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C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014

and

M.P.Nos.1 to 1 of 2014 in C.M.A.Nos.3625 to 3627 of 2014

C.M.A.No.3625 of 2014

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Having its office at Vellore.

... Appellant

Vs.

1.K.Sandanam
2.D.Venkatachalam

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.50 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore dated 24.06.2014.

C.M.A.No.3626 of 2014

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
No.48, Whites Road,
Chennai – 14.

... Appellant

Vs.



C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014

1.Thanjammal

2.Santhi

3.Murali

4.Valliammal

5.D.Venkatachalam

[2nd respondent given up since her
claim was rejected]

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.60 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore dated 24.06.2014.

For Appellant	: Mr.M.Krishnamoorthy
For R1	: Mr.C.Prabakaran
R5	: Died

C.M.A.No.3627 of 2014

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Having its office at Vellore.

... Appellant

Vs.

1.Minor Sakthivel
represented by next friend/guardian and
father Simon @ Chandran

2.D.Venkatachalam

... Respondents



Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.180 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore dated 24.06.2014.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.C.Prabakaran
R2 : Died

C.M.A.No.2651 of 2014

1.Thanjammal
2.Santhi
3.Murali
4.Valliammal

... Appellants

Vs.

1.D.Venkatachalam

2.The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Having its office at Vellore.

[No relief sought against the 1st respondent
hence notice may be dispense with]

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 24.06.2014 made in M.C.O.P.No.60 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Vellore.



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C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014

For Appellants : Mr.C.Prabakaran

For Respondents : Not ready in notice

C.M.A.No.2652 of 2014

K.Sandanam

... Appellant

Vs.

1.D.Venkatachalam

2.The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Having its office at Vellore.

[No relief sought against the 1st respondent
hence notice may be dispense with]

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 24.06.2014 made in M.C.O.P.No.50 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Not ready in notice



COMMON JUDGMENT

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C.M.A.Nos.3625, 3626 and 3627 of 2014 have been filed by the Insurance Company, challenging the liability fixed on them to pay the compensation awarded by the Motor Accident Claims Tribunal (Principal District Judge's Court, Vellore) in M.C.O.P.Nos.50, 60 and 180 of 2011, respectively.

2. C.M.A.Nos.2651 and 2652 of 2014 have been filed by the respective claimants seeking enhancement of the compensation against the award passed in M.C.O.P.Nos.60 and 50 of 2011, respectively.

3. For the purpose of convenience, the parties herein are referred to as per their litigative status. Since all the appeals arising out of a common award, the appeals have taken together and a common judgment is passed as follows:

4. The case of the claimants is that on 11.07.2010 at about 5.00 p.m., deceased Pandian was riding his two wheeler TVS XL Super bearing



Registration No.TN-22-AH-2851 along with the claimant Sandanam (petitioner in M.C.O.P.No.50/11) and minor Sakthivel (petitioner in M.C.O.P.No.180/11), from Ramachandrapuram towards Agaramcheri. After reaching the service road at the northern side of the railway over bridge at Pachakuppam, while entering into the National Highways towards Agaramcheri from west to east direction, a car bearing Registration No. TN-23-AW-0361 came from behind them and dashed against the two wheeler which resulted in causing injuries to all the three persons. Deceased Pandian was succumbed to injuries, subsequently, his legal heirs have filed M.C.O.P.No.60 of 2011 claiming compensation.

5. The first respondent in claim petitions has filed a counter disputing the negligence fixed on the part of the driver of the car and he has also contended that the negligence is on the part of the two wheeler rider and prayed for dismissal of the petitions. The second respondent/Insurance Company has filed a separate counter and contended that the criminal case has been registered against the rider of the two wheeler, immediately after the accident on the basis of the complaint lodged by the driver of the car. Further contended that there is also violation of the Rules, since three persons



travelled in the vehicle and the quantum of compensation claimed is also excessive and hence, prayed for dismissal of the petitions.

