



C.M.A.Nos.1621 and 761 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1621 and 761 of 2023
and C.M.P.No.6800 of 2023

C.M.A.No.1621 of 2023

1. Puttu Vani
Puttu Pedda Guravaiah (Died),
Puttu Munemma (Died),
2. Puttu Guru Nageswara Rao,
3. Puttu Guru Sai,
Sri Lakshmi Colony, Tada Madal,
Nellore District, Andra Pradesh,
Temporary Address,
Ramapuram Village,
Tiruthani Town and Taluk,
Tiruvallur District.

... Appellants/Petitioners

Versus

- 1.R.Parthiban
- 2.The Manager,
The Oriental Insurance Company Ltd.,
Motor T.P.Cell, No.115, 2nd Floor,
Broadway, Chennai – 600 001.

...Respondents/Respondents

Cause Title accepted vide Court Order dated 25.04.2023 made in
C.M.P.No.8039/223 in C.M.A.Sr.No.109047/2022 by NMJ.



C.M.A.Nos.1621 and 761 of 2023

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 29.01.2018 made in M.C.O.P.No.327 of 2014 on the file of the Subordinate Judge, Tiruttani.

For Appellants	: Mr. K. Naveen Kumar
For Respondents	: R1 : No Appearance
	R2 : M/s. S. Arun Kumar

C.M.A.No.761 of 2023

The Manager,
The Oriental Insurance Company Ltd.,
Motor T.P.Cell, No.115, 2nd Floor,
Broadway, Chennai – 600 001.

... Appellant

Versus

1.Puttu Vani
2.Puttu Pedda Guravaiah
3.Puttu Munemma
4.Minor.Puttu Nageswara Rao
5.Minor.Puttu Guru Sai,
S/o. Late. Puttu Krishnaiah
Minor rep by N/F Mother Puttu Vani
All are permanently residing at
Sri Lakshmi Colony, Tada Mandal,
Nellore District, Andra Pradesh.



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Now temporarily residing at
Ramapuram Village, Tiruthani Town & Taluk,
Tiruvallur District.

6. R.Parthiban,

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.01.2018 made in M.C.O.P.No.327 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge's Court, Tiruttani.

For Appellant : M/s. S.Arun Kumar

For Respondents : R1, R4 and R5 – Mr. K. Naveenkumar
R2, R3 – Notice not ready
R6 – No Appearance

COMMON JUDGMENT

(Both these appeals arise out of the same award and hence these appeals are disposed of by this Common Judgment. For the sake of convenience, parties are referred as per their rank in the claim petition)

C.M.A.No.1621 of 2023 has been filed by the claimants seeking enhancement of compensation. C.M.A.No.761 of 2023 has been filed by the second respondent/insurance company challenging the quantum of compensation awarded by the Tribunal.



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2. The claimants filed the petition seeking compensation stating that on 19.02.2014 at about 15.30 hours, when the deceased was riding his two wheeler bearing Reg.No.AP-26-M-6760, on the extreme left of the road, a lorry belonging to one Parthiban was driven in a rash and negligent manner and dashed against the railing of the National Highways Authority of India and the two wheeler of the deceased, as a result of which the deceased sustained fatal injuries.

3. The first respondent/owner of the lorry, remained ex-parte before the Tribunal.

4. The second respondent/insurance company filed a counter stating that there was no valid insurance coverage for the lorry as the policy stood cancelled on 04.02.2014, due to dishonour of the cheque issued by the owner of the lorry; that the accident in any case did not take place due to the negligence of the driver of the lorry; and that the claim made was excessive and prayed for dismissal of the claim petition.



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5. The claimants examined P.W.1 and P.W.2 and marked five documents as Exs.P1 to P5. The second respondent/insurance company examined R.W.1 and R.W.2 and marked five documents as Exs.R1 to R5.

6. The Tribunal after taking into consideration the oral and documentary evidence held that the owner of the lorry did not have a valid insurance policy; that however, the second respondent/insurance company is liable to pay the compensation amount and then recover it from the owner; and that the claimants are entitled to compensation of Rs.12,92,200/- with interest at the rate of 7.5% per annum.

7. The learned counsel for the claimants submitted that there is no infirmity in the finding of the Tribunal and directing the second respondent/insurance company to pay and recover; and that the Tribunal had awarded meagre compensation though the claimants had established that the deceased was doing fish and prawn business and was earning more than Rs.20,000/- per month and prayed for enhancement of compensation.



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8. Though notice has been served on the first respondent, none has entered appearance on his behalf.

