsel is abysmally low. She would also point out that once it is shown that the income has been returned and income tax has been paid on the returned income prior to the accident, the Tribunal ought not to have rejected it on the ground that it is income from the partnership firms. She would also rely upon the judgment of the Hon'ble Supreme Court in **K.Ramya and Others Vs. National Insurance Co. Ltd. And Another** reported in **2022 SCC OnLine SC 1338** wherein the Hon'ble Supreme Court had held that the basis on

which compensation is granted for an agriculturist viz., the cost of supervision would apply to persons carrying on business also. Therefore, even assuming that the family would get the share in the income from the partnership business, the involvement of the deceased in the partnership business which has been deprived of due to his passing away would definitely result in reduction of income. Therefore, the Tribunal should have taken the same into consideration. Drawing our attention to the income tax returns of the deceased Rajendran that were filed as Exs.P22 to P24, the learned counsel would submit that at least a portion of the income should have been treated as supervision charges and that should have been taken as loss to the family. It was also pointed out that the Tribunal has not applied any future prospects but it had clubbed both together and fixed a sum of Rs.15,000/-. Therefore, according to the learned counsel, the compensation granted for the death of Rajendran has to be necessarily enhanced.

16. Contending contra, Mr.S.Arun Kumar, learned counsel for the second respondent insurance company, would submit that in order to be favoured with an award for compensation, the claimants will have to prove loss of dependency. In the absence of proof of loss of dependency, the Tribunal was justified in fixing the quantum of income at Rs.15,000/- per month including future prospects. He would also draw our attention to the evidence of

P.W.1 and P.W.3 who had deposed that the claimants continue to get the share in the income from the partnership business even after the death of Rajendran.

17. We have considered the rival submissions.

18. The evidence available on record shows that the deceased Rajendran was involved in many businesses. His income tax returns for the years 2016-2017, 2017-2018 and 2018-2019 have been produced. All those returns were filed prior to the accident and it could be seen from those returns that the deceased Rajendran was having income from various sources as a partner of two finance firms, as a partner of a tyre business and income from transport business. The claimants have also produced certificate showing that the deceased Rajendran was drawing a sum of Rs.12,000/- per month as a Manager of a petrol bunk. The deceased Rajendran was also having a four wheeler which met with the accident on the fateful day. The theory of employment in a petrol bunk, no doubt, is suspicious. A person who was a partner of at least two finance firms and tyre business and was owning mini lorries cannot be expected to work as a Manager in petrol bunk for a salary of Rs.12,000/-. However, there is some evidence to that effect which cannot be ignored by us totally. As regards the oral evidence, there are certain admissions regarding the payment

of the share of profits in the partnership business to Rajendran. We cannot on the basis of such evidence eschew the entire income from the partnership business while determining the compensation. In ***Ramya's*** *case* (referred to supra), the Hon'ble Supreme Court had held that the observations made by the Hon'ble Supreme Court in **State of Haryana Vs. Jasbir Kaur** reported in **(2003) 7 SCC 484** relating to income from agricultural land and house property would also be applicable to rent received from leased out properties as loss of dependency arises mainly out of loss of management capacity or efficiency. In doing so, the Hon'ble Supreme Court observed as follows:

> *'22. In our opinion, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.'*

19. If we have to apply the above principles to the case on

hand, we will have to necessarily conclude that the Tribunal was not right in eschewing the entire income from the business and taking only the notional income at Rs.15,000/- including future prospects. The accident happened on 25.12.2019. At the relevant point of time, even a last grade employee in Government service or an NMR engaged by the Public Works Department were paid more than Rs.17,000/-. Therefore, the adoption of the income at Rs.15,000/- including future prospects made by the Tribunal is unacceptable. We find from the income tax returns that the deceased Rajendran was earning about Rs.4 lakhs per annum from the various businesses and the evidence available in the form of the salary certificate which has been marked as Ex.X6 should also be taken into account. True, the family may be receiving the profits from the partnership business but the said share may not be the same as it would have been if Rajendran was alive and he had taken part in the business.