6. Before the Tribunal, on the side of the petitioners/claimants P.W.1 to P.W.4 were examined and Exs.P1 to P17 marked. On the side of the respondents R.W.1 and R.W.2 were examined and Exs.R1 to R4 marked.

7. Based on the evidence placed on record, the Tribunal has arrived its conclusion in Point No.1 that the rash and negligent driving of the driver of the car is responsible for the accident. In Point No.2 the Tribunal considered the quantum of compensation to be awarded to the claimants and accordingly awarded a sum of Rs.3,45,000/- as compensation for the death of the deceased Pandian, Rs.52,500/- as compensation to the minor Sakthivel and Rs.75,000/- as compensation to the claimant Sandanam.

8. The learned counsel for the Insurance company has contended that the Tribunal has not properly appreciated the fact regarding the liability, since there is an admitted case of the claimants that F.I.R. has been registered against the rider of the two wheeler, wherein the rider of the two wheeler was



held responsible for the negligent act, which resulted in accident. He has also submitted that the accident was happened in the wrong side of the road in which the deceased Pandian and claimant Sandanam were travelled, this aspect not appreciated by the Tribunal and prays to absolve the liability fixed on the Insurance company and to fix the negligence on the part of the rider of the two wheeler. He has also relied on Ex.P1-F.I.R. to support his contention.

9. Learned counsel for the claimants would submit that the Insurance company has not examined the driver of the car. Except Ex.P1-F.I.R., no other document is relied on by the Insurance company to support their case but the F.I.R. is not sufficient in the absence of any oral evidence establishing the negligence of the driver of the two wheeler or any other eyewitnesses to the occurrence. The Tribunal has rightly held that the driver of the car is responsible for the accident and prays to confirm the liability fixed on the driver of the car.

10. Learned counsel further contended that the Tribunal has also failed to fix the proper notional income for the deceased Pandian and has also failed to award future prospects. The compensation awarded under the other heads



are also lower side, not only to the deceased Pandian but also to the other claimant Sandanam. Hence, prays to enhance the compensation awarded for the death of Pandian and also for the injury sustained by the Sandanam.

11. I have considered the arguments made by both sides and also perused the records. To prove the negligence on the part of the driver of the car, the petitioners have relied on the evidence of P.W.1-Sandanam, who is the injured person. She has deposed that on 11.07.2010 at about 5.00 p.m., she came to know that his brother Sundarraaj was not well at Agaramcheri. Hence, P.W.1-Sandanam, deceased Pandian along with her grand child were travelled in the two wheeler and proceeded to Agaramcheri from her village. After crossing the Pachakuppam Bridge, to reach the National Highways they travelled on the over bridge near service road and after noticing as to whether any vehicle is coming from Ambur to Vellore side, the two wheeler entered into the National Highways. At that time, the car which was came from Ambur to Vellore direction in high speed hit on the two wheeler and caused injuries to them.



12. It was suggested in the cross examination that they entered into the National Highways in the wrong side but the same has been denied by Sandanam and according to her, they entered into the National Highways from the service road near the over bridge. Admittedly, the F.I.R. has been lodged against the driver of the two wheeler on the basis of the complaint given by the driver of the car. As contended by the learned counsel for the Insurance company that the F.I.R. also to be looked into, while deciding the negligence aspect for the purpose of supporting oral evidence adduced on behalf of the witnesses. In this case, admittedly, on the side of the Insurance company neither the driver of the car nor any other eyewitnesses have been examined to controvert the evidence of P.W.1. The contention in the F.I.R. would be looked into for the purpose of contradiction and corroboration. In this case, the evidence of P.W.1, i.e., injured witness is that while they were entering into the National Highways, suddenly a car came in a rash and negligent manner and hit against the two wheeler. They sustained injuries that too grievous injuries. They were immediately taken to the hospital. The complaint has been lodged by the driver of the car, who has stated in the F.I.R. that immediately after the accident he sent the injured persons to the hospital and thereafter went to the police station. This shows that the injured



persons were not aware about the registration of F.I.R. and its recitals made thereon.

