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C.M.A. Nos.1012 & 1014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.1012 & 1014 of 2023

1. Naina Mohamed

2.N.Sahitha

...

Appellants in CMA No.1012 of 2023

1.M.Seiyathalibathima

2.Minor M.Parveen Banu

3.Minor M.Syed Farook

4.D.Sikkanthar Beevi

...

Appellants in CMA No.1014 of 2023

(Minor appellants 2 & 3 are rep.by their
mother and natural guardian M.Seiyathalibathima)

Vs.

1.T.Shajahan

2.The New India Assurance Company Ltd.,

No.1, Bharathi Road, Arcot Woodlands Building,
Cuddalore.

3.The Managing Director,

Tamilnadu State Transport Corporation

Byepass Road,

Madurai – 625 010.

...

Respondents in both Appeals



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Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2021 made in M.C.O.P. Nos.1730 & 1729 of 2017 on the file of the Special Motor Accident Claims Tribunal, 1st Additional District and Sessions Judge, Cuddalore.

For Appellants : Ms.Ramya V.Rao
in both appeals

For Respondents : Ms.R.Sreevidhya for R2
in both appeals Mr.V.Bharathidasan for R3
R-1 dispensed with in both appeals

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 25.03.2021 made in M.C.O.P.Nos.1730 & 1729 of 2017 on the file of Special Motor Accident Claims Tribunal, 1st Additional District and Sessions Judge, Cuddalore.

2. Both the appeals arise out of the same accident and hence they are disposed of by this common judgment. Parties are referred to as per their rank in the claim petitions.



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WEB COPY 3. By consent of both the learned counsel appearing for the claimants, 2nd respondent as well as third respondent, both these appeals are taken up for final hearing at the admission stage itself.

4. The appellants in both the appeals filed the above said claim petitions claiming compensation for the death of Mansoor and Mobasak who died in the accident that took place on 24.12.2016.

5. According to the claimants, on the date of accident, when the deceased Mansoor and Mobasak were travelling in the auto bearing Regn.No.TN67 AU 2891 belonging to the first respondent on the Aruppukottai – Virudhunagar main road, near Aruppukottai, the driver of the bus belonging to the third respondent drove the same in a rash and negligent manner, hit against the auto and caused the accident. Hence, the claimants filed the above said claim petitions claiming compensation against the respondents.



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6. The 2nd respondent filed separate counters in both the claim petitions and contended that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the third respondent and hence the 2nd respondent is not liable to pay compensation to the appellants. The 2nd respondent also denied the age, occupation and monthly income of the deceased. The total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

7. The third respondent filed separate counters in both the claim petitions denying all the averments made in the claim petitions including the manner of accident. It is stated that the driver of the bus drove the same slowly observing traffic rules. The driver of the auto alone drove the same in a rash and negligent manner and suddenly turned from left to right and again right to left side of the road, due to unbalance, dashed against the front left side of the bus and invited the accident. Hence, the third respondent is not liable to pay compensation to the claimants. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the appeal.



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WEB COPY 8. Before the Tribunal, the claimant in MCOP No.1729 of 2017 examined herself as PW1, claimant in MCOP No.1730 of 2017 was examined as PW2 and two other witnesses were examined as PW3 & PW4. Ten documents were marked as Exs.P.1 to P.10. No document was marked on the side of the respondent however one Sriram was examined as RW1.

9. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by driver of the bus belonging to the third respondent and directed the third respondent to pay compensation to the claimants. The Tribunal dismissed the claim petitions as against the respondents 1 & 2. Aggrieved by the said order, the claimants have preferred the present appeals seeking enhancement of compensation.

10. The learned counsel appearing for the claimants/appellants in CMA No.1012 of 2023 submitted that the deceased was working as a driver with



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the 1st respondent and had examined PW1, mother of the deceased to prove the avocation and income of the deceased. However, the Tribunal had fixed only a sum of Rs.7500/- per month as notional income of the deceased for the accident which took place in the year 2016. The compensation awarded by the Tribunal towards loss of love & affection at Rs.20,000/- each to the appellants is meagre and prayed for enhancement of compensation.

