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CMA Nos. 943 & 2938 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 943 & 2938 of 2022
and
C.M.P. No. 22688 of 2022

C.M.A. No. 943 of 2022:

1.Thilagavathy
2.Kandasamy ... Appellants

Versus

1.Duraisamy
2.Kumaresan
3.The United India Insurance Co.,Ltd.,
146/N, II Floor, Kumar Complex, Annasalai,
Tiruchengode Town & Taluk,
Namakkal District.
4.The United India Insurance Co.Ltd.,
Branch at: 1170, Muthaiah Complex,
Mettur Road, Erode – 638 011.
5.Subramani
6.The Chairman, M/s.Vivekananda College of
Arts and Science (Women), Elampalayam,
Tiruchengode Taluk, Namakkal District.
7.The ICICI Lombard General Insurance Co.Ltd.,



CMA Nos. 943 & 2938 / 2022

Second and Third Nungambakkam High Road,
Chottabhai Centre, Chennai – 600 034.

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8.The ICICI Lombard General Insurance Co.Ltd.,
Branch Office: JB Towers, First floor,
258B, Sathy Road, Erode – 638 001.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to enhance the award amount in the Judgment and decree dated 19.03.2021 made in M.C.O.P. No. 633 of 2018, on the file of the Motor Accident Claims Tribunal, Special District Judge, Erode.

For Appellants : Mr. T.S. Arthanareeswaran.

For Respondents : No appearance for R1, R2 & R6.

R5 – Unclaimed.

Mr. P. Sankaranarayanan for R3 & R4.

Mr. M. Jayaraj for R7 & R8.

C.M.A. No. 2938 of 2022:

1.The United India Insurance Co.,Ltd.,
146/N, II Floor, Kumar Complex, Annasalai,
Tiruchengode Town & Taluk,
Namakkal District.

2.The United India Insurance Co.Ltd.,
Branch at: 1170, Muthaiah Complex,
Mettur Road, Erode – 638 011.

... Appellants

Versus



CMA Nos. 943 & 2938 / 2022

1. Thilagavathy
 2. Kandasamy
 3. Duraisamy
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 7. The ICICI Lombard General Insurance Co.Ltd., Second and Third Nungambakkam High Road, Chottabhai Centre, Chennai – 600 034.
 8. The ICICI Lombard General Insurance Co.Ltd., Branch Office: JB Towers, First floor, 258B, Sathy Road, Erode – 638 001.
- ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Judgment and decree dated 19.03.2021 made in M.C.O.P. No. 633 of 2018, on the file of the Motor Accident Claims Tribunal, Special District Judge, Erode.

For Appellants : Mr. P. Sankaranarayanan.

For Respondents : Mr. T.S. Arthanareeswaran for R1 & R2.

R3, R4 & R6 – No appearance.

R5 – Unclaimed.

R7 & R8 – Mr. M. Jayaraj.



WEB COPY 4.The respondents 3, 4, 7 and 8 / insurance companies in C.M.A.

No. 943 of 2022 filed separate counters denying all the averments made in the claim petition including the manner of accident. The compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

5.The respondents 1, 2, 5 and 6 in C.M.A. No. 943 of 2022 remained ex-parte before the tribunal.

6.The claimants examined two witnesses on their side and marked Ex.P.1 to Ex.P.10 and the respondents examined one witness on their side. However, no document was marked.

7.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the first respondent in C.M.A. No. 943 of 2022 and awarded a compensation of Rs.8,30,000/- to the claimants to be paid by the third respondent and dismissed the claim petition as against the respondents 4 to 8. Aggrieved by the said award, the claimants have filed C.M.A. No.



CMA Nos. 943 & 2938 / 2022

943 of 2022 and the respondents 3 and 4 / Insurance company have filed

C.M.A. No. 2938 of 2022.

8.The learned counsel for the claimants / appellants in C.M.A. No. 2938 of 2022 submitted that the Tribunal had fixed the entire negligence on the driver of the offending vehicle bearing Registration No.TN 33 BA 2666. The manner in which the accident took place would show that the driver of the college bus bearing Registration No. TN 63 W 0163 had also contributed to the accident. The learned counsel relied upon the evidence of RW1, rough sketch and the evidence of PW1 in support of his submission and contended that the college bus belonging to the sixth respondent which was insured with the respondents 7 and 8 herein had contributed to the accident. The learned counsel submitted that the vehicles belonging to the college were standing in a que on the east to west direction, waiting to take a right turn i.e., towards the northern side. While so one of the vehicles (i.e.) bus bearing Registration No. TN 63 W 0163 without any warning signal had taken a sudden right turn as a result of which the offending vehicle which was driven from east to west had rammed against the college bus. In such circumstances, the learned counsel submitted that contributory negligence has to be fixed on the fifth



