



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2023

PRONOUNCED ON : 21.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.Nos.7 of 2014, 1764 of 2016

and

Cros.Obj.Nos.29 and 30 of 2020

and

M.P.No.1 of 2014 and C.M.P.No.13151 of 2016

C.M.A.No.7 of 2014:

United India Insurance Co. Ltd.,
Dr.Nanjappa Road,
Coimbatore. ... Appellant/3rd Respondent

vs.

1.Tmt.K.Ranganayaki

2.Minor K.Prathiba

3.Minor K.Leebika
(Minors 2 and 3 represented by R1)

4.C.Kandasamy ... Respondents 1 to 4 /
Claimants 1 to 4

5.A.Mohandas

6.H.Lakshminarayanan ... Respondents 5 and 6 /
Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Motor Vehicles Act, against the Order dated 26.07.2012 made in
M.C.O.P.No.574 of 2010 on the file of Motor Accident Claims Tribunal (III
ADJ), Coimbatore.

Cros.Obj.No.30 of 2020:

1.Tmt.K.Ranganayaki

2.Minor K.Prathiba

3.Minor K.Leebika

4.C.Kandasamy

(Petitioners No.2 and 3 are represented by
their Guardian mother Ranganayaki the
1st petitioner herein) ... Cross Objectors

vs.

1. United India Insurance Co. Ltd.,
Dr.Nanjappa Road,
Coimbatore.

2. A.Mohandass

3.H.Lakshminarayanan ... Respondents

PRAYER: This Cross Objection is filed under Order LXI Rule 22 of C.P.C.,
R/w. Section 173 of the Motor Vehicles Act, against the judgment and
decree dated 26.07.2012 made in M.C.O.P.No.574 of 2010 on the file of
Motor Accident Claims Tribunal (III Additional District Judge), Coimbatore.

C.M.A.No.1764 of 2016:

United India Insurance Co. Ltd.,



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Dr.Nanjappa Road,
Coimbatore.

... Appellant/Respondent No.1

vs.

1.Tmt.Maragadhan

2.Tmt.Thulasimani

3.Tmt.Rajalakshmi

... Respondents No.1 to 3 /
Claimants

4.A.Mohandass

5.H.Lakshminarayanan

... Respondents 4 and 5 /
Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 26.07.2012 made in M.C.O.P.No.157 of 2010 on the file of Motor Accident Claims Tribunal (III ADJ), Coimbatore.

Cros.Obj.No.29 of 2020:

1.Tmt.Maragadhan

2.Tmt.Thulasimani

3.Tmt.Rajalakshmi

... Cross Objectors

vs.

1. United India Insurance Co. Ltd.,
Dr.Nanjappa Road,
Coimbatore-641 018.

2. A.Mohandass

3. H.Lakshminarayanan

... Respondents



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

WEB C **PRAYER:** This Cross Objection is filed under Order LXI Rule 22 of C.P.C.,
R/w. Section 173 of the Motor Vehicles Act, against the judgment and
decree dated 26.07.2012 made in M.C.O.P.No.157 of 2010 on the file of
Motor Accident Claims Tribunal (III Additional District Judge), Coimbatore.

For Appellant : Mr.I.Malar

For Respondents : Mr.C.Veeraraghavan [R1 to R4]
R5 & R6 – Exparte

COMMON JUDGMENT

The Appellant/Insurance Company has preferred these appeals
against the common Order passed in M.C.O.P.No.157 of 2010 and 574 of
2010 on the file of Motor Accident Claims Tribunal (III ADJ Court),
Coimbatore, challenging the quantum.

2. The legal representatives of the deceased Muruge Gouder and
Kanagaraj who died in the accident have also preferred cross-objections
respectively.

3. While the above said Muruge Gouder was riding a two wheeler
bearing Reg.No.TN-37-K-3234 with Kanagaraj towards Meenatchipuram
Village, at about 4 p.m., on 03.02.2009, the driver of the bus bearing



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Reg.No.TN-37-AT-6789 Route No.50 drove the vehicle with high speed in a rash and negligent manner came in the opposite side, hit on the motor cycle and they sustained fatal injuries and succumbed to the injuries on the spot. Therefore, the legal heirs of the above said two persons have filed the claim petitions as mentioned supra.

4. The Tribunal, in the death claim of the one Kanagaraj in the petition in M.C.O.P.No.574 of 2010(C.M.A.No.7 of 2014), has passed award for a sum of Rs.13,36,500/- from the date of filing of petition till the date of deposit with interest at 7.5% p.a.

5. The Tribunal, in the death claim of one Muruge Gouder in the petition in M.C.O.P.No.157 of 2010(C.M.A.No.1764 of 2016), has passed an award for a sum of Rs.4,35,000/- from the date of filing of petition till the date of deposit with an interest at 7.5% p.a.,

6. The learned counsel for the appellant / Insurance Company in C.M.A.No.7 of 2014 would contend that without any proof for monthly income, the Tribunal has fixed the monthly income of the deceased Kanagaraj at Rs.10,000/- in M.C.O.P.No.574 of 2010. He would further



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

contend that contributory negligence on the part of the rider of two wheeler ought to have been taken in to account.

