



WEB COPY

CMA NOS.423 AND 828 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 22 / 03 / 2024

JUDGMENT DELIVERED ON: 15 / 04 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NOS.423 AND 828 OF 2021

AND

CMP NO.2725 OF 2021 IN CMA NO.423 OF 2021

CMA NO.423 OF 2021

M/s.IFFCO-TOKIO General
Insurance Company Limited
No.128, IV Floor, IFFCO Bhavan,
Habibullah Road, T.Nagar,
Chennai – 600 017.

... Appellant /
3rd Respondent

Vs.

1.Kalaiselvi
2.Thangamani
3.Narmatha

... Respondents 1 to 3 /
Petitioners

4.S.Periyasamy
5.I.Prabhakaran

... Respondents 4&5 /
Respondents 1&2

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor



CMA NOS.423 AND 828 OF 2021

Vehicles Act, 1988, against the Award dated 11.03.2020 passed in M.A.C.T.O.P. No.4766 of 2018 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan & Associates

For Respondents : Mr.Ramya V. Rao
1 to 3

CMA NO.828 OF 2021

1.Kalaiselvi
2.Thangamani
3.Narmatha ... Appellants / Petitioners

Vs.

1.S.Periyasamy
2.I.Prabhakaran
3.IFFCO-TOKIO General
Insurance Company Limited
No.128, IV Floor, IFFCO Bhavan,
Habibullah Road, T.Nagar,
Chennai – 600 017. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 11.03.2020 passed in M.A.C.T.O.P. No.4766 of 2018 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellants : Mr.Ramya V. Rao
For Respondent-3 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan & Associates

COMMON JUDGMENT



CMA NOS.423 AND 828 OF 2021

R.SAKTHIVEL, J.

WEB COPY

These two Civil Miscellaneous Appeals are arising out of the Award dated March 11, 2020, passed by the 'Motor Accident Claims Tribunal, Chennai (Chief Judge, Court of Small Causes, Chennai)' (henceforth 'Tribunal') in M.A.C.T.O.P.No.4766 of 2018.

2.The petitioners in the aforesaid Original Petition have filed CMA No.828 of 2021 seeking enhancement of compensation. The third respondent / insurance company has filed CMA No.423 of 2021 praying to set aside the Award.

3.For the sake of convenience, henceforth the parties will be referred to as per their array in the Original Petition.

Petitioners' case

4.The case of the petitioners is that the first petitioner is the mother, second petitioner is the father and third petitioner is the sister of the deceased - Yogeswaran. On June 23, 2018, at about 16.45 hours, the deceased was traveling as the pillion rider in a motorcycle bearing



CMA NOS.423 AND 828 OF 2021

Registration No.TN07-CP-0761 along with friends in Anna Salai. While nearing Spencer Plaza main gate and D-2 Anna Salai Police Station, another motorcycle bearing Registration No.TN-03-W-4845 was ridden in a rash and negligent manner. It collided with the center median and crashed into the motorcycle carrying the deceased. As a result of the handlebar to handlebar collision, the deceased was thrown off from the motorcycle and he succumbed to the injuries later at the hospital on June 24, 2018. At the time of accident, the deceased was aged about 17 years and was pursuing II year Diploma in Electrical and Electronics Engineering at Panimalar Polytechnic, Chennai. The first and second respondents are the owners of the motorcycles bearing Registration Nos.TN-07-CP-0761 and TN-03-W-4845 respectively and the third respondent is the insurer of both the motorcycles. Hence, the petitioners, seek a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs Only) with 12% interest and costs from the respondents.

Third respondent's case

5.The third respondent filed a counter stating that the



CMA NOS.423 AND 828 OF 2021

motorcycle bearing Registration No.TN-07-CP-0761 belonging to the first respondent and the motorcycle bearing Registration No.TN-03-W-4845 belonging to the second respondent, were involved in Bike race at the time of accident. It was further stated that the rider of the first respondent's motorcycle Minor - Mukesh and the rider of the second respondent's motorcycle Minor - Vikram did not possess a valid driving license on the date of the accident. The owners of the motorcycles viz., first and second respondents had permitted the minors to ride the motorcycles without license and thereby, violated the terms and conditions of the insurance policy. The Police had charge sheeted against the respondents 1 and 2 under Section 5 read with 180 of the Motor Vehicles Act, 1988 and also against the Minors under Section 4 read with 181 of the Motor Vehicles Act, 1988. The compensation claimed by the petitioners is exorbitant and does not bear any legal, equitable and reasonable basis. Accordingly, the third respondent / insurance company prayed to dismiss the Original Petition.