20. Considering the overall circumstances, the fact that Rajendran had two daughters, one of whom is a medical student and the other was in 11th standard and the fact that he owned a four wheeler at the time of the accident, we find that the fixation of the monthly income at Rs.25,000/- would be reasonable. Since Rajendran was aged about 51 years at the time of the accident and was a self-employed person, we will have to apply future

prospects at 10%. Therefore, the monthly income of Rajendran would be Rs.27,500/-. We will have to deduct 1/3rd towards his personal expenses which comes to Rs.9166/-. Thus the monthly loss of dependency would be Rs.18,334/- (Rs.27,500/- - Rs.9166/- = Rs.18,334/-). Since the deceased was aged about 51 years, we will have to apply multiplier of 11. Therefore, the total loss of dependency would be Rs.18,334/- x 12 x 11 = Rs.24,20,088/-. Apart from the above, claimants would be entitled to a sum of Rs.40,000/- each towards loss of love and affection and loss of consortium and Rs.15,000/- each towards funeral expenses and loss of estate and Rs.5,000/- towards transport expenses. Thus the total award worked out to Rs.25,35,088/- which we round off to Rs.25,35,000/-.

21. Insofar as **C.M.A.No.914 of 2023** is concerned, the quantum of compensation is for the death of minor Logavidya, a 11th standard student. The Tribunal has taken her notional income at Rs.10,000/- per month including future prospects. As rightly contended by Ms.J.Prithivi, learned counsel for the appellants/claimants, the adoption of Rs.10,000/- per month as notional income inclusive of future prospects is very low. No doubt, she was a student of 11th standard but from the mark sheets that have been filed before us, we find that she was an intelligent student and had secured above 90% in all subjects in

her 10th standard examination that too in the CBSE syllabus. We are therefore inclined to agree with the contention of learned counsel for the appellants that she is a very bright student and she would definitely made it big had she been alive.

22. Mr.S.Arun Kumar, learned counsel for the insurance company would however submit that being a 11th standard student, it will be too premature to assume a larger income for her. This Court and the Hon'ble Supreme Court have repeatedly held that this grant of compensation necessarily involves certain amount of guess work and there cannot be mathematical precision in awarding compensation. Considering the overall circumstances, we find that the notional income of Rs.9,000/- per month with an addition of 40% towards future prospects would be just and equitable in the circumstances of the case. If we are to re-work the compensation on the above basis, the monthly income of the deceased should be taken at Rs.12,600/- and multiplier of 18 has to be applied. The total loss of income works out to Rs.12,600/- x 12 x 18 = Rs.27,21,600/-. We have to deduct 50% of the same towards personal expenses and the total loss of dependency would be Rs.13,60,800/-. The two claimants would be entitled to Rs.40,000/- each towards loss of love and affection. They would also be entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Though medical bills to the

tune of Rs.48,416/- were produced, the Tribunal has granted only Rs.40,000/-. No reason has been assigned by the Tribunal for reduction of the claim of medical expenses which is based on bills. We therefore find that the claimants would be entitled to the entire amount of Rs.48,416/- towards medical expenses. Thus, the total compensation works out to Rs.15,19,216/-, which we round off to Rs.15,20,000/-.

23. **C.M.A. No.927 of 2023:** This appeal relates to the compensation for the injuries suffered by Ms.Revathy, wife of Rajendran. The Medical Board has certified her permanent disability at 30%. It is in evidence that she has worked as a teacher in a Government school and she has also admitted that she is continuing in her job and she had not lost her income because of the disability. Therefore, the Tribunal has rightly awarded a sum of Rs.1,20,000/- at Rs.4,000/- per each percentage of disability for the permanent disability caused to her. Ms.J.Prithivi, learned counsel for the appellants would vehemently contend that the discharge summary produced as Ex.P13 would go to show that she had suffered right renal artery thrombosis which will have the effect on kidney itself being rendered dysfunctional and useless. Therefore, she will have to survive with one kidney, of course, she may not have any difficulty and she can carry on her day to day activities as normal person but the risk of living

with one kidney is always there. The Tribunal has not taken into account the said risk.