10(i) The learned counsel appearing for the claimants/appellants in CMA No.1014 of 2023 submitted that the claimants had established that the deceased was working as a Manager in Namakkal Transport, Madurai and had filed Ex.P7-salary certificate and examined PW4, author of the salary certificate to prove the avocation and income of the deceased. However, the Tribunal had fixed only a sum of Rs.8500/- per month as notional income of the deceased which is meagre. PW4 in his evidence has deposed that the deceased was earning Rs.20,000/- per month. Further, the Tribunal had not awarded compensation towards filial consortium and parental consortium instead has awarded only a sum of Rs.40,000/- each towards loss of love &



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affection to the claimants 2 to 4 and prayed for enhancement of compensation.

11. Per contra, the learned counsel appearing for the third respondent in CMA No.1012 of 2023 submitted that the deceased was an auto driver who was under the influence of alcohol at the time of accident and produced a copy of the final report wherein the action was dropped as against the driver of the offending vehicle. The learned counsel further submitted that in the absence of any documentary evidence to prove the avocation and income of deceased, the Tribunal was right in fixing the notional income at Rs.7500/- per month. The compensation awarded by the Tribunal under different heads are also just and reasonable and prayed for dismissal of the appeal.

11(i) The learned counsel for the third respondent in CMA No.1014 of 2023 contended that no attendance register or salary register has been produced to prove the avocation of the deceased. Moreover, during cross examination by the third respondent, PW4 has deposed that the deceased



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Mobasak @ Mubarak Ali is his brother. No document has been produced to show that he paid salary to his brother. The learned counsel further submitted that in the facts and circumstance of the case, the Tribunal was right in fixing the notional income of the deceased at Rs.8500/- which is reasonable. The compensation awarded by the Tribunal under different heads are also just and reasonable and prayed for dismissal of the appeal.

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

13. It is submitted by the learned counsel of either side that the third respondent had filed an appeal before the Division Bench of this Court in CMA Nos.1271 & 1272 of 2022 and the same was dismissed by the Division Bench of this Court at the admission stage itself and no notice was issued to the claimants.



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

CMA No.1012 of 2022

15. Though the learned counsel for the third respondent submitted that criminal case against the offending vehicle was closed as action dropped for the reason that the postmortem certificate of the deceased in CMA No.1012 of 2022 who drove the auto, revealed that there was presence of ethyl alcohol in his body, the same was not produced before the Tribunal. The third respondent has not let in any evidence to prove the contributory negligence on the part of the deceased. Further the appeal filed by the third respondent has also been dismissed by the Division Bench of this Court. In such circumstances, this court cannot take cognizance of the final report now relied upon by the third respondent, especially for the reason that one cannot infer contributory negligence merely because the deceased had consumed alcohol. The third respondent ought to have proved that the deceased was under the influence of alcohol to establish contributory negligence. Hence, there is no reason to interfere with the finding of the Tribunal with regard to



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fixing of contributory negligence on the part of the driver of the bus belonging to the third respondent.

16. As far as quantum of compensation is concerned, it is seen that though the claimants have not produced any reliable documentary evidence to prove the income of the deceased, they had examined PW2, mother of the deceased who in her deposition had stated that the deceased was working as a driver and was earning Rs.15000/- per month. However, the Tribunal had fixed the notional income at Rs.7500/- per month which is meagre. Considering the age, avocation and the year of accident, this court is of the view that it would be just and reasonable to fix Rs.12,500/- per month as notional income of the deceased. The deceased was aged 24 years at the time of accident. The multiplier applicable is 18 and the claimants are entitled to 40% enhancement towards future prospects. Since the deceased died as a bachelor, 50% has to be deducted towards his personal expenses. Thus, the compensation towards loss of income is calculated as follows -

$$12500 + 5000 (12500 \times 40\%) \times 12 \times 18 \times 50\% = \text{Rs.18,90,000/-}$$

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The amounts awarded by the Tribunal towards loss of love & affection is meagre. Hence, a sum of Rs.40,000/- each is awarded towards loss of love & affection to the claimants. Since the claimants have not established the transport expenses, the amount awarded by the Tribunal under the said head is set side. The Tribunal has not awarded any amount towards loss of estate and hence a sum of Rs.15,000/- is awarded under the said head. The amounts awarded by the Tribunal towards funeral expenses is just and reasonable and hence the same is 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
1.	Loss of income	11,34,000/-	18,90,000/-	Enhanced
2.	Loss of love & affection	20,000/-	80,000/-	Enhanced
3.	Transport expenses	15,000/-	-	Set aside
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	-	15,000/-	Granted
	Total	11,84,000/-	20,00,000/-	Enhanced by Rs.8,16,000/-



