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CMA.Nos.1877, 1879 & 1880 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.1877, 1879 & 1880 of 2024

C.M.A. Nos.1877 & 1879 of 2024

1. Majitha Begum
2. Babusha

... Appellants

vs.

1. M/s. Madurai Radha Logistics
No.89, West Avani Moolavee
Madurai 625 001.
2. The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No. 232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road,
Chennai 600 001

...Respondents

C.M.A. No.1880 of 2024

Babusha

... Appellant

vs.

1. M/s. Madurai Radha Logistics
No.89, West Avani Moolavee
Madurai 625 001.
2. The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,



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No. 232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road,
Chennai 600 001

...Respondents

PRAYER in C.M.A. No.1877 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 10.10.2022 in M.C.O.P.No.6748 of 2018 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

PRAYER in C.M.A. No.1879 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 10.10.2022 in M.C.O.P.No.6747 of 2018 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

PRAYER in C.M.A. No.1880 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 10.10.2022 in M.C.O.P.No.6746 of 2018 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

In all C.M.As

For Appellants : Mr.R. Nalliyappan
For R2 : Mr. J. Chandran
R1 : Notice dispensed with.

COMMON JUDGMENT

The appellants in C.M.A. 1877 and 1879 of 2024 are the claimants in M.C.O.P. 6747 and 6748 of 2018 while the appellant in C.M.A. No.1880 of 2024 is the claimant in M.C.O.P. No.6746 of 2018 on the file



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of the Motor Accidents Claims Tribunal (III Court of Small Causes),
Chennai.

2. The claimants in M.C.O.P. 6747 and 6748 of 2018 are the parents of the deceased Thamim Ansari and Mohammed Yasik (aged 13 years and 11 years respectively) and the claimant in M.C.O.P. No.6746 is the father of the deceased. The claimants filed all the above claim petitions under Section 166 of the Motor Vehicles Act, seeking compensation for the death of their sons as well as injury sustained by the father of the deceased Thamim Ansari and Mohammed Yasik.

3. The case of the appellants/claimants in a nutshell is as follows:

3.1. On 02.10.2018, at about 00.05 hours, Babusha (the claimant in M.C.O.P. No.6746 of 2018) was riding his two wheeler bearing Registration No.TN-09-AF-0690 with his two sons Thamim Ansari and Mohammed Yasik as pillion riders on Anakaputhur Road. When they were nearing a police booth on the same road, a lorry bearing Registration No.TN-64-P-8730, owned by the first respondent, rear ended



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the two wheeler, as a result of which all of them sustained injuries. They were immediately rushed to the Government Hospital, Chennai. In the said accident Mohammed Yazik died on the spot. Thamin Ansari succumbed to injuries on 04.10.2018 and Babusha was treated as an inpatient.

3.2. According to the claimants the deceased were aged about 11 years and 13 years respectively. It is their contention that the rash and negligent driving of the driver of the lorry bearing Registration No.TN-64-P-8730 was the cause of the accident and that since the said lorry was insured with the second respondent, the New India Assurance Co. Ltd., the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the first respondent remained absent and was set ex parte. The second respondent, the New India Assurance Co. Ltd., Chennai, contested the claim petitions on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.



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5. The Tribunal after analysing the evidence on record, awarded compensation with interest at the rate of 7.5% per annum as shown below:

<i>M.C.O.P. No.</i>	<i>Award Amount</i>
6746/2018	Rs.34,750/-
6747/2018	Rs.5,70,000/-
6748/2018	Rs.5,60,000/-

The Tribunal also held that the liability of the owner of the lorry and the insurer are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeals are filed.

7. Heard Mr.R. Nalliyappan, learned counsel for the appellants and Mr. J. Chandran, learned counsel for the second respondent.

8. Mr.R. Nalliyappan, learned counsel for the appellant contended that the deceased were aged 11 and 13 years respectively on the date of accident. The Tribunal had fixed the notional income of the



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deceased only as Rs.30,000/- per annum, which, according to him, is very meagre. His further contention is that the Tribunal had awarded only a sum of Rs.34,750/- for the injuries sustained by Babusha (claimant in M.C.O.P. No.6746/2018). He therefore, prayed for enhancement of compensation in all the appeals.