13. Before the Tribunal, the injured eyewitness has narrated the manner in which the accident had taken place. In the absence of any other evidence to show that the manner in which the accident occurred, the oral evidence of the injured eyewitness, which is also corroborated by the medical records supports the case of the claimants. The claimants have also lodged separate complaint-Ex.P6, and made attempt to register the complaint. The copy of the complaint and postal receipt are also marked before the Tribunal. The complaint has been forwarded to the Superintendent of Police, Vellore but this has been sent belatedly. Since already a case has been registered, no further action has been taken on the complaint of the claimants. As discussed above, in the absence of any contra evidence placed before the Tribunal by the Insurance company, the Tribunal has rightly taken a view that the claimants have proved the negligent on the part of the driver of the car and this Court is inclined to confirm the same.



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14. With regard to the quantum of compensation to be awarded to the deceased Pandian is concerned, the Tribunal has fixed the notional income of Rs.3,000/- per month stating that he is a coolie worker. After deducting 1/3rd of his personal expenses, Rs.2,000/- x 12 = Rs.24,000/- is fixed as notional income per year and by adopting multiplier of '13', the total loss of income to the family due to the death of the deceased was fixed as Rs.24,000/- x 13 = Rs.3,12,000/-. Admittedly, the accident was occurred on 11.07.2010 and this Court in various circumstances has considered the notional income of the manual labour, for the accident occurred in the year 2010 as Rs.6,000/- and the same would be appropriate. The Tribunal by following the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TNMAC 609 (SC)**, ought to have awarded the Future Prospects. Since the Tribunal has not awarded Loss of Future Prospects to the appellants/claimants, this Court awards Loss of Future Prospects at 25%, as the deceased was aged about 40 years at the time of the accident. Since the notional monthly income of the deceased is enhanced to Rs.6,000/- by this Court, the compensation payable to the appellants/claimants towards Loss of Future Earning Capacity is re-assessed



by this Court at Rs.7,80,000/- as detailed hereunder:

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(i) After adding 25% towards future prospects to the notional income of the deceased and applying 13 as multiplier, the compensation comes to Rs.11,70,000/- as follows:

$$[\text{Rs.6,000/-} + (\text{Rs.6,000/-} \times 25/100)] \times 12 \times 13 = 11,70,000/-$$

(ii) After deducting the 1/3rd of amount towards personal expenses of the deceased, the compensation comes to Rs.7,80,000/- as follows:

$$11,70,000 - (11,70,000 \times 1/3) = 7,80,000/-$$

15. The Tribunal, considering the status of the second petitioner in M.C.O.P.No.60 of 2011 that she is a second wife, not awarded any compensation to her and this Court finds no infirmity in the order. Accordingly, this Court is not inclined to award any amount to the second appellant in C.M.A.No.2651 of 2014.

16. The Tribunal has awarded a sum of Rs.10,000/- towards consortium, which is very meagre and this Court is inclined to grant a sum of Rs.40,000/- under the head spousal consortium to the first petitioner, who is the wife, Rs.40,000/- under the head filial consortium to the third petitioner



and Rs.40,000/- under the head parental consortium to the fourth petitioner.

The Tribunal has awarded a sum of Rs.5,000/- for funeral expenses and the same is modified to Rs.15,000/-. The Tribunal has not awarded compensation under the head loss of estate and this Court is inclined to grant a sum of Rs.15,000/- for the head Loss of Estate. The amount awarded by the Tribunal under the head transportation is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal in M.C.O.P.No.60 of 2011 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 Future Earning	Rs.3,12,000/-	7,80,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	Rs.10,000/-	Rs.40,000/-	Enhanced
	3 rd appellant		Rs.40,000/-	Enhanced
	4 th appellant		Rs.40,000/-	Enhanced
3.	Love and affection	Rs.15,000/-	-	modified
4.	Transport Expenses	Rs.3,000/-	Rs.3,000/-	Confirmed
5.	Funeral expenses	Rs.5,000/-	Rs.15,000/-	Enhanced
6.	Loss of estate	-	Rs.15,000/-	Granted
	Total	Rs.3,45,000/-	Rs.9,33,000/-	Enhanced by Rs.5,88,000/-

17. With regard to the claimant Sandanam is concerned, being a lady



aged about 56 years, suffered the following injuries as per the disability certificate:

- (i) Fracture in both bones of left forearm.
- (ii) Fracture in both bones of left leg.
- (iii) Fracture in both bones of right leg and knee.
- (iv) Fracture in great toe at left foot.

