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CMA Nos.2658 & 2664 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.2658 & 2664 of 2022
and C.M.P. Nos.20743 & 20851 of 2022

The New India Insurance Co. Ltd.,
Medayil Complex,
Medamukku,
Kayankulam – 690 502. ..

Appellant in both Appeals

Vs.

1.Ponnammal
2.Balagopal ..

Respondents in CMA No.2658 of 2022

1.Pashaniammal
2.Arumugam
3.Balagopal ..

Respondents in CMA No.2664 of 2022

Prayer in CMA No.2658 of 2022 : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 08.03.2022 made in MCOP.No.58 of 2008 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Mettur.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 : Mr.R.Navaneetha Krishnan



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Prayer in CMA No.2664 of 2022: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 08.03.2022 made in MCOP.No.95 of 2008 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Mettur.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 & R2 : Mr.R.Navaneetha Krishnan

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred by the appellant/Insurance Company questioning the quantum of compensation awarded by the Tribunal.

2. The appellant / Insurance Company is the second respondent in MCOP.No.58 of 2008 & third respondent in MCOP No.95 of 2008 on the file of the Motor Accidents Claims Tribunal / Sub Court, Mettur.

3. The parties are referred to as per their rank in the claim petitions for the sake of convenience.



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WEB COPY 4. According to the claimants, on 19.06.2007, at about 19.00 hrs, while the deceased Govindaraju was riding the Bajaj Motor Cycle bearing Regn.No.TN 30S 3343 alongwith one Raja @ Raju as a pillion rider on the Mecheri to Thoppur Main Road towards Thoppur at Thethigiripatty Kattuvalavu down, a lorry bearing Regn.No.KL04 F 1996 which was coming in the opposite direction driven by its driver in a rash and negligent manner, dashed against a bullock-cart which was going in front of the motorcycle and after that dashed against the motorcycle and caused the accident. Due to the sudden impact, the both the rider as well as the pillion rider of the motorcycle sustained grievous injuries all over the body. Inspite of treatment, both the rider as well as the pillion rider of the motorcycle died in the hospital. Hence, the claimants in MCOP Nos.58 of 2008 and 95 of 2008 have filed claim petitions claiming a sum of Rs.20,00,000/- each as compensation against the respondents.

5. The 1st respondent remained exparte before the Tribunal.



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WEB COPY 6. The respondent/insurance company filed counter denying the averments made in the claim petition including the manner of accident. They had stated that the owner and insurer of the Bajaj motor cycle have not been added as necessary parties. Hence claim petitions are liable to be dismissed as non-joinder of necessary parties. The rider of the motorcycle did not possess valid driving licence at the time of accident and hence contributory negligence has to be fixed on the deceased. The age, occupation and income of the deceased are denied. The compensation claimed by the claimants are highly excessive and prayed for dismissal of the claim petitions.

7. The claimant in MCOP No.95 of 2008 examined herself as PW1, claimant in MCOP No.58 of 2008 was examined as PW2 and one Arumugam eye-witness to the accident was examined as PW3. Six documents were marked as Exs.P.1 to Exs.P.6. The respondent/insurance company has not examined any witness nor marked any documents on their side.



WEB COPY 8. The Tribunal, after considering the evidence and documents filed on the side of the claimants held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the respondent/Insurance company, being the insurer of the lorry to pay compensation to the claimants.

9. Challenging the quantum of compensation awarded by the Tribunal, the respondent / Insurance Company has filed the present appeals.

10. The learned counsel appearing for the respondent/insurance company submitted that the claimants in both the claim petitions have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence, the notional monthly income fixed by the Tribunal at Rs.7,000/- is excessive. The compensation awarded by the Tribunal under different heads are also excessive and prayed for setting aside the award passed by the Tribunal.



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WEB COPY 11. Per contra, the learned counsel appearing for the claimants contended that the deceased in both the claim petitions were building contractors and also doing agricultural work. The accident is of the year 2007 and hence the Tribunal has rightly fixed the notional income of the deceased at Rs.7000/- per month which is not excessive. The compensation awarded by the Tribunal under other heads are also just and reasonable and prayed for dismissal of the appeal.

12. Though notice has been ordered to the 1st respondent, it has been returned with an endorsement as “unclaimed”.

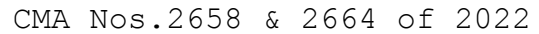
13. Heard the learned counsel appearing for the claimants as well as respondent / insurance company and perused the materials available on record.

14. The issue involved in the instant appeals are whether the quantum of compensation awarded by the Tribunal is just and reasonable.