7. Whereas, the learned counsel for the claimants in Cros.Obj.No.30 of 2020 (C.M.A.No.7 of 2014) would argue that based on the evidence of PW4, who is the employer of the deceased and as per Ex.P12, future prospects ought to have been awarded by the Tribunal. He would further contend that meagre amount was awarded under the heads of loss of consortium and loss of love and affection. He would also point out that no amount was awarded for funeral expenses and transportation and prayed for enhancement of compensation.

8. The learned counsel for the appellant / Insurance Company in C.M.A.No.1764 of 2016 would contend that without any proof for monthly income, the Tribunal has fixed the monthly income of the deceased Kanagaraj at Rs.6,000/- in M.C.O.P.No.157 of 2010 is incorrect.

9. Whereas, the learned counsel for the claimants in Cros.Obj.No.29 of 2020 (C.M.A.No.1764 of 2016) would argue that based on the evidence of PW1, who is the wife of the deceased and as per Ex.P9-Copy of Patta



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Passbook, future prospects ought to have been awarded, while calculating the income. He would further contend that meagre amount was awarded under the head of loss of consortium, loss of love and affection, funeral expenses and transportation. Though Exs.P9 to P11, P16 to P18 have been marked to substantiate the income of the deceased, the income fixed by the Tribunal is on the lower side. He would further putforth that age of the deceased was not fixed properly and prayed for enhancement of compensation.

10. Heard the rival submissions of learned counsels of both sides and perused the materials available on record.

11. On the side of the claimants, to prove the factum of accident, ocular witness Tvl.Kumaresan has spoken about the road accident. By appreciating the evidence of PW1, PW2 and the ocular witness as mentioned supra, the Tribunal has come to the conclusion that because of rash and negligent driving of the driver of the bus, as mentioned supra, road accident had occurred and liability is fastened on the owner of the said bus namely the 1st respondent along with the Insurance Company, the policy of the bus was in force.



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

(I) C.M.A.No.7 of 2014 and Cros.Obj.No.30 of 2020

(M.C.O.P.No.574 of 2010):

12. It could be seen from the evidence of PW2 that the deceased Kanagaraj was cultivating land for an extent of 5 acres in Survey Nos.413 and 414 of Valukkuparai Village Panchayat and cultivating vegetables and commercial crops. By marketing the vegetables, he was working as an auction conductor besides working as accountant and thereby he was earning a sum not less than Rs.20,000/- p.m. The revenue records in the name of Kanagaraj is exhibited as Ex.P21. It is the evidence of PW4-Ayyasamy that the deceased Kanagaraj was running a vegetable commission mandi in the name and style of SKM Kaigari Mandi in Achipalayam Kaikari Market, Meenatchipuram. It is evidenced that Kanagaraj was working as auction conductor as well as Accountant for the past 7 years and the said Kanagaraj used to distribute amounts to the agriculturists and he would conduct auction by 11 a.m., and thereby he was earning Rs.7,500/- p.m. with Rs.100/- batta. To substantiate the same, the income proof dated 01.07.2012 is marked as Ex.P22. Based on the same, the Tribunal has calculated the income of the deceased at Rs.8,000/- by working as an auction conductor and considering the fact that he was also engaged in agriculture, a sum of Rs.10,000/- was fixed as



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

his monthly income. Relying upon the above said evidence of PW4 coupled with the documents mentioned supra, it could be seen that he was doing agriculture besides working as auction conductor etc., therefore, taking into account of the fact as mentioned supra, it would be reasonable to fix the income of the deceased Kanagaraj, as Rs.11,000/- p.m.

13. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, it is held that in case of person self-employed or on fixed salary, for the persons aged below 40 years, 40% Future Prospects to be added while calculating the income.

14. As per post-mortem certificate Ex.P6 age of the deceased Kanagaraj was fixed as 39 years. Considering his age. Considering his age, no doubt he would have earned more, had he been alive. The relevant multiplicand for the age group between 36 and 40 is '15'. Admittedly, the deceased Kanagaraj left behind his wife two minor children and his father as his legal heirs. When the deceased being a married person has left behind four persons as his heirs, 1/4th of the income has to be deducted for personal and living expenses as per the law laid down by the Hon'ble



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Supreme Court in **Smt.Sarla Verma & Others v. Delhi Transport**

Corporation & Another reported in **2009 (2) TN MAC 1 (SC)**. Based on these observations, the following formula emerges for calculating the loss of income of the deceased.

Calculation

Notional Income = Rs.11,000/-

40% Future Prospects = Rs.4,400/-

Total = Rs.11,000/- + Rs.4,400/- = Rs.15,400/-

After 1/4th deduction = Rs.15,400 - Rs.3,850/- = Rs.11,550/-.