The Doctor has assessed the permanent disability of the appellant/claimant at 50%. The Tribunal has assessed the permanent disability of the appellant/claimant at 30%. Considering the nature of injuries, the Tribunal has granted only Rs.1,500/- per disability, i.e. $30\% \times \text{Rs.1,500/-} = \text{Rs.45,000/-}$. This Court is of the view that the same is very lower side, since the petitioner being a lady had suffered lot of injuries and she has to face various difficulties in doing day to day activities. Therefore, I am inclined to award Rs.3,000/- per disability. The tribunal has fixed the disability of the appellant/claimant at 30% and the same is confirmed. Accordingly permanent disability of the appellant/claimant is fixed as $30\% \times \text{Rs.3,000} = \text{Rs.90,000/-}$.

18. Considering the injury sustained by the claimant Sandanam, I am of the view that she is entitled for loss of income during the period of disablement. Accordingly, a sum of Rs.5,000/- is granted under the head Loss



of Income. The Tribunal has awarded a sum of Rs.25,000/- under the head pain and sufferings which is very meagre and this Court is inclined to grant a sum of Rs.50,000/- under the said head. The Tribunal has not awarded compensation under the heads damages to cloth, attender charges and extra nourishment and this Court is inclined to grant a sum of Rs.1,000/-, Rs.5,000/- and Rs.25,000/- under the said heads, respectively. The amount awarded by the Tribunal under the head transportation is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal in M.C.O.P.No.50 of 2011 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.	Permanent Disability	Rs.45,000/-	Rs.90,000/-	Enhanced
2.	Loss of Income	-	Rs.5,000/-	Granted
3.	Pain and sufferings	Rs.25,000/-	Rs.50,000/-	Enhanced
4.	Transport charges	Rs.5,000/-	Rs.5,000/-	Confirmed
5.	Damages to cloth	-	Rs.1,000/-	Granted
6.	Attendar charges	-	Rs.5,000/-	Granted
7.	Extra Nourishment	-	Rs.25,000/-	Granted
	Total	Rs.75,000/-	Rs.1,81,000/-	Enhanced by Rs.1,06,000/-

19. In the result, the appeals preferred by the claimants in C.M.A.Nos.2651 and 2652 of 2014 are partly allowed and the appeals



preferred by the Insurance Company in C.M.A.Nos.3625 to 3627 of 2014

are dismissed. The compensation awarded by the Tribunal at Rs.3,45,000/-

in M.C.O.P.No.60 of 2011 is hereby enhanced to Rs.9,33,000/- (Rupees Nine lakhs and Thirty Three thousand only) and Rs.75,000/- in M.C.O.P.No.50 of 2011 is hereby enhanced to Rs.1,81,000/- (Rupees One lakh and Eight 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 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 twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.60 and 50 of 2011, respectively on the file of the Motor Accidents Claims Tribunal (Principal District Judge's Court, Vellore. On such deposit, the appellants 1, 3 & 4 in M.C.O.P.No.60 of 2011 and the appellant in M.C.O.P.No.50 of 2011 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, 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 claimant, as laid down by a Division



Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others* in C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeals. Consequently, connected miscellaneous petitions are closed.

26.07.2023

Index : Yes / No
Speaking Order / Non speaking order
Neutral Citation Case : Yes / No
rsi

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,

18/20



Vellore.

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

C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2019.





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C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014

K.RAJASEKAR,J.

Rsi

**C.M.A.Nos.3625 to 3627, 2651 and 2652 of 2014
and
M.P.Nos.1 to 1 of 2014**

26.07.2023