



CMA.No.1998 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CMA.Nos.1998 and 1996 of 2023

Kalaimani ... Appellant in both CMA's

Vs.

1.Chinnasamy,
S/o.Kaveriappan,
D.No.10-95, Viruthasampatty,
Mettur Taluk & Salem District.

2.National Insurance Co. Ltd.,
D.No.75A, Paramathy Road,
Namakkal Town & Taluk,
Branch office at:
D.No.37/2E, Salem Main Road,
Mettur Dam, R.S.Mettur Dam,
Salem District. ... Respondents in both CMA's

PRAYER in CMA.No.1998 of 2023: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.07.2022 made in MCOP.No.880 of 2016, on the file of MACT/Additional District Court at Namakkal, with interest of 9% and Cost by allowing this Appeal.



CMA.No.1998 of 2023

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PRAYER in CMA.No.1996 of 2023: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.07.2022 made in MCOP.No.888 of 2016, on the file of MACT/Additional District Court at Namakkal, with interest of 9% and Cost by allowing this Appeal.

For Petitioner
in both CMA's : Mr.M.Lokesh

For Respondents
in both CMA's : Mrs.R.Sreevidhya for R2

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the appellant challenging the quantum of compensation awarded and fixing 10% contributory negligence on the part of the deceased by the Tribunal in MCOP.Nos.880 & 888 of 2016, dated 29.07.2022, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2. The appellant is the claimant in MCOP.Nos.888 & 880 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. She filed the claim petition claiming a sum of Rs.25,00,000/-



CMA.No.1998 of 2023

each, as compensation for the death of her parents Gunasekaran and Manjula in the accident that took place on 19.04.2016.

3. According to the appellant, on 19.04.2016 at about 01.30 p.m. while her father Gunasekaran was riding and mother Manjula was travelling pillion in a two wheeler and were proceeding in the Salem - Taramangalam Main Road, nearing Kollapatti, the driver of the lorry bearing Registration No.TN-52-Y-7877 which was coming behind drove the same in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the deceased. Due to the said impact, the said Gunasekaran and Manjula died.

4. The first respondent, the owner of the offending vehicle, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving of the first respondent and in any event, the compensation claimed by the appellant was



CMA.No.1998 of 2023

excessive and prayed for dismissal of the claim petition.

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6. Before the Tribunal, the appellant examined herself as P.W.1 and one Mr. Kannan was examined as P.W.2 and marked twenty one documents as Exs.P1 to P21. On the side of the second respondent/ Insurance Company three witnesses were examined as R.W.1 to R.W.3 and four documents were marked as Ex.R1 and R4. The Motor Vehicle Inspection Report was marked as Ex.C-1.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent act of the first respondent and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.12,93,000/- in M.C.O.P.No.880 of 2016 and a sum of Rs.8,26,830 in M.C.O.P.No.888 of 2016 as compensation to the appellant. Aggrieved over the said award, the appellant has preferred the instant appeal.

8. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre; that the notional income fixed by the Tribunal in both the cases is less, considering the avocation and



CMA.No.1998 of 2023

year of accident, and that the Tribunal had erroneously deducted 50% towards personal expenses.

9. The learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, prayed to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to first respondent is dispensed with.

10. Per contra, the learned counsel for the second respondent submitted that the compensation awarded by the Tribunal in both the cases are just and reasonable and do not call for any interference. Hence, prayed for the dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.



CMA.No.1998 of 2023

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12. The only question involved in both the appeals is whether the compensation awarded by the Tribunal is just and reasonable?

