



CMA No.189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2023

PRONOUNCED ON : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.189 of 2023
and CMP No.1565 of 2023

The Superintendent of Police,
Kancheepuram,
Kancheepuram District.

.. Appellant/Respondent

Vs.

1. Babu
2. Jothi
3. R.Mohan

.. Respondents/claimants
.. Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award dated 24.02.2021 passed in MCOP No.2497 of 2015 on the file of the Motor Accident Claims Tribunal [Special Sub Court No.1, Small Causes Court], Chennai.

For Appellant : Mr.C.Jayaprakash
Government Advocate

For Respondents : Mrs.Ramya V. Rao (for R1 & R2)



CMA No.189 of 2023

JUDGMENT

WEB COPY

Respondent/owner of the vehicle, is the appellant herein, challenging the award of the Motor Accident Claims Tribunal (Special Sub Court No.1, Small Causes Court), Chennai, vide judgment and decree dated 24.02.2021 in MCOP No.2497 of 2015, on the ground that since the deceased was sitting on the road, she had contributed to the accident and further, the notional income fixed by the tribunal and overall compensation awarded, are on the higher side.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

3. The findings regarding factum of the accident and the manner of accident, were not disputed and hence, the findings of the tribunal are hereby confirmed.

4. Learned Government Advocate could contend that in view of the admission in the cross examination, wherein PW1 has stated that her mother



CMA No.189 of 2023

was sitting on the road on the fateful day, claims tribunal ought to have fixed the contributory negligence on the part of the deceased.

5. Learned Government Advocate further contended that the claims tribunal has awarded a sum of Rs.7,80,000/- towards loss of dependency, fixing sum of Rs.6,000/- as monthly income of the deceased, which is on the higher side. He further submitted that the dependants/claim petitioners, 1 and 2 are sons aged 30 and 27 and hence, award of Rs.50,000/- under the head loss of love and affection, is also exorbitant. Thus, he seeks for reduction in the quantum of compensation.

6. Per contra, learned counsel for the respondents 1 and 2/claim petitioners could contend that PW2-R.Gopi, is an eye-witness and he had categorically deposed that on 22.12.2013 at about 10.00pm, he was waiting near the Mariamman Koil next to Bhavani Petrol Bunk at Muthusamy Salai and at that time, a Jeep bearing Regn.No.TN21G0940, driven by its driver in a rash and negligent manner, came from Frazer Bridge road towards Muthusamy Salai Junction, on the wrong side, dashed against a lady, who was sitting in front of the Muthumariamman Temple.



CMA No.189 of 2023

WEB COPY

7. Heard the learned counsel on either side and perused the materials available on record.

8. Perusal of the award shows that RW1-Mohan, the driver of the offending vehicle viz., Police Jeep has deposed that on the date of accident, the deceased Lakshmi was sitting on the road that too in the pitch dark night at about 10.30pm. Copy of the Judgment, acquitting driver of the Jeep-Mohan on the grounds of benefit of doubt, was produced before the claims tribunal as Ex.R1.

9. On a combined reading of the oral evidence of PW2 and RW1, and documentary evidence of Ex.P1 and Ex.P2, this Court comes to the conclusion that the version of RW1 is only a self-saving statement and accordingly, I have no hesitation to reject the evidence of RW1 and to rely upon the evidence of PW2. Hence, the finding rendered by the claims tribunal that the accident has taken place only due to the rash and negligent driving of the appellant vehicle, does not warrant any interference as the same does not suffer from any illegality or irregularity.



CMA No.189 of 2023

WEB COPY

10. On the point of quantum of compensation, as rightly contended by the learned Government Advocate, the notional income fixed at Rs.6,000/-pm for the deceased aged 48 years, who claimed to be a flower vendor, is excessive, in the absence of substantial evidence. Therefore, taking into consideration the year of the accident i.e. 2013 and the avocation, this Court feels it just and reasonable to fix Rs.5,000/-per month as notional income. Accordingly, by applying '13' multiplier as per the decision of the Hon'ble Supreme Court in *Sarla Varma Vs. Delhi Transport Corporation Ltd.*, reported in **TNMAC 2009 (2) SC**; and adding 25% towards future prospects as per the decision of our Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi*, reported in **2017 (16) SCC 680** and by deducting 1/3rd towards personal and living expenses, as there were two dependants, the loss of dependency is reassessed as follows:

Monthly income	-	Rs.5,000/-
Future Prospects @ 25%	-	Rs.1,250/-
Total Income	-	Rs.6,250/-

$$\begin{aligned}\text{Loss of dependency/income} &= \text{Rs.6,250/-} \times 12 \times 13 \times 2/3 \\ &= \text{Rs.6,50,000/-}\end{aligned}$$

11. The award under other heads i.e., Rs.50,000/- towards loss of



CMA No.189 of 2023

love and affection; Rs.15,000/- toward loss of estate; Rs.5,000/- towards transport charges and Rs.15,000/- towards funeral expenses, cannot be said to be excessive and hence, it is confirmed.

12. In view of the above discussion, the award of the tribunal is reduced from Rs.8,65,000/- to Rs.7,35,000/- as detailed hereunder.

	Amount awarded by the tribunal Rs.	Award now modified Rs.	Reduction
Loss of dependency	7,80,000	6,50,000	1,30,000
Loss of love and affection	50,000	50,000	
Loss of Estate	15,000	15,000	
Funeral Expenses	15,000	15,000	
Transportation charges	5,000	5,000	
Total	8,65,000	7,35,000	
Reduced now			Rs.1,30,000/-

13. In the result, it is ordered as follows:

- (i) The judgment and decree dated 24.02.2021, made in MCOP No.2497 of 2015 on the file of the Motor Accident Claims Tribunal [Special Sub Court No.1, Small Causes Court], Chennai, stands modified.
- (ii) The award amount is reduced from Rs.8,65,000/- to Rs.7,35,000/-. The interest awarded by the claims tribunal



WEB COPY



CMA No.189 of 2023

remains unaltered.

- (iii) The appellant-Owner of vehicle is directed to deposit the modified compensation amount of Rs.7,35,000/- with proportionate interest and costs to the credit of MCOP No.2497 of 2015 on the file of the Motor Accident Claims Tribunal [Special Sub Court No.1, Small Causes Court], Chennai, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.
- (iv) On such deposit, the respondents 1&2/claim petitioners, are permitted to withdraw the award amount equally, on making necessary applications.
- (v) On satisfaction of the award, excess amount if any, shall be refunded to the appellant-owner of the vehicle.

14. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

14.03.2023

Index : Yes/No

Neutral Citation : Yes/No.

ars



WEB COPY



CMA No.189 of 2023

RMT.TEEKAA RAMAN,J.,

ars

To

The Special Sub Court No.1, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Pre-delivery Judgment in
CMA No.189 of 2023

14.03.2023