9. The learned counsel for the second respondent/insurance company per contra submitted that the Tribunal after having held that there was no insurance policy ought not to have directed the insurance company to pay and recover the compensation amount; that it is not a case of breach of policy condition, but it is a case of no policy and therefore, prayed for setting aside the order of the Tribunal which had directed the insurance company to pay and recover the compensation amount.

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

11. The questions involved in the instant appeals are as follows:

(a) Whether the Tribunal was right in directing the second respondent/insurance company to pay and recover the compensation from the first respondent/owner of the offending vehicle.



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(b) Whether the compensation awarded by the Tribunal is just and reasonable.

12. As regards the compensation, it is seen from the evidence of P.W.1 – wife of the deceased, that the deceased was doing fish and prawn business. However, no document has been produced to prove the income of the deceased. The Tribunal had fixed Rs.7200/- per month, as the notional income of the deceased. This Court is of the view that the notional income fixed by the Tribunal is meagre. The deceased was aged 42 years at the time of the accident. Considering his avocation of doing fish and prawn business, his age and the year of the accident, this Court is of the view that it would be just and reasonable to fix notional income as Rs.10,000/- per month. The deceased would be entitled to 25% enhancement towards future prospects. The multiplier applicable is “14” and since there were five dependants at the time of his death, 1/4th of his income has to be deducted towards his personal expenses. Thus, the compensation under the head “Loss of Dependency” has to be:

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Rs.10,000/- + 2,500/- (25% of Rs.10,000/-) X 12 X 14 X 3/4 =

Rs.15,75,000/-

13. There were originally five claimants. Subsequently, the parents of the deceased died and the present appellants/claimants who are the mother and children of the deceased have filed C.M.A.No.1621 of 2023. Since the parents were also alive at the time of filing of the claim petition, the parents and the appellants/claimants are each entitled to Rs.40,000/- under the head “Loss of Love and Affection”. Therefore, the compensation under the head “Loss of Love and Affection” is reduced from Rs.3,75,000/- to Rs.2,00,000/-. The compensation awarded by the Tribunal under the head “Funeral Expenses” is meagre. Hence, the same is enhanced from Rs.10,000/- to Rs.15,000/- and no compensation was awarded under the head “Loss of Estate”. Hence, the same is granted at Rs.15,000/-. Thus, the compensation awarded by the Tribunal is modified as follows.



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	9,07,200/-	15,75,000/-	Enhanced
2.	Loss of Love and Affection	3,75,000/-	2,00,000/-	Reduced
3.	Funeral Expenses	10,000/-	15,000/-	Enhanced
4.	Loss of Estate	---	15,000/-	Granted
	Total	Rs.12,92,200/-	Rs.18,05,000/-	Enhanced by Rs.5,12,800/-

14. As regards the direction issued by the Tribunal to pay and recover, this Court finds that it is the finding of the Tribunal that there is no valid insurance policy at the time of the accident. The owner of the vehicle remained ex-parte before the Tribunal. The claimants had produced the policy documents which show that the policy was valid from 22.01.2014 to 21.01.2015. Though the insurance company had established that the policy



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stood cancelled on 04.02.2014 on account of the dishonour of cheque and also established that the said fact was intimated to the owner of the vehicles, the Tribunal had directed the insurance company to pay the said compensation amount determined and recover it from the owner. This Court is of the view that in the peculiar facts and circumstances of this case, there is no infirmity with the said finding of the Tribunal. The direction issued by the Tribunal in the interest of claimants who happen to be a young widow and two children of the deceased cannot be faulted. In the interest of the justice, the direction issued by the Tribunal deserves to be confirmed.

15. In the result:-

(i) C.M.A.No.1621 of 2023 is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.12,92,200/- to Rs.18,05,000/- together with interest @ 7.5 p.a., (excluding the default period if any) till the date of payment.



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(ii) C.M.A.No.761 of 2023 is partly allowed with respect to reducing the compensation awarded by the Tribunal under the head Loss of Love and Affection.

(iii) The second respondent/insurance company is directed to deposit the award amount now determined by this Court, along with interest and cost, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of this Judgment at the first instance and recover the same from the first respondent, owner of the lorry. On such deposit, the claimants are permitted to withdraw the award amount equally with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed. The claimants are directed to pay the necessary court fee, if any in the enhanced award amount.

08.09.2023

NCC: Yes/No

dk

Copy to:-

1.The Principal Special Judge,
EC and NDPS Act,
Chennai.

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SUNDER MOHAN, J.

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

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