



C.M.A. Nos. 2790 & 2791 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal Nos.2790 and 2791 of 2021

C.M.A. No.2790/2021:

1. Malar
2. Munirathinam
3. Naveena Shree
4. Minor.Kaishka Shree
5. Minor.Paviska Shree

[Minor Apellants represented by their father namely Babu (as per order passed in I.A.No.2/2020, dated 06/01/2020)

... Appellants / Petitioners

Vs.

1. Shri Pariyur Amman KRAFT Papers P. Ltd.,
Plot No.D-13, D-26,
SIPCOT INDUSTRIAL Growth Centre,
Perundurai, Erode District-638052
Tamilnadu
2. The Branch Manager,
National Insurance Co. Ltd.,
1st Floor, Karthikeyan Complex,
403, B-10, Mettur Main Road,
Bhavani, Erode District-638301.
Tamilnadu ... Respondents / Respondents



C.M.A. Nos. 2790 & 2791 of 2021

CMA No.2791/2021:

1. Babu
2. Minor.Kaishka Shree
3. Minor.Paviska Shree
[Minor appellants represented by their father
viz., Babu, the first appellant herein]
4. Malar ... Appellants / Petitioners

Vs.

1. Shri Pariyur Amman KRAFT Papers P. Ltd.,
Plot No.D-13, D-26,
SIPCOT INDUSTRIAL Growth Centre,
Perundurai, Erode District-638052
Tamilnadu
2. The Branch Manager,
National Insurance Co. Ltd.,
1st Floor, Karthikeyan Complex,
403, B-10, Mettur Main Road,
Bhavani, Erode District-638301.
Tamilnadu ... Respondents / Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Award and Decree dated 11.12.2020 passed in M.C.O.P. Nos.71 and 94 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants in both appeals : Mr. S.P. Yuvaraj

For R1 in both appeals : No Appearance

For R2 in both appeals : Mr. J. Michael Visuvasam

COMMON JUDGMENT



C.M.A. Nos. 2790 & 2791 of 2021

Both the Civil Miscellaneous Appeals have been filed by the claimants seeking enhancement of compensation awarded in the Common Award passed in M.C.O.P. Nos.71 & 94 of 2020, dated 11.12.2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. Both the claim petitions arising out of the accident taken place on 18.07.2018 at about 7.30 hours. The deceased No.1 namely Nataraj, who is the father of the deceased No.2 Ranjitha. The dependants of the deceased viz., Nataraj and Ranjitha are the claimants in these appeals have filed separate claim petitions.

4. On 18.07.2018 at about 7.30 hours both the deceased were travelled as a passenger in Volks Wagon Polo car bearing Registration No.TN 02 AR 1818 along with other relatives from Krishnagiri to Chennai



National Highways NH-48. While they reached near Oppathavadi Bus stop, an Eicher Lorry bearing Registration No.TN 56 B 1623 was running in front of them in high speed without any signal and sound suddenly entered into the middle of the road and stopped which resulted in the Volks Wagons Polo car, in which, the deceased were travelled was dashed on the right rear side of the lorry. Due to the impact, both the deceased and other passengers sustained grievous injuries. In this regard, a criminal case was also registered against the lorry driver in Crime No.273 of 2018 under Sections 279, 337 and 304-A IPC, on the file of the Bargur Police Station. For the death of the deceased Nataraj, his wife, son, daughter and grandchildren have filed M.C.O.P. No.71 of 2020 claiming compensation for a sum of Rs.30,00,000/-. For the death of the deceased Ranjitha, her husband, her children and his mother namely Malar have filed M.C.O.P. No.94 of 2020 seeking compensation for a sum of Rs.50,00,000/- along with interest at the rate of 12% per annum from the date of claim petition till the date of realization.

5. Since both the claim petitions arising out of same accident, common enquiry was conducted and common evidence was recorded in M.C.O.P. No.71 of 2020.



