



C.M.A. No.268 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.268 of 2014
and
Cross Objection SR.No.23921 of 2014
and M.P.No.1 of 2014

C.M.A.No.268 of 2014:

National Insurance Company Ltd.,
Motor Third Party Cell, 2nd Floor,
751, Anna Salai, Chennai -2.

... Appellant/2nd Respondent

Vs.

1. Tmt. Rajalakshmi
2. Tmt. Thirupurasundari
3. Minor Santhosh
4. Minor Madhan

[Minor respondents represented by their mother
Tmt. Rajalakshmi, the first respondent herein]

... Respondents /Petitioners 1 to 4

5. The Managing Director,
P.T & T.D.C, 40 Goubert Avenue,
Pondy cherry – 605 001.

... Respondents /1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 05.02.2013 passed in M.C.O.P. No.2572 of 2006 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : M/s. N. B. Surekha



C.M.A. No.268 of 2014

WEB COPY

For R1 to R4 : Mr. V. Velu
For R5 : Mr. A. R. Nixon

Cross Objection SR.No.23921 of 2014:

1. Tmt. Rajalakshmi
2. Tmt. Thirupurasundari @ Thirupuram
Muthu (Deceased)
3. Minor Santhosh
4. Minor Madhan

[Minor respondents represented by their mother
Tmt. Rajalakshmi, the first respondent herein]

... Cross Appellants/Respondents

vs.

1. National Insurance Company Ltd.,
Motor III Party Cell, II Floor,
No.751, Anna Salai,
Chennai – 600 002.

...1st Respondent/Appellant

2. The Managing Director,
Pondicherry Tourism and Development Corporation Limited,
40 Goubert Avenue,
Pondicherry – 605 001.

... 2nd Respondent /6th

Respondent

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, 1908 against the Award and Decree dated 05.02.2013 passed in M.C.O.P. No.2572 of 2006 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Cross Appellants : Mr. V. Velu
For R1 : M/s. N. B. Surekha
For R2 : Mr. A. R. Nixon

COMMON JUDGMENT



The Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation granted to the claimants as per the award passed in M.C.O.P.No.2572 of 2006, dated 05.02.2013, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai, whereby, the Tribunal has awarded a sum of Rs.16,00,000/- as compensation along with interest at the rate of 7.5% per annum for the death of one Veeramani. The claimants who are the dependents of the deceased raised Cross-Objection for enhancement of compensation awarded in the above M.C.O.P.No.2572 of 2006.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. On 04.03.2006 at about 17.00hours the deceased Veeramani was travelling in his Lorry bearing Registration No.TN 04 X 2679 on the Perunduruvu to Ellaiamman Koil, while he reached near Muttukkadu Village, a driver of the Pondicherry Government Bus bearing Registration No.PY 01 L 1831 came in rash and negligent manner and dashed against the deceased's lorry which resulted in the deceased sustained fatal injuries and



died on the spot. The claimants who are the wife, minor children and mother of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.15,00,000/-.

4. Before the Tribunal, the first respondent remained ex-parte and has not contested the claim. The second respondent has disputed the liability fixed on them, contended that the deceased was not having valid driving licence at the time of accident and disputed the manner in which, the accident has taken place. The age, avocation and income of the deceased, also disputed. The compensation claimed by the claimants is on the higher side and prays to dismiss the claim.

5. The Tribunal after considering the evidences placed on record has held that the accident had happened due to the negligent driving of the driver of the bus and also quantified the compensation and awarded a sum of Rs.16,00,000/- as compensation to the claimants.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed this present Civil Miscellaneous



C.M.A. No.268 of 2014

Appeal.

WEB COPY

7. The learned counsel for the appellant - Insurance Company has contended that the Tribunal has fixed the notional income of the deceased, which is on the higher side and that the compensation awarded under various heads are also on the higher side and prays to reduce the quantum fixed by the Tribunal.

8. Per Contra, the learned counsel for the claimants has submitted that the Tribunal has not properly fixed the notional income while awarding compensation and the Tribunal has not awarded compensation under the head future prospects to the deceased and the compensation awarded under other heads are also very meagre and prays to enhance the same.