6.The first and second respondents did not appear before the Tribunal and contest the Original Petition. Hence, they were set *exparte*.

7.On the side of the petitioners, first petitioner was examined



CMA NOS.423 AND 828 OF 2021

as P.W.1. One Mr.Ramesh, an ocular witness of the accident was examined as P.W.2. Ex-P.1 to Ex-P.17 documents were marked. On the side of the third respondent / insurance company, Ms.Kowsalya, Traffic Inspector, Anna Salai, was examined as R.W.1 and Mr.C.Arunkumar, Assistant Manager of the third respondent / insurance company was examined as R.W.2. Ex-R.1 to Ex-R.4 were marked on their side.

8.The Tribunal, after perusing the FIR and Charge Sheet, concluded that the accident occurred due to the rash and negligent riding of the riders of the first and second respondents' vehicles and therefore, they have contributed equally to the accident. Further, the Tribunal concluded that on the date of the accident, both the vehicles were insured with the third respondent and the insurance policy was in force. However, since the first and second respondents had permitted the minors without any valid driving license, to ride the motorcycles, the first and second respondents have violated the terms and conditions of the policy.

9.The Tribunal, by relying on the decision in ***Oriental Insurance Company Ltd., Vs. D.Varadhammal and Others*** reported in ***2014 (2) TNMAC 184***, concluded that the third respondent / insurance company is liable to pay compensation to the petitioners and later recover



CMA NOS.423 AND 828 OF 2021

the same from the first and second respondents at 50% each.

WEB COPY

10.Regarding the quantum of compensation, the Tribunal, after relying on the decision in *National Insurance Co. Ltd., Vs. K.Sugumar and Others* reported in **2017 (2) TNMAC 805** had taken a sum of Rs.60,000/- per annum towards loss of dependency and applied the multiplier of 18. Accordingly, the Tribunal calculated a sum of Rs.10,80,000/- towards total loss of dependency; awarded a sum of Rs.15,000/- towards funeral expenses and awarded a sum of Rs.40,000/- towards loss of love and affection to the first and second petitioners. The Tribunal has not awarded compensation to the third petitioner, who is the sister of the deceased. Totally, the Tribunal awarded a sum of Rs.11,35,000/- (Rupees Eleven Lakhs Thirty Five Thousand Only) as compensation to the first and second petitioners along with 7.5% interest from the date of filing of the Original Petition till the date of realization, excluding the period of default, if any, with proportionate costs.

11.Feeing aggrieved with the said Award, the petitioners filed CMA No.828 of 2021 seeking enhancement of compensation; the third respondent/ insurance company filed CMA No.423 of 2021 seeking to set aside the Award passed against it.



Arguments

WEB COPY

12.This Court has heard Ms.Ramya V. Rao, learned counsel for the claimants / petitioners and Mr.M.B.Raghavan, learned counsel for the insurance company.

13.The learned counsel appearing for the petitioners would submit that at the time of accident, the deceased was pursuing II Year Diploma in Electrical and Electronics Engineering at Panimalar Polytechnic, Chennai. The Tribunal fixed the notional income of the deceased at Rs.60,000/- per annum which is on the lower side. The Tribunal failed to consider that the deceased was studying in a reputed Polytechnic at Chennai and there would be a chance of getting placed in campus placement. He further submitted that the Tribunal failed to consider the dictum laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others [2017 (2) TNMAC 609 (SC)]***. The Tribunal did not award future prospects and also did not award loss of estate which is not in conformity with the judgment of the Hon'ble Supreme Court. Accordingly, learned counsel prayed to



CMA NOS.423 AND 828 OF 2021

allow the appeal in CMA No.828 of 2021 and enhance the compensation.

WEB COPY

14.Per contra, learned counsel appearing for the third respondent / insurance company would argue that the Tribunal has ignored the gross negligence and violation of law on the side of the deceased who along with his friends engaged in motorcycle race on a public road and thus invited the accident; that the Tribunal failed to consider the FIR and the Charge Sheet in proper prospective; that the Tribunal ought to have fastened liability against the respondents 1 and 2 and not the third respondent; that the Tribunal ought not to have awarded compensation on the principle of pay and recovery; and that the quantum of compensation awarded by the Tribunal is excessive. Accordingly, he prayed to allow the appeal in CMA No.423 of 2021 and discharge the third respondent / insurance company from the liability.

