IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 13.06.2023**

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU**
**AND**
**THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**C.M.A.Nos.2210 & 2218 of 2021**

1. Kothandaraman

2. Shobana ... Appellants in both the Appeals

Vs.

1. Rajasekar

2. The New India Assurance Co. Ltd.,
Motor Third Party Claims
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Boase Road,
Chennai - 600 001. ..Respondents in both the Appeals

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.02.2021 and made in M.A.C.T.O.P.Nos.6253 & 6250/2018 respectively on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents : Mr.K.Elango for R2
R1- exparte

**COMMON JUDGMENT**

These two Civil Miscellaneous Appeals arise out of the same accident and are taken up for disposal by way of this common judgment.

2. Two persons, viz., Jamuna, the mother and Kamalesh, the son, died in the same accident. The two Original Petitions in M.C.O.P.Nos.6253/2014 & 6250/2014 were filed by the dependants namely Kothandaraman who is the husband of Jamuna and father of Kamalesh and minor Shobana who is the daughter of Jamuna and sister of Kamalesh.

3. By a common award dated 08.02.2021, the Motor Accident Claims Tribunal, Chennai, had allowed the petitions by awarding a total sum of Rs.14,04,000/- in M.C.O.P.No.6250/2018 and Rs.12,37,600/- in M.C.O.P.No.6253/2018. Not satisfied with the quantum, the claimants are on appeal before this Court.

4. Heard Mr.F.Terry Chella Raja, the learned counsel appearing for the appellants and Mr.K.Elango, the learned counsel appearing on behalf of the respondent/Insurance Company.

5. The learned counsel for the appellants would submit that in this case, the accident took place in the year 2018. Firstly, the trial Court had

deducted 20% of the total compensation on the ground of contributory negligence. When the offending lorry is parked on highway, there was no question of deduction of contributory negligence and in this case, no contra evidence was also let in by the Insurance Company to prove that the deceased in any manner contributed to the accident. Secondly, it is his contention that in both the cases, in the absence of positive proof of income, a sum of Rs.10,000/- has been taken as notional income. In this regard, the learned counsel would rely upon the judgment of the Division Bench of this Court in C.M.A.No.1635/2020 wherein, in respect of an accident which happened in the year 2018, this Court, after considering the issue, had taken the notional income as Rs.15,000/- per month. As a matter of fact, the learned counsel would also cite the judgments of Division Benches in Managing Director, Tamil Nadu State Transport Corporation vs. Neela and another reported in CDJ 2019 MHC 3304 and Maheshwari and others vs. V.Vimal and others in C.M.A.Nos.149 & 740/2021 to demonstrate that this Court had even taken more than Rs.15,000 i.e., Rs.18,000/- and Rs.20,000/- as notional income in those cases. Therefore, he would submit that the quantum awarded by the trial Court is on the lower side and requires interference.

6. Per contra, the learned counsel appearing for the Insurance Company would submit that a sum of Rs.10,000/- has been uniformly taken as notional income and as a matter of fact, he circulated two other judgments of this Court of the learned single Judge (C.M.A.Nos.342 & 887 of 2022 and C.M.A.No.710/2021) to contend that the notional income is rightly taken as Rs.10,000/-. He would also submit that when the vehicle was not stopped and dashed against the stationary vehicle, the Tribunal was right in deducting 20% as contributory negligence.

7. We have considered the submissions made on either side and perused the material records of the case.

8. The points raised for consideration in these appeals are:

i) Whether or not the trial Court is right in deducting 20% of the compensation as contributory negligence?

ii) Whether or not the trial Court is right in taking the notional monthly income as Rs.10,000/- and arriving at the compensation?

9. Point No.(i): It can be seen in this case that the offending vehicle was parked on the highway. That is only the sole and proximate reason for the accident and on the facts and circumstances of this case, especially, when no contra evidence was let in on behalf of the Insurance

Company to the effect that the deceased failed to take reasonable care, we find that the Tribunal erred in deducting 20% as contributory negligence and therefore, to that extent, the award of the Tribunal requires interference.

10. Point No.(ii). Now coming to the notional income, in the absence of any poof, it can been seen that the evidence of the claimants is that the deceased Jamuna was working as a Tailor cum Apalam maker. Similarly, the deceased Kamalesh was the first year B.C.A. student in a private College in Chennai. Under these circumstances, the Division Bench of this Court in *Managing Director, Tamil Nadu State Transport Corporation vs. Neela and anoth*er *(CDJ 2019 MHC 3304)* (cited supra) has categorically laid down that considering the vagaries of the employment and the prevailing circumstances as of the year 2018, a sum of Rs.10,000/- is too low and the notional income of Rs.15,000/- per month will be appropriate.

11. In that view of the matter, we are inclined to accept the criteria laid down by the Division Bench of this Court. Therefore, in both cases, we fix the notional income as Rs.15,000/-. Now if that is fixed, the following would be the calculation.

12. In respect of CMA.2210/2018 (MCOP.No.6253/2014), compensation payable is worked as follows:

| | |
|---|---|
| Deceased monthly income | : Rs.15,000/- |
| plus: 40% future prospects | : Rs. 6,000/- |
| | Rs.21,000/- |
| Towards loss of dependency Rs.21,000 x 18 x 12 x 1/2 | : Rs.22,68,000/- |
| Towards Funeral Expenses | : Rs. 15,000/- |
| Towards Loss of Love and Affection | : Rs. 20,000/- |
| | Rs.23,03,000/- |

13. In respect of CMA.2218/2018(MCOP.No.6250/2014), compensation payable is worked as follows:

| | |
|---|---|
| Deceased monthly income | : Rs.15,000/- |
| plus: 40% future prospects | : Rs. 6,000/- |
| | Rs.21,000/- |
| Towards loss of dependency Rs.21,000 x 12 x 15 x 2/3 | : Rs.25,20,000/- |
| Towards Funeral Expenses | : Rs. 15,000/- |

| | | |
|---|---|---|
| Towards Loss of Love and Affection Rs.20,000/- each x 2 | : | Rs. 40,000/- |
| Towards Loss of Consortium | : | Rs. 20,000/- |
| | | Rs.25,95,000/- |

Accordingly, the award amount in both the cases are enhanced as stated supra.

14. In the result, the Civil Miscellaneous Appeals are allowed. The award of the Tribunal in M.C.O.P.No.6250/2014 is modified and enhanced as Rs.25,95,000/- Similarly, the award of the Tribunal in M.C.O.P.No.6253/2014 is modified and enhanced as Rs.23,03,000/-. The proportion of distribution shall be the same as ordered by the trial Court. The Insurance Company shall deposit the enhanced award amount, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants will be entitled to withdraw the entire sum. No costs.

**(J.N.B,J.)** **(D.B.C, J.)**
13.06.2023

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

**J. NISHA BANU, J.**
**and**
**D.BHARATHA CHAKRAVARTHY,J.**

vsi

**C.M.A.Nos.2210 & 2218 of 2021**

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