



C.M.A.Nos.1597 of 2023 & 189 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.02.2024**

CORAM :

**The Hon'ble Mr. Justice Krishnan Ramasamy**

**C.M.A.Nos.1597 of 2023 & 189 of 2024**

**and**

**C.M.P.No.1935 of 2024**

**C.M.A.No.1597 of 2023**

1. Anbarasi
2. Shanthi
3. Selvaraj
4. Gnanasekar

... Appellants

Vs.

1. Vasu
2. Manikandan
3. Cholamandalam General Insurance Co. Ltd.,  
Having its office at Chennai,  
Represented by its Manager,  
No.2, N.S.C. Bose Road,  
Chennai.

... Respondents

**C.M.A.No.189 of 2024**

The Manager,  
Cholamandalam MS General Insurance Co. Ltd.,  
No.2, N.S.C. Bose Road,  
Chennai.

... Appellant

Vs.



C.M.A.Nos.1597 of 2023 & 189 of 2024

1. Anbarasi

2. Shanthi

3. Selvaraj

4. Gnanasekar

...Respondents

**Prayer in C.M.A.No.1597 of 2023:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to enhance the compensation awarded by the Motor Accident Claims Tribunal, Neyveli, (Sub Court, Neyveli) in M.C.O.P.No.12 of 2018, dated 27.01.2023 from Rs.23,98,000/- to Rs.26,00,000/- in the interest of justice.

**Prayer in C.M.A.No.189 of 2024:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree in M.C.O.P.No.12 of 2018, dated 27.01.2023 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli.

**Appearance in C.M.A.No.1597 of 2023**

For Appellant : Mr.P.Paramasivados

For R1 &R2 : No appearance

For R3 : Ms.C.Harini

**Appearance in C.M.A.No.189 of 2024**

For Appellant : Ms.C.Harini

For R1 to R4 : Mr.P.Paramasivados

**COMMON JUDGEMENT**

Being not satisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.12 of 2018, dated 27.01.2023, the appellants/claimants have filed C.M.A.No.1597 of 2023. Aggrieved by the said award of compensation, the Insurance Company has filed C.M.A.No.189 of 2024.



C.M.A.Nos.1597 of 2023 & 189 of 2024

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2. Since both the appeals arise out of the same order, they have been taken up together and, being disposed of by this common judgement. For the sake of convenience, the parties are referred to as per their array in C.M.A.No.189 of 2024.

3. On 14.04.2017, at about 18.45 hours, while the deceased was riding his motorcycle bearing Reg.No.TN.91.Y-5217, he was hit by a lorry bearing Reg.No.TN-34-F-5305, driven by its driver which came from opposite direction, in a rash and negligent manner. Due to the said accident, the deceased sustained grievous injuries all over his body. Though he was taken to the Government Hospital, Panrutti and given treatment, he died on the same day. Therefore, the claimants have filed a claim petition claiming a compensation of Rs.40,00,000/-.

4. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.23,98,000/- towards compensation. Being not satisfied with the quantum and aggrieved by the quantum



C.M.A.Nos.1597 of 2023 & 189 of 2024

respectively, both the appellants & Insurance Company have filed these appeals.

5. The learned counsel for the appellant/Insurance Company would submit that the dependents of the deceased are only wife, father and mother, and the brother of the deceased cannot be a dependent. Therefore, for the purpose of determining the loss of income, the Tribunal ought to have deducted 1/3<sup>rd</sup> towards “personal expenses” instead of 1/4<sup>th</sup>. Accordingly, he prays for appropriate modification of the Tribunal's award.

6. Per contra, the learned counsel for the respondents/claimants submitted that, at the time of the accident, the deceased was aged about 25 years, was working as a mason, earning a sum of Rs.28,000/- per month. However, without considering the same, the Tribunal had erroneously fixed the notional income of the deceased at a sum of Rs.10,500/- per month, which is on the lower side, and the same may be re-determined by this Court. Further, he submitted that, the Tribunal has



C.M.A.Nos.1597 of 2023 & 189 of 2024

not awarded any amount towards “loss of estate” and the amount awarded under the head of “loss of consortium”, is also on the lower side, and the said heads may also be re-determined by this Court. Accordingly, he prays for appropriate enhancement in favour of the claimants.

7. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing on behalf of the respondents/claimants and perused the materials available on record.

8. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The challenge in these appeals is only with regard to the quantum of compensation awarded by the Tribunal. The appellant/Insurance Company claims that the compensation awarded by the Tribunal is on the higher side, whereas the respondents/claimants contends that the compensation awarded by the Tribunal needs to be enhanced. In the present case, as noticed above, the deceased was a mason and aged about 25 years, and was earning a sum of Rs.28,000/- per month at the time of