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WEB COPY 15. From the materials available on record, it is seen that the claimants in both the claim petitions have not produced any documents to prove the avocation and income of the deceased. In the absence of any material evidence, the notional income fixed by the Tribunal is excessive. Both the deceased were building contractors at the time of accident. The accident is of the year 2007. Considering the age, avocation and year of accident, this court is of the view that a sum of Rs.6,000/- per month may be fixed as the notional income of the deceased in both the claim petitions. Both the deceased died as bachelors. They are aged 24 years and 20 years. As per the judgment of the Hon'ble Apex Court in ***Sarla Verma & others vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 SC Supreme Court*** and ***National Insurance Co. Ltd., Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, the proper multiplier applicable is 18 and 40% has to be added towards future prospects. Thus, by applying multiplier 18, adding 40% towards future prospects and deducting 50% towards personal expenses of the deceased, the compensation awarded under the head loss of income is calculated as follows -



$$6000 + 2400 (6000 \times 40\%) \times 12 \times 18 \times 50\% = \text{Rs.}9,07,200/-$$

16. That apart, the Tribunal has awarded a sum of Rs.2,00,000/- each in both the claim petitions towards pain & sufferings which the claimants are not entitled to. The same are liable to be set aside and they are accordingly set aside. The amount awarded by the Tribunal at Rs.3,00,000/- each in both the claim petitions towards loss of love & affection is on the higher side and hence the same is reduced to Rs.40,000/- in MCOP No.58 of 2008 and Rs.80,000/- in MCOP No.95 of 2008. The Tribunal has not awarded any amount towards loss of estate. The claimants are entitled to a sum of Rs.15,000/- under this head. The amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre and hence the same is enhanced to Rs.15,000/-. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal are modified as follows -

CMA No.2658 of 2022 :

Sl. No	Description	Amount awarded by	Amount awarded by	Award confirmed or
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		Tribunal (Rs)	this Court (Rs)	enhanced or granted
1.	Loss of income	10,80,000/-	9,07,200/-	Reduced
2.	Pain and Sufferings	2,00,000/-	-	Set aside
3.	Loss of love & affection	3,00,000/-	40,000/-	Reduced
4.	Transportation expenses	3,000/-	3,000/-	Confirmed
5.	Funeral expenses	10,000/-	15,000/-	Enhanced
6.	Damages to clothes	2,000/-	2,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	15,95,000/-	9,82,200/-	Reduced by 6,12,800/-

CMA No.2664 of 2022

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,80,000/-	9,07,200/-	Reduced
2.	Pain and Sufferings	2,00,000/-	-	Set aside
3.	Loss of love & affection	3,00,000/-	80,000/-	Reduced
4.	Transportation expenses	3,000/-	3,000/-	Confirmed
5.	Funeral expenses	10,000/-	15,000/-	Enhanced
6.	Damages to	2,000/-	2,000/-	Confirmed



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	clothes			
7.	Loss of estate	15,000/-	15,000/-	Granted
	Total	15,95,000/-	10,22,200/-	5,72,800/-

17. The learned counsel appearing for the appellant submitted that the Tribunal erred in directing the appellant to deposit the award amount without deducting TDS and that as per the statutory provisions, if the payment is made without deducting TDS, the appellant would be liable for prosecution.

18. It is seen from the award of the Tribunal that the Tribunal had relied upon a judgment of a learned Judge of this Court, Hon'ble Mr.Justice M.V.Muralidaran reported in 2016 (3) *LW 289 [The Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd. vs. Chinnadurai*, for issuing such a direction. Another Single Judge of this Court, Hon'ble Mr.Justice N.Anand Venkatesh, in CMA No.113 of 2020 dated 14.05.2020 had subsequently referred the issue to a larger Bench. It is reported that the larger Bench is yet to be constituted to decide the above issue. While referring the matter to the larger Bench, Hon'ble Mr.Justice N.Anand Venkatesh had directed the Insurance Company to deposit the entire award



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amount alongwith interest and costs, without deducting TDS, considering the

facts of that case.



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WEB COPY 19. In view of the above, this Court is also of the view that the law laid down by Mr.Justice M.V.Muralidharan still holds good. Therefore, the Tribunal was right in issuing such a direction. Hence, this Court is of the view that there is no reason to interfere in the said finding of the Tribunal.

20. In the result -

(i) C.M.A No.2658 of 2022 is partly allowed reducing the compensation awarded by the Tribunal from Rs.15,95,000/- to Rs.9,82,200/-.

(ii) C.M.A No.2664 of 2022 is partly allowed reducing the compensation awarded by the Tribunal from Rs.15,95,000/- to Rs.10,22,200/-.

(iii) The interest awarded by the Tribunal at 7.5% is confirmed.

21. The appellant/Insurance Company is directed to deposit the award amount, now determined by this Court alongwith interest and cost (excluding the default period, if any), less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this



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judgment, without deducting any TDS. On such deposit, the claimants are permitted to withdraw their share of the award amount alongwith proportionate interest and cost, less the amount already withdrawn, if any, on the basis of apportionment fixed by the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.07.2023

rgf

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To :

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Mettur.

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



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SUNDER MOHAN, J.

rgr

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