9. I have considered the rival submissions made on both sides and also perused the records available.

10. The claimants claimed that the deceased was the owner of the



Lorry as well as the owner of Lathe Workshop and was earning a sum of Rs.25,000/- per month. But no evidence to prove the same has been produced and the Tribunal has fixed the notional income of the deceased at Rs.7,500/- per month and this Court is of the view the same is on the higher side and this Court is inclined to fix the notional income of the deceased at Rs.5,000/- would be proper since the accident had taken place in the year 2006, and also considering his avocation. The Tribunal has not awarded any amount as future prospects of the deceased and this Court is inclined to grant 40% as the future prospects considering the age of the deceased, he is also entitled for 40% future prospects as per the Hon'ble Apex Court Judgment in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and as per the Judgment of the Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the Tribunal has rightly applied multiplier '17' considering the age of the deceased 28 years at the time of accident. The dependents of the deceased are four in number, the Tribunal has rightly deducted 1/4 as the personal and living expenses of the deceased. Accordingly, the following calculations have been made for assessing the loss of income $[5000 + 2000 (40\% \text{ of } 5000) \times 12 \times 17 \times 1/4] =$



Rs.10,71,000/-.

WEB COPY

11. The Tribunal has awarded a sum of Rs.30,000/- under the head loss of consortium to the first claimant alone and this Court is of the view that all the claimants are entitled to get compensation under the head loss of consortium for a sum of Rs.40,000/- each, accordingly, a sum of Rs.1,60,000/- is awarded under the head Loss of Consortium. The Tribunal has awarded a sum of Rs.30,000/- separately under the head loss of love and affection and as per the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the head loss of love and affection included under the head loss of consortium as reiterated by the Apex Court in ***Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]*** and ***United India Insurance Co. Limited vs. Satinder Kaur and Ors [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** has also confirmed that the claimants are entitled to get Rs.40,000/- each under the head loss of consortium. As far as the conventional heads such as Funeral Expenses is concerned, the Tribunal has awarded a sum of Rs.10,000/- and this Court is of the view the same is modified to Rs.15,000/-. The Tribunal has not



C.M.A. No.268 of 2014

awarded any compensation towards Loss of Estate and this Court is inclined to grant a sum of Rs.15,000/- under the head Loss of Estate.

12. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Dependency	Rs.15,30,000/-	Rs.10,71,000/-	Reduced
2.	Loss of Consortium	Rs.30,000/-	Rs.1,20,000/-	Enhanced
3.	Funeral Expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
4.	Loss of Love and Affection	Rs.30,000/-	---	Rejected
5	Loss of Estate	---	Rs.15,000/-	Granted
	Total Compensation	Rs.16,00,000/-	Rs.12,21,000/-	Reduced to Rs.3,79,000/-

13. As far as the Cross Objection filed by the claimants for enhancement is concerned, this Court finds that the amounts awarded under the head consortium as indicated in above table, hence, no need for enhancement. Accordingly, the Cross Objection is dismissed.

14. In the result, this Civil Miscellaneous Appeal is partly allowed



C.M.A. No.268 of 2014

and the compensation awarded by the Tribunal at Rs.16,00,000/- is hereby reduced to Rs.12,21,000/- [Rupees Twelve Lakhs and Twenty One Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The Appellant - Insurance Company is directed to deposit 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2572 of 2006 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The share of the minor claimants are directed to be deposited in any one of the Nationalized Bank till the minor claimants attains majority. On such deposit, the first claimant being the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. The Appellant - Insurance Company is permitted to



C.M.A. No.268 of 2014

withdraw the excess amount which was lying in the credit of M.C.O.P.No.2572 of 2006, if, any, already deposited. In other aspects, the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal. The Cross Objection SR.No.23921 of 2014 is dismissed. Consequently, the connected miscellaneous petition stands closed.

13.07.2023

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The VI Judge, Small Causes Court,



C.M.A. No.268 of 2014

Motor Accident Claims,
Chennai.

WEB COPY

2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.

ssi



WEB COPY



C.M.A. No.268 of 2014

C.M.A. No.268 of 2014 and
Cross Objection SR.No.23921 of 2014

13.07.2023