



CMA Nos.732 of 2021 & 447 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.732 of 2021 & 447 of 2024

Judgment reserved on 05.03.2024	Judgment pronounced on 20.03.2024
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ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, Arihant Plaza,
First Floor, Waltax Road,
Chennai – 600 003. ...

Appellant in CMA No.732 of 2021 &
2nd Respondent in CMA No.447 of 2024

Vs.

1. Malarvizhi
2. Kamalakanan ...

Respondents 1 & 2 in CMA No.732 of 2021
& Appellants in CMA No.447 of 2024

3.R.Rajendran ...

3rd respondent in CMA No.732 of 2021 &
1st Respondent in CMA No.447 of 2024

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.08.2019 made in MCOP No.1083 of 2016 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

In both CMAs

For Appellant in	}	
CMA No.732 of 2021	}	
& 2 nd Respondent in	}	: Mr.K.Poomalai
CMA No.447 of 2024	}	



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For Respondents 1 & 2 }
in CMA No.732 of 2021 } : Mr.K.Varadhakamaraj
& Appellants in CMA No.447 of }
2024 }

For R3 in CMA No.732 of 2021 }
and R1 in CMA No.447 of 2024 } No appearance

COMMON JUDGMENT

Both the appeals arise out of the same award and same accident hence disposed of by this common judgment. Parties are referred to as per their ranking in the claim petition for the sake of convenience.

2. CMA No.447 of 2024 has been filed by the claim petitioners seeking enhancement of compensation awarded in MCOP No.1083 of 2016 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

3. CMA No.732 of 2021 has been filed by the Insurance Company challenging the very same award on the point of liability as well as quantum of compensation awarded by the Tribunal.



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4. By the Administrative Order of My Lord, The Hon'ble Chief

Justice, both the Civil Miscellaneous Appeals are posted before this court.

5. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the first respondent and insured with the second respondent are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence is hereby confirmed.

6. On the point of quantum of compensation, heard the learned counsel appearing for the claim petitioners as well as second respondent and perused the materials available on record.

7. The claim petitioners are parents of the deceased Giridhar aged 13 years studying in IX Standard who died in the road transport accident happened on 10.12.2015. In the judgment of this Court reported in **2021 (1) TN MAC 764 (DB) [Iffco – Tokio General Insurance Co. Ltd. v. V. Raja & others]**, this Court has fixed a sum of Rs.10,000/- as notional income of the deceased minor aged 17 years. Thus, following the above said judgment the notional income of the deceased is fixed as Rs.10,000/-



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per month. Since the deceased minor was aged about 13 years, by applying multiplier 15, granting 40% future prospects and deducting 50% towards personal expenses, a sum of Rs.12,60,000/- (10,000 + 4,000 (10000 x 40%) x 12 x 15 x 50%) is awarded as compensation towards loss of income. The amount awarded by the Tribunal towards loss of love & affection is hereby set aside. The amount of Rs.2,00,000/- awarded by the Tribunal towards filial consortium is on the higher side and hence the same is reduced to Rs.1,50,000/- (Rs.75000 x 2). The compensation awarded by the Tribunal towards medical expenses is without any documentary evidence and hence the same is hereby set aside. The Tribunal has not awarded any amount towards transportation and loss of estate. Hence, a sum of Rs.15,000/- each is awarded under the heads. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence the same is confirmed. Accordingly, the compensation awarded by the Tribunal is enhanced from **Rs.12,75,000/- to Rs.14,55,000/-**, break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Loss of dependency	8,10,000/-	12,60,000/-
2.	Loss of love and affection	2,00,000/-	Set aside



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<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
3.	Filial consortium	2,00,000/-	1,50,000/-
4.	Medical expenses	50,000/-	Set aside
5.	Funeral Expenses	15,000/-	15,000/-
6.	Transportation charges	-	15,000/-
7.	Loss of Estate	-	15,000/-
	Total	12,75,000/-	14,55,000/-

8. As far as negligence on the part of the driver of the first respondent is concerned, the learned counsel appearing for the second respondent/Insurance Company would contend that on the date of accident, the driver of the offending vehicle does not possess valid driving licence. Hence, he would submit that the second respondent/Insurance Company has to be exonerated from its liability.

9. This Court has anxious consideration of the said contention of learned counsel for the second respondent/Insurance Company. In this regard, it is seen that RW1 – legal officer from RTO was examined as RW1. Ex.R1-authorisation letter, Ex.R2 – registration certificate, Ex.R3 – investigation report and LLR were marked. Based upon R.6-Court summon, One Haribabu appeared before the Court and was examined as



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RW2 and Ex.R7 – authorisation letter was marked. RW2 deposed that the driver of the offending vehicle was having only LLR and marked the same as Ex.R8. The driving licence particulars of the driver was also marked as Ex.R9.

10. Since I find that there is violation of policy condition, following the decision reported in *2008 (1) TNMAC 191 (New India Assurance Co. Ltd. v. Palanisamy and others)* and the judgment rendered by this Court in *CMA No.1576 of 2015 dated 19.04.201 (United India Insurance Company Ltd. v. R.Vivekandandan)*, pay and recovery has to be ordered.

11. Accordingly, the order passed by the Tribunal in respect of quantum is modified and enhanced from **Rs.12,75,000/- to Rs.14,55,000/-** alongwith interest @ 7.5% per annum. With regard to the liability on the second respondent/Insurance Company, the payment ordered by the Tribunal is hereby modified and the second respondent/Insurance Company is directed to pay compensation to the claim petitioners at the first instance and recover the same from the first respondent/owner of the offending vehicle.



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12. In total, the claim petitioners are entitled to a sum of Rs.14,55,000/- (Rupees Fourteen Lakhs Fifty Five Thousand only).

13. In fine,

(i) **CMA No.732 of 2021 is partly allowed**, enhancing the award amount from **Rs.12,75,000/- to Rs.14,55,000/-** to the extent indicated above, alongwith 7.5% interest per annum.

(ii) CMA No.447 of 2024 is partly allowed directing the second respondent/Insurance Company to pay compensation to the claim petitioners at the first instance and recover the same from the first respondent/owner of the offending vehicle.

(iii) the respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited, at the first instance and recover the same from the first respondent/owner of the offending vehicle.

(iv) on such deposit being made, the claim petitioners are permitted to withdraw the entire enhanced award amount with accrued interest and costs, on the basis of apportionment fixed by the Tribunal, less



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the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(v) the claim petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee. No costs.

20.03.2024

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Index : Yes/No

Speaking/Non-speaking order

To

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

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



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RMT.TEEKAA RAMAN, J.

rgr

Judgment in
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