Loss of Income :

= Rs.11,550/- x 12 x 15

= Rs.20,79,000/-

15. As the deceased Kanagaraj died at the age of 39 years left his wife, two minor children and father. Therefore, an amount of Rs.10,000/- each (Rs.10,000/- X 4 = Rs.40,000/-) is granted in addition to the amount already granted under the head of loss of love and affection. As no amount was granted for funeral expenses, Rs.15,000/- is granted. In respect of other heads, the amount awarded by the Tribunal appears to be reasonable and needs no interference. The Compensation awarded by the



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.12,80,000/-	Rs.20,79,000/-	Enhanced
2	Loss of Consortium to the 1 st Claimant	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Loss of Love and Affection	Rs. 20,000/-	Rs. 60,000/-	Enhanced
4	Pain and Sufferings	Rs. 10,000/-	Rs. 20,000/-	Enhanced
5	Damage to Clothes	Rs. 1,500/-	Rs. 1,500/-	Confirmed
6	Funeral Expenses	NIL	Rs. 15,000/-	Granted
	Total	Rs.13,36,500/-	Rs.22,00,500/-	

16. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,36,500/- to **Rs.22,00,500/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

17. In the result, (1) :

(i) The C.M.A.No.7 of 2014 is dismissed and Cros.Obj.No.30 of 2020 is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.13,36,500/- to **Rs.22,00,500/-**.

(iii) The 1st respondent / Insurance Company is directed to deposit



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

the enhanced compensation amount i.e., **Rs.22,00,500/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.574 of 2010 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Coimbatore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the 1st claimant, mother of the minors Ranganayaki, shall be permitted to withdraw quarterly interest from the said amount. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. Consequently, connected miscellaneous petition is closed.

(II) C.M.A.No.1764 of 2016 and Cros.Obj.No.29 of 2020



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

(M.C.O.P.No.157 of 2010):

WEB COPY

18. From the evidence of PW1-S.Rajalakshmi, it could be discernible that her father deceased Muruge Gouder was an agriculturist. The relevant patta pass book Ex.P9, Partition related document and property receipts Ex.P11 series, Adangal – Ex.P16 in the name of Muruge Gouder confirmed the fact that he was cultivating the lands. It is her further evidence that he was earning not less than Rs.12,000/- p.m., by maintaining 20 cows. To substantiate the same Ex.P16 and Ex.P17 xerox copies of milk supply books would indicate the fact that he had been supplying milk. Considering the extent of land, he was cultivating and the relevant documents as mentioned supra, it is reasonable to fix his monthly as Rs.8,000/-. As per Ex.P5-post mortem certificate, the Tribunal has fixed the age of the deceased Muruge Gouder as 65 years at the relevant point of time. As per the law laid down in **Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC)**, the multiplicand for the age group between 61 and 65 is 7. It is pertinent to note that the claimants 2 to 3 though it is stated to be married daughters, both daughters were under the care and custody of the father as one was destitute and another one is widow who lost her husband. If the deceased has left 3 dependents, 1/3rd of his income has to be deducted for personal



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

and living expenses as per law laid down in **Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC)**.

19. In the case of **National Insurance Co. Ltd., v. Pranay Sethi and others**, reported in **2017 (2) TN MAC 609(SC)**, while calculating income of the deceased future prospects to be added only for the persons below 60 years and in the present case, Muruge Gouder died in the age of 65 years, hence, there is no question of adding future prospects while calculating his income, and thus, the following formula emerges as follows:

After 1/3rd deduction = Rs.8,000/- - Rs.2667/- = Rs.5,333/-.

Loss of Income :

= Rs.5,333/- x 12 x 7

= Rs.4,47,972/-

20. More so for the loss of love and affection and for pain and sufferings by the claimants on account of the death of Muruge Gouder, an amount of Rs.10,000/- under each head is awarded in addition to the amount already awarded by the Tribunal. In other aspects, the compensation awarded by the Tribunal appears to be reasonable and



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

needs no interference. The Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.3,57,000/-	Rs.4,47,972/-	Enhanced
2	Loss of Consortium to the 1 st claimant	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Loss of Love and Affection	Rs. 20,000/-	Rs. 30,000/-	Enhanced
4	Transportation	Rs. 3,000/-	Rs. 3,000/-	Confirmed
5	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
6	Pain and Sufferings	Rs. 10,000/-	Rs. 20,000/-	Enhanced
7	Future Prospects	Rs. 10,000/-	Rs. 10,000/-	Confirmed
	Total	Rs.4,35,000/-	Rs.5,45,972/-	

21. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,35,000/- to **Rs.5,45,972/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

22. In the result, (2)

(i) The C.M.A. No.1764 of 2016 is dismissed and Cros.Obj.No.29 of 2020 is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

Rs.4,35,000/- to **Rs.5,45,972/-** .

WEB COPY

(iii) The 1st respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.5,45,972/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.157 of 2010 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Coimbatore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. Consequently, connected miscellaneous petition is closed.

21.04.2023

Index : Yes/No
Speaking / Non-speaking order
ssn



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

WEB COPY

To:

1. The Motor Accident Claims Tribunal,
III Additional District Judge, Coimbatore.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in



WEB COPY



C.M.A.Nos.7 of 2014 and 1764 of 2016
and Cros.Obj.Nos.29 and 30 of 2020

C.M.A.Nos.7 of 2014, 1764 of 2016
and
Cros.Obj.Nos.29 and 30 of 2020

21.04.2023