



WEB COPY



C.M.A.Nos.136 and 415 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.Nos.136 and 415 of 2023

and

CMP.No.3577 of 2023

C.M.A.No.136 of 2023

1.G.Jayalakshmi

2.G.Tamizhselvi

3.G.Porkodi

4.G.Malarvizhi

5.G.Yuvarajan ... Appellants

Vs.

1.J.Anand

2.ICICI Lombard General Insurance Co. Ltd.,

Chottabai Centre, 2nd and 3rd Floor,

No.140, Uthamar Gandhi Salai,

Nungambakkam,

Chennai – 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor



C.M.A.Nos.136 and 415 of 2023

Vehicles Act, 1988, to enhance the award amount awarded in the fair and decretal order dated 03.01.2022 passed in M.C.O.P.No.5118 of 2016 by the Motor Accident Claims Tribunal – II Court of Small Causes, Chennai and pass such or other orders as this Court may deem fit and proper in the circumstances of the case.

For Appellants : Mrs.M.Meenatchi

For R1 : No appearance

For R2 : Mr.B.Sivakollapan

C.M.A.No.415 of 2023

ICICI LOMBARD General Insurance Co. Ltd.,
Chottai Bhai Center, 2nd and 3rd Floor,
No.140, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

... Appellant

Vs.

1.G.Jayalakshmi

2.G.Tamizhselvi

3.G.Porkodi

4.G.Malarvizhi

5.G.Yuvarajan

6.J.Anand

... Respondents



C.M.A.Nos.136 and 415 of 2023

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2022 made in M.C.O.P.No.5118 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.B.Siva Kollapan

For R1 to R5 : Mrs.M.Meenatchi

For R6 : Ex-parte

* * * * *

COMMON JUDGMENT

These two appeals arise out of the Judgment and Decree dated 03.01.2022 passed in M.C.O.P.No.5118 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. C.M.A.No.136 of 2023 is filed by the claimants seeking enhancement of compensation. C.M.A.No.415 of 2023 is filed by the Insurance Company challenging the finding on negligence as regards the involvement of the Insured vehicle in the accident.



C.M.A.Nos.136 and 415 of 2023

2.For the sake of convenience, parties will be referred as per the ranking in the claim petition.

3.The summary of facts leading to the above appeals are as follows:

On 13.04.2016 at about 05.30 a.m. while the deceased was crossing the Madambakkam Main Road, a Tata Ace Van belonging to the first respondent insured with the second respondent, driven by its driver in a rash and negligent manner, hit the deceased whereby the deceased sustained grievous injuries. Initially the deceased was admitted in Parvathy Hospital, Chrompet for treatment and later he died on 15.04.2016. According to the claimants, the accident occurred only due to the rash and negligent driving of the first respondent's driver and therefore the second respondent as the Insurer of the first respondent was liable to compensate the claimants for the death of the deceased Ganapathy.

4.According to the claimants the deceased was a pensioner and drawing a pension of Rs.24,950/-. Therefore, the claimants filed the claim petition claiming a sum of Rs.26,00,000/- as compensation. Though the



C.M.A.Nos.136 and 415 of 2023

first respondent, owner of the vehicle initially entered appearance, he later remained absent and was set exparte. The second respondent insurance company filed a detailed counter denying all the allegations and contentions raised in the claim petition including negligence, liability and quantum. According to the second respondent, the insured vehicle was not at all involved in the accident and therefore the liability was disputed.

5.Before the Claims Tribunal, the claimants examined three witnesses and marked Ex.P1 to Ex.P16 in support of their claim. The second respondent examined two witnesses and marked Ex.R1 to Ex.R4.

6.The Claims Tribunal on the basis of the pleadings and assessment of the entire evidence on record held that the vehicle of the first respondent was involved in the accident and further held that it was the negligence of the driver of the first respondent that resulted in the accident. The Claims Tribunal awarded a sum of Rs.4,48,000/- along with interest at the rate of 7.5% as compensation and mulcted the liability on the second respondent on the basis of the policy which was marked as Ex.R3. Aggrieved by the



C.M.A.Nos.136 and 415 of 2023

Judgment and Decree of the Claims Tribunal, the claimants as well as the

Insurance Company have filed the above appeals.

7.As the Insurance Company questions its liability the appeal of the Insurance Company is taken up first.