(i) **CMA.No.1996/2023:-** The deceased in the instant case is the father of the appellant. The tribunal had taken Rs.12,000/- per month as notional income although the appellant had proved the avocation of the deceased. Considering the year of accident; the age of the deceased and his avocation, this Court is of the view that it would be just and reasonable to fix Rs.14,000/- as his monthly notional income. The deceased was aged about 52 years at the time of accident. Since the deceased was married, 1/3rd has to be deducted towards his personal expenses. Therefore, the award of compensation under the head "Loss of income" has to be Rs.14,000/- + Rs.1,400/- (10% future prospects) $\times 12 \times 11 \times \frac{2}{3} = \text{Rs.13,55,200/-}$. The Tribunal has awarded a meagre sum of Rs.33,000/- under the head "Loss of love and affection" and "Funeral expenses". Further, on perusal of the award of the Tribunal, it is seen that the Tribunal has not awarded compensation under the head "Loss of Estate". Considering the facts and



CMA.No.1998 of 2023

circumstances of the case, this Court is of the view that it would be just and reasonable to award a sum of Rs.40,000/- under the head “Loss of love and affection”, Rs.15,000 under the head “Funeral expenses” and Rs.15,000/- under the head “Loss of Estate”. The award of compensation under the other heads are just and reasonable and the same is confirmed.

Thus the compensation awarded by 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 or reduced
1.	Loss of income	8,71,200	13,55,200	Enhanced
2.	Medical Bills	14,500	14,500	Confirmed
3.	Loss of love and affection	33,000	40,000	Enhanced
	Funeral expenses		15,000	
4.	Loss of estate	---	15,000	Granted
	Total	9,18,700/-	14,39,700	Enhanced
	contributory negligence at	91,870/-	1,43,970	



CMA.No.1998 of 2023

3.	Loss of love and affection	33,000	40,000	Enhanced
	Funeral expenses		15,000	
	10%			
	Net compensation	Rs.8,26,830/-	Rs.12,95,730/-	Enhanced by Rs.4,68,900/-

(ii) **CMA.No.1998 of 2023:-**The deceased is the mother of the appellant. The appellant had not proved the income earned by the deceased, although she had stated that the deceased was working as a Tailor. Considering the year of accident, avocation of deceased and her age, it would be just and reasonable to fix the income as Rs.13,000/- per month. The deceased was aged about 44 years at the time of the accident. Hence, the appellant is entitled 25% enhancement towards future prospects. Thus the award under the head “Loss of income” has to be fixed at Rs.13,000/- + $\text{Rs.3,250} \times 12 \times 14 \times \frac{2}{3} = \text{Rs.18,20,000/-}$. The Tribunal has awarded a meagre sum of Rs.33,000/- under the head “Loss of love and affection” and “Funeral expenses”. Further, on perusal of the award of the Tribunal, it is seen that the Tribunal has not awarded compensation under the head “Loss



CMA.No.1998 of 2023

of Estate". Considering the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to award a sum of Rs.40,000/- under the head "Loss of love and affection", Rs.15,000 under the head "Funeral expenses" and Rs.15,000/- under the head "Loss of Estate". The award of compensation under the other heads are just and reasonable and the same is confirmed.

Thus the compensation awarded by 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 or reduced
1.	Loss of income	12,60,000	18,20,000	Enhanced
2.	Loss of love and affection	33,000	40,000	Enhanced
	Funeral expenses		15,000	
3.	Loss of estate	---	15,000	Enhanced
	TOTAL	12,93,000/-	18,90,000/-	5,97,000/-

13. In the result, these Civil Miscellaneous Appeals are partly



CMA.No.1998 of 2023

allowed and the compensation awarded by the Tribunal in M.C.O.P.No.888 of 2016 at Rs.8,26,830/- is hereby enhanced to Rs.12,95,730/- and the compensation awarded by the Tribunal in M.C.O.P.No.880 of 2016 at Rs.12,93,000/- is hereby enhanced to Rs.18,90,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified 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. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

07.09.2023

gba
To

1.The Additional District Court,
Motor Accident Claims Tribunal
Namakkal.

2.2.The Section Officer

10/12



CMA.No.1998 of 2023

VR Section
High Court of Madras, Chennai – 600 104.

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CMA.No.1998 of 2023

SUNDER MOHAN,J.

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**CMA.Nos.1998 and
1996 of 2023**

07.09.2023