



WEB COPY



C.M.A.No.2137 and 2138 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.2137 & 2138 of 2023

1.Ramasamy
2.Magesh

Appellants in both C.M.As

Vs

1.A.Tamilmani

2.M/s Magma HDI General Insurance Co.Ltd,
Having Branch Office at 2nd Floor,
No.454/4, Ram Complex,Chinnery Vavalkadu,
Near New Bus Stand, West,
Pallapatty, Salem.

Respondents in C.M.As.

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.Nos.903 & 1024 of 2021 dated 24.01.2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

In both C.M.As.

For appellant	:	Mr.R.Navaneetha Krishnan
For R2	:	Mrs.R.Sree Vidhya



C.M.A.No.2137 and 2138 2023

COMMON JUDGMENT

Since both the appeals arise out of the same accident and common award, they are disposed of by this common judgment.

2. These appeal have been filed by the appellants challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Judge, Salem in M.C.O.P.Nos.903 of 2021 and 1024 of 2021.

3. The appellants have filed the above claim petitions stating that the sons of the first appellant while travelling in a two wheeler on a public road, the driver of the offending vehicle belonging to the first respondent, insured with the 2nd respondent herein, came in a rash and negligent manner, on the opposite direction and hit the two wheeler, as a result of which, both of his sons sustained fatal injuries.

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

5. The 2nd respondent filed a counter stating that the claim petitions are bad for non-joinder of necessary parties; and that the accident took place only due to the rider of the two wheeler; both the



C.M.A.No.2137 and 2138 2023

WEB COPY rider and the pillion rider did not wear helmet at the time of the accident; and that in any case the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petitions.

6.Before the Tribunal, the first appellant examined himself as P.W.1 and marked 23 documents as Exs.P1 to P23. The second respondent/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Bolero vehicle belonging to the first respondent and directed the second respondent being insurer of the offending vehicle to pay a sum of Rs.10,85,000/- as compensation to the appellants in C.M.A.No.2137 of 2023 and a sum of Rs.10,25,000/- as compensation to the appellants in C.M.A.No.2138 of 2023.

8.The learned counsel for the appellants submitted that the first appellant had lost both his sons in the accident and both of them had avocation at the time of accident and though the accident took place in the year 2021, the Tribunal had fixed a meagre monthly notional income in both the cases. The learned counsel further submitted that the the



C.M.A.No.2137 and 2138 2023

compensation amount granted under the head loss of love and affection has to be enhanced and the Tribunal has not granted any amount towards loss of estate. Hence, he prayed for enhancement of compensation.

9. The first respondent remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to the first respondent may be dispensed with and made an endorsement to that effect. Hence, notice to R1 is dispensed with.

10. Per contra, the learned counsel for the second respondent submitted that the appellants had not established the avocation or income of the deceased in both the claim petitions and hence, the Tribunal was right in fixing the monthly notional income as Rs.10,000/- including the future prospects. The learned counsel therefore submitted that no interference is called for and hence, prayed for dismissal of the appeals.

11. The only question involved in both the appeals is:

Whether the compensation awarded by the Tribunal in both the claim petitions is just and reasonable?

12.(i) In C.M.A.No.2137 of 2023:



C.M.A.No.2137 and 2138 2023

On perusal of records, it is seen that the appellants had established that the deceased was working as a partner in Transport Firm, through the evidence of PW.1, the father of the deceased. However, they have not produced any document to prove the avocation and income of the deceased at the time of accident. Considering the age of the deceased, his avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional monthly income as Rs.15,000/-. As per the judgment of the Hon'ble Apex Court reported in **2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi)**, the appellants would be entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and therefore, the Tribunal deducted 50% towards personal expenses, which is proper. By applying multiplier '17', the compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.15,000/-} + 6,000/- [\text{Rs.15,000/-} \times 40\%] \times 12 \times 17 \times \frac{1}{2} =$$

Rs.21,42,000/-.

(ii) The appellants are each entitled for an amount of Rs.44,000/- towards loss of love and affection. Therefore, Rs.88,000/- is awarded



C.M.A.No.2137 and 2138 2023

under the said head. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is hereby reduced to Rs.16,500/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.16,500/- is hereby awarded towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,20,000/-	21,42,000/-	Enhanced
2.	Loss of estate	-	16,500/-	Granted
3.	Loss of love and affection	40,000/-	88,000/- (44,000x2)	Enhanced
4.	Funeral expenses	25,000/-	16,500/-	Reduced
	Total	10,85,000/-	22,63,000/-	Enhanced by Rs.11,78,000/-
	90% of the award amount			

13(i) C.M.A.No.2138 of 2023:

On perusal of records, it is seen that the deceased was the elder son of the first appellant and he was aged about 31 years at the time of the accident. The appellants had established that the deceased owned a Poclain vehicle and earning a sum of Rs.30,000/- per month. through the



C.M.A.No.2137 and 2138 2023

evidence of PW.1, the father of the deceased. through the evidence of

PW.1, the father of the deceased. However, they have not produced any document to prove the avocation and income of the deceased at the time of accident. Considering the age of the deceased, his avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional monthly income as Rs.15,000/-. As per the judgment of the Hon'ble Apex Court reported in **2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi)**, the appellants would be entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and therefore, the Tribunal deducted 50% towards personal expenses, which is proper. By applying multiplier '16', the compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.15,000/-} + 6,000/- [\text{Rs.15,000/-} \times 40\%] \times 12 \times 16 \times \frac{1}{2} =$$

Rs.20,16,000/-.

(ii) The appellants are each entitled for an amount of Rs.44,000/- towards loss of love and affection. Therefore, Rs.88,000/- is awarded under the said head. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is hereby reduced to Rs.16,500/-. The Tribunal has not awarded any amount



C.M.A.No.2137 and 2138 2023

towards loss of estate and hence, a sum of Rs.16,500/- is hereby awarded towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	9,60,000/-	20,16,000/-	Enhanced
2.	Loss of estate	-	16,500/-	Granted
3.	Loss of love and affection	40,000/-	88,000/- (44,000x2)	Enhanced
4.	Funeral expenses	25,000/-	16,500/-	Reduced
	Total	10,25,000/-	21,37,000/-	Enhanced by Rs.11,12,000/-

14(i). With the above modification, C.M.A.No.2137 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.10,85,000/- is hereby enhanced to Rs.22,63,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / 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 (6) weeks from the date of a



C.M.A.No.2137 and 2138 2023

receipt of copy of this Judgment. On such deposit, the second appellant is permitted to withdraw a sum of Rs.5,00,000/- of the award amount and the first appellant is permitted to withdraw the remaining amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

14(ii). With the above modification, C.M.A.No.2138 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.10,25,000/- is hereby enhanced to Rs.21,37,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / 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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the second appellant is permitted to withdraw a sum of Rs.5,00,000/- of the award amount and the first appellant is permitted to withdraw the remaining amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee, if



C.M.A.No.2137 and 2138 2023

any, on the enhanced award amount. No costs.

WEB COPY

21.09.2023

vkx

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Vehicle Accident Tribunal,
Special District Judge, Salem.
- 2.The Section Officer,
VR Section,
High Court, Madras.

SUNDER MOHAN, J.



WEB COPY



C.M.A.No.2137 and 2138 2023

vkf/vca

C.M.A.Nos.2137 & 2138 of 2023

21.09.2023