CMA Nos. 943 & 2938 / 2022

respondent, driver of the college bus. Further, the learned counsel submitted that the interest awarded by the Tribunal at 9% is on the higher side and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel for the respondents 7 and 8, insurer of the college bus submitted that the evidence of RW1 is contradictory and cannot be accepted. It is the case of the claimants that the accident took place on account of the rash and negligent driving of the offending vehicle and relied upon the evidence of PW1 to substantiate their case. The FIR was registered against the offending vehicle and the police on investigation filed a final report as against the offending vehicle which would show that there is no negligence on the part of the driver of the college bus. The learned counsel relied upon the cross examination of RW1 in support of his submission and prayed for dismissal of the appeal filed by the Insurance company.

10.The insurance companies have not questioned the quantum of compensation awarded by the Tribunal.

11.The learned counsel for the appellants / claimants in C.M.A.



CMA Nos. 943 & 2938 / 2022

No. 943 of 2022 submitted that the deceased was a minor child aged two years. The Tribunal had rightly taken Rs.5,000/- per month as notional income of the minor child. However, the Tribunal had erroneously deducted 1/3rd towards personal expenses which is contrary to the settled position of law. The compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

12.Though notice has been served on the respondents 3 to 6 in C.M.A. No. 2938 of 2022, none has entered appearance on behalf of them.

13.As regards negligence, this Court finds that the rough sketch, the evidence of PW1 and RW1 would indicate that the college buses were parked on the extreme left hand side of the road and one of the college bus bearing Registration No. TN 63 W 0163 attempted to take a right turn to proceed towards northern side. It is also the admitted case that the offending vehicle which came in the same direction rammed against the college bus. Though an FIR was registered against the driver of the college bus on the complaint given by the driver of the offending vehicle



CMA Nos. 943 & 2938 / 2022

and charge sheet was also filed against the driver of the college bus, the evidence in the case regarding the manner of the accident would show that both the driver of the offending vehicle and the driver of the college bus are guilty of negligence. Admittedly, the college bus which was parked on the left hand side of the road without due care and caution had taken a sudden right turn. The evidence of PW1 confirms the said fact. At the same time, if the driver of the offending vehicle had taken proper care and caution, the accident could have been avoided. Hence, this Court is of the view that the driver of both the college bus and the offending vehicle are liable for the accident. Considering the manner in which the accident took place and the evidence adduced before the Tribunal, this Court is of the view that contributory negligence on the driver of the offending vehicle has to be fixed at 60%. In view of the negligent act of the driver of the college bus taking a right turn from extreme left, 40% is fixed on the driver of the college bus.

14.As regards the compensation, this Court finds that the deceased was a minor child aged two years and the Tribunal has fixed the notional income at Rs.5,000/- per month for the accident of the year 2018. As per the II Schedule of the Motor Vehicles Act, for minor, a non earning



CMA Nos. 943 & 2938 / 2022

member, the income is fixed as Rs.15,000/- per annum. The Hon'ble Apex Court in the judgment reported in **2014 (1) SCC 244 (Kishan Gopal and another vs. Lala and others)**, held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the deceased minor. This Court has fixed notional income of the minor deceased as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the deceased was aged 2 years at the time of accident. In view of the facts and circumstances of this case, a sum of Rs.60,000/- per annum is fixed as income of the deceased. The Tribunal erred in deducting $1/3^{\text{rd}}$ towards personal expenses and applied the multiplier 18 which is erroneous. As per II Schedule of the Motor Vehicles Act, the multiplier applicable is '15'. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.9,00,000/- (Rs.60,000/- x 15). However, the compensation awarded under the other heads are just and the same are confirmed. Thus, the award of 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



CMA Nos. 943 & 2938 / 2022

1.	Loss of income	7,20,000	9,00,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of filial consortium	80,000	80,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	8,30,000	10,10,000	Enhanced by Rs.1,80,000/-

The interest awarded by the Tribunal @ 9% is on the higher side and the same is reduced to 7.5% per annum.

15. With the above modification, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.8,30,000/- is hereby enhanced to Rs.10,10,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. Out of the compensation amount of Rs.10,10,000/-, 60% i.e., Rs.6,06,000/- has to be paid by the United India Insurance Company and 40% i.e., Rs.4,04,000/- has to be paid by the ICICI Lombard Insurance Company. The appellants and the seventh and eighth respondents / Insurance Companies in C.M.A. No. 2938 of 2022 are directed to deposit their share of the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date



CMA Nos. 943 & 2938 / 2022

of a receipt of copy of this Judgment in the proportion fixed by this Court.

On such deposit the claimants are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment made by the Tribunal. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amount. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

The Motor Accident Claims Tribunal,
Special District Judge,
Erode.



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C.M.P. No. 22688 of 2022

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