8.The point to be decided in the appeal of the second respondent is whether the insured's vehicle i.e. Tata Ace van was involved in the motor accident which occurred on 13.04.2016. According to the learned counsel for the second respondent, the accident occurred only due to the negligence of the deceased. The insured's driver was not at all involved in the accident but only helped the deceased to be admitted in the hospital.

9.On the other hand, the learned counsel for the claimants submitted that there is ample evidence on record to show that the vehicle belonging to the first respondent was involved in the accident and it was the first respondent's driver's negligence which resulted in the accident. The learned



C.M.A.Nos.136 and 415 of 2023

counsel relies on the evidence of PW3, the FIR Ex.P1 and the statement of the driver of the first respondent in Ex.P15, to drive home the point that the first respondent's vehicle was involved in the accident.

10.From the reading of the FIR, it is clear that the complaint was registered against the driver of the first respondent. PW3 in his proof affidavit clearly stated that he was an eye-witness to the accident and that one Vijayakumar along with the driver helped him in transporting the deceased to the hospital. A suggestion was put to PW3 in cross examination that he was not present at the scene of accident but, nothing could be elicited thereon. On the other aspects of PW3's proof affidavit no cross-examination was done. Ex.P15 is a letter given by the driver of the first respondent to the Sub Inspector of Police, S13, Traffic Investigation Division, wherein the first respondent's driver categorically admitted the involvement of his vehicle in the accident. When the driver of the first respondent was examined as RW1, he admitted his signature in Ex.P15 and



C.M.A.Nos.136 and 415 of 2023

and daughter of the deceased.

WEB COPY

13.In contra, the learned counsel for the second respondent submits that the order of the Tribunal is fair, just and reasonable and does not call for any interference.

14.In Ex.P8, the pension order, the amount of pension is shown as Rs.27020/-. It is admitted by the first claimant that 50% of pension amount (i.e.) Rs.13,510/- was paid to her as family pension every month. Therefore the loss towards income is Rs.13510/- only. As per the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., Vs. Pranay Sethi* reported in **2017 (16) SCC 680** as the deceased was aged 63 years at the time of accident he was not eligible for any addition towards future prospects. The deduction towards personal expenses would be 1/4th and the multiplier appropriate to the age of the deceased is 7. On the basis of the above the loss of income is assessed as follows:



C.M.A.Nos.136 and 415 of 2023

Pension Rs.13,510 x 12 x 7 = Rs.11,34,840

Less : Personal Expenses 1/4th = Rs. 2,83,710

Rs. 8,51,130

15.The Tribunal awarded only a sum of Rs.40,000/- towards loss of love and affection/consortium. I am of the view that the claimants are entitled for a sum of Rs.2,00,000/- towards loss of love and affection/consortium at Rs.40,000/- each for five claimants. In view of the above discussion, the award of the Tribunal needs to be modified and the same is modified as follows:

SI. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.3,78,000/-	Rs.8,51,130/-
2	Loss of Estate	Rs. 15,000/-	15,000/-
3	Loss of Love and affection/consortium	Rs. 40,000/-	Rs.2,00,000/-
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
TOTAL		Rs.4,48,000/-	Rs.10,81,130/-



C.M.A.Nos.136 and 415 of 2023

16.The claimants shall be entitled for a sum of Rs.10,81,130/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation.

17.It is submitted by the learned counsel for the appellants that the appeal was filed with a delay of 146 days which was condoned by this Court on 06.01.2023, subject to the condition that the claimants forfeit interest for the delay period of 146 days.

18.It is submitted by the learned counsel appearing for the second respondent that 50% of the award amount along with accrued interest and costs was already deposited in pursuance to the interim order passed by this Court. Hence, the second respondent is directed to deposit the balance amount less the interest for the delay period of 146 days, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants shall be entitled to withdraw the said amount as per the apportionment fixed by the Tribunal by making proper application before the Tribunal.



C.M.A.Nos.136 and 415 of 2023

19.In the result, the Civil Miscellaneous Appeal filed by the second respondent is dismissed. The Civil Miscellaneous Appeal filed by the claimants is partly allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

19.04.2023

Index : yes/no
Internet : yes/no
ah

To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

12/14



WEB COPY



C.M.A.Nos.136 and 415 of 2023

N.MALA, J.

ah



WEB COPY



C.M.A.Nos.136 and 415 of 2023

C.M.A.Nos.136 and 415 of 2023
and CMP.No.3577 of 2023

19.04.2023