24. Mr.S.Arun Kumar, learned counsel for the insurance company would submit that unless it is shown that loss of one kidney had affected her normal life or it has a bearing on her income, she will not be entitled to compensation on that ground.

25. The medical evidence that is available shows that the claimant has suffered a condition of right renal artery thrombosis which leads to the kidney becoming dysfunctional and useless. No doubt, a person can survive with one kidney but as rightly contended by the learned counsel for the appellants, the risk involved has to be taken into account while determining the compensation. There is also quotient of mental agony which cannot be measured in terms of money. The Tribunal has granted a sum of Rs.1,20,000/- towards disability, Rs.30,000/- towards pain and suffering and Rs.1,75,000/- towards medical expenses. We find that the medical bills have been produced to the tune of Rs.1,92,614/-. It is not known as to why the Tribunal reduced the award for medical expenses to Rs.1,75,000/-. There is no reason, reflected in the award, for such reduction. We therefore find that the award for medical expenses should have been at Rs.1,92,614/-. We also confirm the award for permanent disability at

Rs.1,20,000/-. We enhance the award for pain and suffering to Rs.1,00,000/- from Rs.30,000/-. We find from the certificate of the Medical Board that the claimant has suffered bilateral closed hip dislocation and right sided closed radius fracture which will also be a permanent nuisance or it will have the effect on her life style. We therefore find that an award of Rs.5 lakhs on both counts i.e., for loss of kidney and the loss of amenities due to the discomfort caused by the fracture in the hip bone. Thus, a total compensation that she would be entitled to would be Rs.9,12,614/-, which we round off to Rs.9,13,000/-.

26. **C.M.A. No. 926 of 2023**: This appeal relates to compensation for injuries suffered by the claimant who is a medical student. The Medical Board had certified the injuries at 10%. It is also seen from the nature of the injuries that the injuries do not translate into functional disability being injuries on the facial bone though they had resulted in disfigurement. The Tribunal has awarded a sum of Rs.40,000/- at Rs.4,000/- per percentage towards permanent disability which we sustain. The Tribunal has awarded a sum of Rs.15,000/- for pain and suffering. We find the said sum to be very low. We find from the discharge summary that she had undergone a surgery and there has been open reduction and internal fixation of bilateral zygomatic co maxillary complex elevation of nasal bone fracture and revised

closed reduction of sutured wounds over face and scalp. This would have definitely resulted in considerable pain and suffering. She was inpatient for almost six days. Therefore, we award a sum of Rs.75,000/- towards pain and suffering. As a girl, studying in second year M.B.B.S. aged about 19 years, the disfigurement suffered by her would definitely have an effect on her marriage prospects. This aspect has been completely overlooked by the Tribunal. We find that grant of a sum of Rs.1,50,000/- towards of loss of marriage prospects would be appropriate compensation. She would also be entitled to a sum of Rs.1,02,154/- towards medical expenses as evidenced by the bills. Therefore, the total compensation that she would be entitled to is Rs.3,67,514/- which is rounded off to Rs.3,68,000/-.

27. In fine, all these appeals are allowed in part. The claimants would be entitled to enhanced compensation as aforesaid with 7.5% interest. The insurance company will deposit the difference in compensation within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

(R.S.M., J.)   (N.S., J.)
14.12.2023

Index: Yes / No
Neutral Citation: Yes / No

mmi

To

1.The New India Assurance Co. Ltd.,
Namakkal rep. By
New India Assurance Co. Ltd.,
TP Hub, Sethukrishna Trade Centre,
Gugai, Salem – 636 006.

2.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.

3.The Record Keeper,
V.R. Section, High Court,
Madras.

R. SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

mmi

C.M.A.Nos.914, 926, 927
and 931 of 2023

14.12.2023