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6. Based on the evidences placed on record, the Tribunal has accepted the case of the claimants and however it has held that the driver of the car is also contributed to the accident and accordingly fixed the ratio of the negligent between the car driver and the driver of the lorry to the extent of 10% : 90%. Further it has held that the second respondent/Insurance company is liable to pay the compensation of 90% and 10% shall be bear by the claimants themselves and quantified the compensation of Rs.11,70,100/- [Rs.10,53,090/- (90% of award amount) and Rs.1,17,010/- (10% of award amount)] awarded in M.C.O.P. No.71 of 2020 and a sum of Rs.21,17,800/- [Rs.19,06,020/- (90% of award amount) and Rs.2,11,780/- (10% of award amount) awarded in M.C.O.P. No.94 of 2020 to be paid by the respondents.

7. Aggrieved over the contributory negligence fixed on the driver of the car and also for seeking enhancement of compensation, this appeal has been filed by the respective claimants.

8. Since both the appeals arising out of same accident, common arguments have been heard and I have also perused the records.



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9. The learned counsel for the claimants in both the appeals submitted that the deceased in both the cases are only a passengers in the car and they could not be made liable for the contributory negligence caused by the driver of the car since they cannot be held themselves contributors of the accident. Since they are the passengers and both vehicles have colluded each other and it is only a composite negligence of both the vehicles and the claimants are entitled to claim compensation from anyone of the tortfeasors. Hence for fixing deduction of 10% of compensation on the side of the claimants is not valid and prays to set aside the same. He has also states that the notional income fixed on both the deceased is also on the lower side hence prays to enhance the same.

10. The learned counsel for the second respondent - Insurance Company has submitted that it is a clear case of negligence on the part of the driver of the car but the Tribunal has not considered the nature of the accident and which itself is sufficient to show that the driver of the car alone is responsible for the accident and the lorry is no way connected with the accident. Some of the claimants are not the dependants of the deceased and



they have been included for the purpose of getting enhanced compensation.

Hence prays to dismiss the appeal.

11. I have considered the rival submissions made on both sides and also perused the records.

12. The deceased in this case are the passengers who travelled in the car. According to them, the lorry belongs to the first respondent was driven by its driver in rash and negligent manner and entered into the middle of the road and suddenly stopped, which resulted in the car driver could not control his car and dashed on the rear side of the lorry. Even though, the Insurance Company claims that the driver of the car also responsible for the accident being the passengers of the car, the claimants are entitled to claim compensation from any one of the tortfeasors in case of the accident is made due to the composite negligence of drivers of two vehicles.

13. In this case, the manner in which the accident had taken place shows that it is a case of composite negligence, this finding has not been challenged by any of the insurer of the vehicles and as per the Judgment of



the Apex court in ***Khenyei vs. New India Assurance Company Limited and***

Others [2015 (9) SCC 273 : 2015 SCC Online SC 433] the claimants are entitled to get compensation. Being the passengers they shall not be fixed with any liability as if they have contributed negligence which is squarely against the principles laid down by the Apex Court in the Judgment cited supra. Accordingly, this Court is of the view that 10% deduction of payment of compensation to the claimants is not proper and the same is hereby set aside and the contested respondents are liable to pay the entire compensation.

14. As far as the dependency is concerned, the Insurance Company submitted that in M.C.O.P. No.71 of 2020 the grandchildren of the deceased Nataraj have been made as claimants whereas they have also separately filed claim petition in M.C.O.P.No.94 of 2020 for the loss of their mother in the accident. It is also admitted evidence that the father of the grandparents is also alive and he is also a claimant in one of the claim petition in M.C.O.P.No.94 of 2020. Under the said circumstances, this Court is of the view that the grandparents namely minor Kanishka Sree and minor Paviska Sree could not be the dependents of the deceased grandfather



namely Nataraj and they are not entitled to claim compensation in M.C.O.P.

No.71 of 2020. Similarly, in M.C.O.P. No.94 of 2020, the claimant namely Malar, who is the mother of the deceased Ranjitha could not be termed as dependent since she has stated in the claim petition in M.C.O.P. No.71 of 2020 that she is the dependant of her deceased husband Nataraj. Hence this Court is of the view that she could not be claimed compensation as dependent of her daughter namely Ranjitha and she is entitled to claim compensation only in M.C.O.P. No.94 of 2020.