9. Per contra, Mr. J. Chandran, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

10. **C.M.A. 1877 and 1879 of 2024**

10.1. The deceased Thamim Ansari and Mohammed Yasik, were aged 13 years and 11 years respectively on the date of accident. The Tribunal while computing the compensation amount, had fixed the notional income of the deceased as Rs.30,000/- per annum following the decision of the Hon'ble Supreme Court in *R.K.Malik vs. Kiran Pal* reported in **2009 (14) SCC 1** and awarded Rs.5,60,000/- for the death of



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Mohammed Yasik and Rs.5,70,000/- for the death of Thamin Ansari towards compensation to the claimants.

10.2 The claimants relied on the decision of this court in **C.M.A. (MD) No. 847 of 2022 dated 17.03.2023 (R. Booma and another vs. New India Life Insurance Company Limited and two others)**, wherein the notional income of a child aged 5 years was fixed at Rs.60,000/- per annum. In **Kishan Gopal and another vs. Lala and others** reported in **2013 (2) TN MAC 358**, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in **Kishan Gopal and another vs. Lala and others** (cited supra) happened in the year 2013. In the present case, considering the passage of time and the age of the victim children, fixing Rs.7,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 15, as per the decision in **Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121**. Calculation for loss of dependency is worked out here under.

Calculation :



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Notional Income = Rs.7,000/- x 12 = Rs.84,000/-

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Loss of dependency :

= Rs.84,000/- x 15

= Rs.12,60,000/-

In addition to that, as per the decision rendered by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* (cited supra), the claimants are entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively. Since there are two dependants, a sum of Rs.80,000/- is granted towards loss of consortium (40000 x 2 = 80000). Thus, the claimants are entitled to compensation as per the following tabular column.

C.M.A. No.1877 of 2024

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	12,60,000/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
Total		13,70,000/-

C.M.A. No.1879 of 2024

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	12,60,000/-
2.	Loss of consortium	80,000/-
3.	Transport charges	10,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		13,80,000/-

11. C.M.A. No.1880 of 2024

11.1. The claimant in the instant case sustained injuries on account of the accident. However, he did not subject himself for examination by the Medical Board to assess the disability. In fact he was treated as an outpatient in Government Hospital, Chennai, as is seen from Ex.P4. The medical bills (Ex.P5) shows that he has spent a sum of Rs.4,750/-. According to the claimant he sustained injuries on his hip and chest. Since no supporting documents were adduced, the Tribunal had



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rightly concluded that he is entitled for a sum of Rs.34,750/- towards compensation for the injuries sustained by him. Accordingly, the Civil Miscellaneous Appeal in C.M.A.No.1880 of 2024 is dismissed.

12. In the result,

(i) The Civil Miscellaneous Appeals in C.M.A. Nos. 1877 and 1879 of 2024 are partly allowed and C.M.A.No.1880 of 2024 is dismissed. No costs.

(ii) The compensation of Rs.5,60,000/- awarded by the Tribunal in M.C.O.P. No.6748/2018 is enhanced to Rs.13,70,000/- in C.M.A. No.1877/2024.

(iii) The compensation of Rs.5,70,000/- awarded by the Tribunal in M.C.O.P. No.6747/2018 is enhanced to Rs.13,80,000/- in C.M.A. No.1879/2024.

(iv) The liability of the owner of the lorry bearing Registration



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No. No.TN-64-P-8730 and the insurer are joint and several.

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(v) The appellants in C.M.A. Nos.1877 and 1879 of 2024 are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(vi) The second respondent / New India Assurance Co. Ltd., Chennai, is directed to deposit the enhanced compensation amounts i.e., Rs.13,70,000/- and Rs.13,80,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petitions till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P. No.6748/2018 and M.C.O.P. No.6747/2018 respectively on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai. The appellants/claimants are not entitled to claim any interest for the period of delay of 378 and 307 days respectively in filing these appeals.

(vii) On such deposit being made, the appellants in C.M.A. Nos.



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1877 and 1879 of 2024 are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

13.08.2024

Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal (III Small Causes Court), Chennai.
2. M/s. New India Assurance Co. Ltd.,
Represented by its Divisional Office,
Sedu Krishna Trade Centre, 2nd Floor,
Trichy main Road, Gugai, Salem.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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