C.M.A.Nos.1597 of 2023 & 189 of 2024

accident. In the light of the law laid down by the Hon'ble Supreme Court in catena of judgments and taking into consideration of the nature of employment of the deceased, this Court is inclined to fix the notional income of the deceased at Rs.14,000/- per month, which would be just and reasonable. Thus, by fixing the notional income of the deceased at Rs.14,000/- per month; adding 40% towards future prospects; and deducting  $\frac{1}{3}^{\text{rd}}$  towards his personal expenses. Adopting right multiplier of '18' (since the deceased was aged about 25 years), the compensation towards "Loss of Dependency" is calculated as under:-

| <i>Loss of Income</i>                                                                                   | <i>Amount in Rs.</i> |
|---------------------------------------------------------------------------------------------------------|----------------------|
| Notional income (Per month)                                                                             | 14,000               |
| <b>Add:</b> Future Prospects (Rs.14,000 x 40%) (Per month)                                              | 5,600                |
|                                                                                                         | 19,600               |
| <b>Less:</b> Personal expenses ( $\frac{1}{3}^{\text{rd}}$ ) (Rs.19,600/- x $\frac{1}{3}$ ) (Per month) | 6533                 |
|                                                                                                         | 13067                |
| Notional income (per annum) (Rs.13067/- x 12)                                                           | 1,56,804             |
| Multiplier                                                                                              | 18                   |
| <b>Total</b>                                                                                            | <b>28,22,400</b>     |

9. Consequently, the sum of **Rs.22,68,000/-** awarded by the



C.M.A.Nos.1597 of 2023 & 189 of 2024

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Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.28,22,400/-**.

10. The Tribunal awarded a sum of Rs.40,000/- under the head of “loss of consortium”, to the first respondent/wife of the deceased and the same is maintained. The Tribunal has awarded a sum of Rs.60,000/- towards “loss of love and affection” to the claimants 1 to 4, including father and mother of the deceased, which appears to be low. This Court finds that no amount has been awarded under the head of “loss of filial consortium”. Hence, this Court is inclined to award a sum of Rs.40,000/- each to the appellants 2 and 3 and a sum of Rs.15,000/- is awarded to the fourth appellant/brother of the deceased under the head “loss of love and affection”.

11. This Court finds that the Tribunal has failed to award any compensation under the head of “loss of estate”. Hence, this Court is inclined to award a sum of Rs.15,000/- towards “loss of estate”.



C.M.A.Nos.1597 of 2023 & 189 of 2024

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12. Insofar as the compensation awarded by the Tribunal under other heads are concerned. This Court finds that the same are just and proper and are hereby confirmed.

12. Thus, the total compensation payable to the claimants under various Heads is modified as hereunder:-

| <i><b>Heads</b></i>                                                 | <i><b>Awarded by the<br/>Tribunal<br/>(Amount in<br/>Rs.)</b></i> | <i><b>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</b></i> |
|---------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------|
| Loss of Dependency                                                  | <b>22,68,000/-</b>                                                | <b>28,22,400/-<br/>(enhanced)</b>                               |
| Loss of consortium                                                  | 40,000/-                                                          | 40,000/-                                                        |
| Loss of love and affection<br>(brother of the deceased)             | <b>60,000/-</b>                                                   | <b>15,000/-<br/>(reduced)</b>                                   |
| Loss of filial consortium<br>(father and mother of the<br>deceased) | <b>Nil</b>                                                        | <b>80,000/-<br/>(awarded)</b>                                   |
| Funeral expenses                                                    | 15,000/-                                                          | 15,000/-                                                        |
| Transportation                                                      | 10,000/-                                                          | 10,000/-                                                        |
| Loss of estate                                                      | <b>Nil</b>                                                        | <b>15,000/-</b>                                                 |
| Damages to clothes                                                  | 5,000/-                                                           | 5,000/-                                                         |
| <b>Total</b>                                                        | <b>23,98,000/-</b>                                                | <b>30,02,400/-</b>                                              |

13. Accordingly, both the Appeals are partly allowed and the impugned Award of the Tribunal is modified by enhancing the



C.M.A.Nos.1597 of 2023 & 189 of 2024

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compensation amount from **Rs.23,98,000/-** to **Rs.30,02,400/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.12 of 2018 along with interest from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is later. Out of total compensation availed to the claimants, the first appellant, the wife of the deceased is entitled to a sum of **Rs.20,00,000/-** together with proportionate interest; second appellant, the mother of the deceased is entitled to a sum of **Rs.5,00,000/-** together with proportionate interest; third appellant, the father of the deceased is entitled to a sum of **Rs.4,00,000/-** together with proportionate interest; fourth appellant, the brother of the deceased is entitled to a sum of **Rs.1,02,400/-** together with proportionate interest. The



C.M.A.Nos.1597 of 2023 & 189 of 2024

appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. No costs. Consequently, Connected Miscellaneous Petition is closed.

**07.02.2024**

Index : Yes / No  
NCC : Yes / No  
jd

To

1. The Motor Accident Claims Tribunal,  
Subordinate Judge, Neyveli.
2. The Section Officer,  
V.R. Section,  
High Court, Madras.



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C.M.A.Nos.1597 of 2023 & 189 of 2024

**Krishnan Ramasamy,J.,**

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**C.M.A.Nos.1597 of 2023 & 189 of 2024**  
**and**  
**C.M.P.No.1935 of 2024**



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C.M.A.Nos.1597 of 2023 & 189 of 2024

**07.02.2024**