Points for Consideration

15.The points that arise for consideration in both the Civil Miscellaneous Appeals are as follows:

(i)Whether the Tribunal is right in its finding that the third



CMA NOS.423 AND 828 OF 2021

respondent/insurance company is liable to pay compensation to the petitioners and recover the amount from the respondents 1 and 2 ?

(ii) Is there any reason to interfere with the quantum of compensation awarded by the Tribunal in favour of the petitioners ?

Discussion and Decision to Point No.(i)

16. The accident occurred on June 23, 2018 at about 16.45 hours. At the time of accident, the deceased was travelling as the pillion rider in the motorcycle along with his friends at Anna Salai. Totally 10 persons travelled in six motorcycles. One Minor Vikram drove the motorcycle bearing Registration No.TN-03-W-4845 and another Minor Mukesh drove the motorcycle bearing Registration No.TN-07-CP-0761. Both rode the motorcycles in a rash and negligent manner and caused the accident. According to the third respondent, the deceased and his friends were engaged in a motor race and caused the accident.

17. A careful perusal of the FIR and Charge Sheet would reveal the fact that the Minor Vikram, Minor Mukesh and others rode the vehicles in a rash and negligent manner. Petitioners' side examined one Ramesh as an ocular witness. He deposed that the accident occurred due to



CMA NOS.423 AND 828 OF 2021

rash and negligent driving of the first respondent's motorcycle bearing Registration No.TN-07-CP-0761. Investigation Officer (R.W.1) deposed that riders of both the vehicles were Minors and they tried to overtake each other and caused the accident. The evidence of P.W.1 and R.W.1, is silent about the motor race alleged by the third respondent. There is nothing to show that they were involved in a motorbike race. Hence, this Court finds that the riders of the first and second respondents' motorcycles rode the motorcycles in a rash and negligent manner and caused the accident. The Tribunal has rightly held that the riders of the respondents 1 and 2 motorcycles were the reason for the accident.

18. Admittedly, the riders of the motorcycles, namely Vikram and Mukesh, were minors and did not possess valid driving licenses. This Court has perused Ex-R.3 – copies of insurance policies. Perusal of it would show that both the policies are 'package policies'. The respondents 1 and 2's vehicles were duly insured with the third respondent and the insurance policies were in force on the date of the accident. Hence, the deceased (pillion rider) was covered under the insurance policies. To be noted, the Motor Vehicles Act, 1988 is a beneficial legislation and it has to be interpreted in favour of the affected persons. Hence, the third



respondent / insurance company is liable to pay the award amount to the petitioners and entitled to recover it from the respondents 1 and 2 in equal proportion. Therefore, this Court concludes that the Tribunal's findings in this regard is correct and there is no reason to interfere with the same. Point No.(i) is answered accordingly.

Discussion and Decision to Point No.(ii)

19.As far as the quantum of compensation is concerned, admittedly, at the time of accident, the deceased was 17 years old and was pursuing II Year Diploma in Electrical and Electronics Engineer in a reputed college. The said fact has been proved before the Tribunal by producing the deceased's Identity Card (Ex-P.7) and Transfer Certificate (Ex-P.8). However, there is no evidence available on record to show that the deceased had any income. The Tribunal fixed notional income at Rs.60,000/- per annum and applied multiplier of 18 and awarded Rs.10,80,000/- towards loss of dependency. In addition to that, the Tribunal awarded a sum of Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of love and affection. Totally, the Tribunal awarded a sum of Rs.11,35,000/- (Rupees Eleven Lakhs Thirty Five Thousand Only) in favour of the petitioners.



WEB COPY



CMA NOS.423 AND 828 OF 2021

20. In the decision of this Court in ***National Insurance Co. Ltd., Vs. K.Sugumar and Others [2017 (2) TNMAC 805]*** relied on by the Tribunal, the deceased was studying 3rd Standard and aged 8 years on the date of accident. The said accident occurred on August 29, 2014. In the said case, the Hon'ble Single Judge of this Court has taken a sum of Rs.60,000/- per annum as notional income and accordingly, awarded compensation.