15. As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of both the deceased as Rs.9,000/- per month. This Court, in various catena of Judgments has held that for the accident taken place in the year 2018, fixing of notional income of Rs.14,000/- by following the Judgment of this Court in *Andal and others vs. The New India Insurance Company Limited [2019 (1)TN MAC 54 DB]*. would be appropriate and accordingly fixed the notional income of the deceased in both cases a sum of Rs.14,100/-. In M.C.O.P.No.71 of 2020, the age of the deceased is 54 years at the time of accident and the Tribunal has rightly applied multiplier '11' and this Court is also accept the same. The



Tribunal has deducted 1/4 for personal expenses of the deceased Nataraj and this Court decides the minor grandchildren are not entitled to get compensation in M.C.O.P.No.71 of 2020 as discussed supra and accordingly the applicable reduction for his personal expenses is 1/3rd. Accordingly, the following calculations have been made: $14100 \times 12 \times 11 \times \frac{1}{3} = \text{Rs.}12,40,800/-$. The deceased Nataraj is entitled for 10% future prospects i.e., Rs.1,24,080/- (10% of Rs.12,40,800/-). Each of the claimants are entitled to get Rs.40,000/- under the head 'Loss of Consortium'. As far as the other conventional heads are concerned, the same are just and reasonable and the same are hereby confirmed.

16. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.9,80,100/-	Rs.12,40,800/-	Enhanced
2	Future Prospects	---	Rs.1,24,080/-	Granted
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Loss of consortium (P1 to P3)	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
6	Loss of Consortium (P4 & P5)	Rs.40,000/-	---	Set aside
	Total Compensation	Rs.11,70,100/- -	Rs.15,14,880/-	Enhanced by Rs.3,44,780/- -

17. In M.C.O.P.No.94 of 2020, the age of the deceased is 26 years at the time of accident and the Tribunal has rightly applied multiplier '17' and this Court is also accept the same. The Tribunal has deducted 1/4 for personal expenses of the deceased Ranjitha and this Court decides that the mother of the deceased Ranjitha is not entitled to get compensation in M.C.O.P.No.94 of 2020 and accordingly 1/3 is deducted towards personal expenses of the deceased. Accordingly, the following calculation have been made: $14100 \times 12 \times 17 \times 1/3 = \text{Rs.}19,17,600/-$. The deceased Ranjitha is entitled for 40% future prospects i.e., Rs.7,67,040/- (40% of Rs.19,17,600/-) as per the dictum laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]. In both cases each claimants are entitled to get Rs.40,000/- under the head 'Loss of Consortium'. As far as the other conventional heads are concerned, the same



are just and reasonable and the same are hereby confirmed.

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18. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.19,27,800/-	Rs.19,17,600/-	Reduced
2	Future Prospects	---	Rs.7,67,040/-	Granted
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Loss of consortium (P1 to P4) / Loss of Consortium (P1 to P3)	Rs.1,60,000/-	Rs.1,20,000/-	Reduced
	Total Compensation	Rs.21,17,800/- -	Rs.28,34,640/- -	Enhanced by Rs.7,16,840/-

19. The Tribunal has awarded interest at 9% per annum on the compensation award from the date of filing of petition till the date of realization. The Hon'ble Apex Court in *Tamil Nadu State Transport Corporation Ltd., vs. S.Rajapriya and Ors [2005 ACJ 1441]*, has modified the rate of interest to 7.5% per annum based on the prevailing rate of interest in bank deposits. By following the same, 7.5% per annum is fixed as the rate



of interest towards the deposit of the compensation amount awarded from the date of filing of claim petition till the date of realization.

20. In the result,

(i) C.M.A.No.2790 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.11,70,100/- is hereby enhanced to Rs.15,14,880/- [Rupees Fifteen Lakhs Fourteen Thousand Eight Hundred and Eighty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(ii) C.M.A.No.2791 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.21,17,800/- is hereby enhanced to Rs.28,34,640/- [Rupees Twenty Eight Lakhs Thirty Four Thousand Six Hundred and Forty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(iii) The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the



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date of receipt of a copy of this Judgment to the credit of M.C.O.P.Nos.71 & 94 of 2020 respectively on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. The share of the minor appellants/claimants are directed to be deposited in any one of the Nationalized Bank till the minor appellants/claimants attains majority. On such deposit, one Babu, who is the father of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants/claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in both the appeals.

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Index:Yes/No



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Speaking Order: Yes/No
Neutral Citation Case: Yes/No

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To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Krishangiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.



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