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CMA No.1014 of 2022

17. It is seen from the award of the Tribunal that the claimants have marked Ex.P7-salary certificate and examined PW4-the author of the said salary certificate to prove that the deceased was working as Manager under PW4. But those documents cannot be the basis to fix the income as the claimants have not produced the appointment letter, attendance register etc. to substantiate their case. Further, PW4 is the brother of the deceased. Hence, only notional income can be fixed. However, the Tribunal had fixed a meagre sum of Rs.8500/- per month as notional income of the deceased stating that neither salary register nor attendance register had been produced by the claimants to prove the income of the deceased which is justifiable. Considering the age, avocation, number of dependents and the year of accident, this court is of the view that it would be just and reasonable to fix a sum of Rs.14,000/- per month as notional income of the deceased. The deceased was aged 37 years at the time of accident. The multiplier applicable is 15 and the claimants are entitled to 40% enhancement towards future



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prospects. Since there are four dependents, 1/4th has to be deducted towards personal expenses. Thus, the compensation towards loss of income is calculated as follows -

$$14500 + 5600 (12500 \times 40\%) \times 12 \times 15 \times 50\% = \text{Rs.26,46,000/-}$$

The amounts awarded by the Tribunal towards loss of love & affection is meagre. The claimants 2 to 4 are entitled to a sum of Rs.40,000/- each towards loss of love & affection. The 1st claimant wife of the deceased is not entitled to compensation towards loss of love & affection. However, the amount awarded by the Tribunal towards loss of consortium to the 1st claimant is confirmed. Since the claimants have not established the transport expenses, the amount awarded by the Tribunal under the said head is set side. The Tribunal has not awarded any amount towards loss of estate and hence a sum of Rs.15,000/- is awarded under the said head. The amounts awarded by the Tribunal towards funeral expenses is just and reasonable and hence the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows -

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	16,06,500/-	26,46,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
2.	Loss of love & affection	40,000/-	1,20,000/- (40000 x 3)	Enhanced
3.	Transport expenses	15,000/-	-	Set aside
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	-	15,000/-	Granted
	Total	17,16,500/-	28,36,000/-	Enhanced by Rs.11,19,500/-

18. In the result -

(a) C.M.A No.1012 of 2023 is allowed and the compensation awarded by the Tribunal at Rs.11,84,000/- is hereby enhanced to Rs.20,00,000/- 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.1014 of 2023 is allowed and the compensation



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awarded by the Tribunal at Rs.17,16,500/- is hereby enhanced to Rs.28,36,000/- 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 third respondent / Transport Corporation is directed to deposit the enhanced award amounts in both the appeals, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the claimants in both the appeals 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 claimants/appellants in CMA No.1014 of 2023 is directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. The mother of the minor claimants/appellants is permitted to withdraw the accrued interest once in three months. The claimants/appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amounts. No costs.

09.08.2023

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Index: Yes/No

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C.M.A. Nos.1012 & 1014 of 2023

Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1. The 1st Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.

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

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Dated: 09.08.2023

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SUNDER MOHAN,J

Today, the above matter is listed under the caption 'For being mentioned'.

2. This Court while enhancing the compensation, permitted the claimants to withdraw their share of the award amount with proportionate interest. However, it is reported that the claimants/appellants 2 and 3 in C.M.A.No.1014 of 2023 are minors. Hence, the share of the minors ought to have been directed to be deposited in any one of the Nationalised Bank, till the minors attain majority.

3. In view of the above, paragraph 18 (c) of the Judgment of this Court dated 09.08.2023 shall be substituted as follows:

“18 (c) The third respondent/Transport Corporation is directed to



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deposit the enhanced award amounts in both the appeals, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit, the claimants in both the appeals 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 claimants/appellants 2 and 3 in CMA No.1014 of 2023 is directed to be deposited in any of the Nationalised Bank, till the minors attain majority. The claimants are directed to pay the necessary court fee, if any, on the enhanced award amounts. No costs.

4.Registry is directed to issue order copy after carrying out the above corrections. The other contents of the Judgment of this Court dated 09.08.2023 shall remain unaltered.

08.11.2023

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SUNDER MOHAN,J.

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08.11.2023