21. In the case on hand, the deceased was 17 years old and was pursuing II Year Diploma in Electrical and Electronics Engineering in a reputed college. The accident took place in 2018. In view of these factual differences, this Court is of the view that the notional income at Rs.60,000/- per annum fixed by the Tribunal is to be interfered with. Considering the fact that the deceased was a student pursuing II Year Diploma in Electrical and Electronics Engineering and 17 years old, a sum of Rs.10,000/- per month would be a reasonable notional income.

22. As per the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others [2017***



CMA NOS.423 AND 828 OF 2021

(2) **TNMAC 609 (SC)**] the petitioners / claimants are entitled to 40% of the income towards future prospects and the relevant multiplier is 18. Since the deceased was a Bachelor at the time of accident, 50% of the income has to be deducted towards his personal expenses. Accordingly, by adding 40% towards future prospects and after deducting 50% towards his personal expenses and by applying multiplier of 18, loss of dependency would be Rs.15,12,000/- [Rs.10,000 + Rs.4,000 (40%) = Rs. 14,000/-; Rs.14,000 X 12 X 18 X 1/2].

23.The Tribunal awarded compensation under the head loss of love and affection to the petitioners 1 and 2 at Rs.20,000/- each. This is not in accordance with the judgment in **Pranay Sethi's case** (cited *supra*). Hence, this Court awards Rs.40,000/- **each** to the petitioners 1 to 3, towards loss of consortium.

24.Further, after the accident, the deceased was taken to Government Hospital, where he passed away. Hence, this Court is of the considered view that the petitioners are entitled to get transportation charges also. As per the judgment in **Pranay Sethi's case** (cited *supra*) the petitioners are entitled to a sum of Rs.15,000/- under the head of 'loss of estate'. Accordingly, this Court is inclined to award Rs.15,000/- (Rupees Fifteen Thousand Only) towards loss of estate. To sum up, this Court



CMA NOS.423 AND 828 OF 2021

concludes that the petitioners are entitled to compensation in the following manner:

WEB COPY

S.No.	Heads	Amount awarded by the Tribunal	Re-quantified by this Court	Status
1	Loss of dependency	Rs.10,80,000.00	Rs.15,12,000.00	Enhanced
3	Loss of Love and Affection	Rs.40,000.00	Nil	Set aside
3	Loss of Consortium (Rs.40,000 X 3)	Nil	Rs.1,20,000.00	Granted
2	Funeral Expenses	Rs.15,000.00	Rs.15,000.00	Confirmed
5	Loss of Estate	Nil	Rs.15,000.00	Granted
4	Transport Expenses	Nil	Rs.15,000.00	Granted
	Total	Rs.11,35,000.00	Rs.16,77,000.00	Enhanced

25.The notional income taken by the Tribunal is on the lower side. The Tribunal miserably failed to consider the fact that the deceased was 17 years old and a Student of Diploma in Electrical and Electronics Engineering (II Year). The Tribunal also failed to consider the deceased's future prospects. Hence, this Court is of the view that the CMA No.828 of 2021 is liable to be allowed in part and the amount awarded by the Tribunal at Rs.11,35,000/- is to be enhanced to Rs.16,77,000/- (Rupees Sixteen Lakhs Seventy Seven Thousand Only). Out of the said award amount, the third respondent is entitled to Rs.40,000/- towards loss of consortium. The petitioners 1 and 2 are entitled to the remaining amount in equal share. Point No.(ii) is answered accordingly.



CMA NOS.423 AND 828 OF 2021

Conclusion

26. Accordingly, the third respondent / insurance company is directed to deposit the modified award amount of Rs.16,77,000/- (Rupees Sixteen Lakhs Seventy Seven Thousand Only) to the credit of M.A.C.T.O.P. No.4766 of 2018 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the petitioners are permitted to withdraw their share as per the procedure, less the amount if any already withdrawn.

27. In fine,

(i) CMA No.423 of 2021 is dismissed. No costs.

(ii) CMA No.828 of 2021 is partly allowed as indicated above.

There shall be no order as to costs.

Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]



CMA NOS.423 AND 828 OF 2021

15 / 04 / 2024

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

TK

To

The Chief Judge

Motor Accidents Claims Tribunal

Chief Court of Small Causes

Chennai.



WEB COPY



CMA NOS.423 AND 828 OF 2021

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.423 AND 828 OF 2021

15 / 04 / 2024