IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.209, 394 & 863 of 2023
and 1442 of 2024

Maruthambal
W/o.Murugan ... Appellant in C.M.A.No.209/2023

1.Periasamy
S/o.Ramasamy

2.Vadivukarasi
D/o.Ramasamy

3.Manakayi
D/o.Ramasamy

4.Sudha
D/o.Ramasamy ... Appellants in C.M.A.No.394/2023

Solaiyammal
W/o.Murugan ... Appellant in C.M.A.No.863/2023

1.Velmurugan
S/o.Ramasamy

Sasikala [died]

2.Amutha
D/o.Ramasamy
3.Mahalakshmi

D/o.Ramasamy

4.Duraisamy
H/o.Late Sasikala

5.D.Sineha
D/o.Duraisamy ... Appellants in C.M.A.No.1442/2024

[Cause title accepted *vide* Court order dated 12.09.2023 made in C.M.P.No.18864 of 2023 in C.M.A.Sr.No.95502 of 2023]

Vs.

1.Johnny Simon
S/o.Manuel Manoharan

2.HDFC ERGO General
Insurance Co. Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet,
Chennai - 600 018. ... Respondents in all appeals
[R1 remained *ex parte* in lower Court,
notice may be dispensed]

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 23.12.2021 made in M.C.O.P.Nos.385, 386, 384 and 387 of 2019 on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants [in all appeals] : Ms.Sithi Fathima Samt for Mr.C.Vidhusan

For Respondents [in all appeals] : Mr.T.K.Premkumar [R2]

*****

COMMON JUDGMENT

All these appeals arise out of a common award passed in M.C.O.P.Nos.385, 386, 384 and 387 of 2019 on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur, dated 23.12.2021.

2. Out of these four appeals, two appeals arise against M.C.O.P.Nos.384 and 385 of 2019, which involve the claim made for the injuries sustained by the claimants. Insofar as the other two appeals are concerned, they arise against M.C.O.P.Nos.386 and 387 of 2019, which involve fatality and the claimants are the son and daughters of the deceased. All these claimants are not satisfied with the quantum of compensation fixed by the Tribunal and hence, they have filed these appeals before this Court.

3. The case of the claimants is that on 10.03.2019, a group of persons were going towards Samayapuram temple as pathayathra and at about 05.45 a.m., when they were nearing the place of occurrence, the offending vehicle, Hyundai i20 Car, was driven in a rash and negligent manner and it dashed on the devotees, who were undertaking pathayathra. Three persons sustained fatal injuries and they died on the spot and the

others sustained grievous injuries and they took treatment in the Government Hospital, Perambalur. A case was registered in crime No.55 of 2019 by the Padalur Police Station, against the driver of the offending vehicle. It is under these circumstances, the claim petitions came to be filed before the Tribunal seeking compensation.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. Having rendered the above finding, the Tribunal proceeded to fix compensation under various heads as follows:

<u>M.C.O.P.No.385 of 2019:</u>

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Medical expenses	21,926/-
2.	Lump sum compensation	25,000/-
	Total	**46,926/-**

<u>M.C.O.P.No.384 of 2019:</u>

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Medical expenses	61,771/-
2.	Disability	60,000/-
3.	Transportation	15,000/-
4.	Pain and suffering	10,000/-
5.	Loss of earning	6,500/-
6.	Extra nourishment	5,000/-
	Total	**1,58,271/-**

M.C.O.P.No.386 of 2019:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of parental consortium	1,60,000/-
2.	Funeral expenses	15,000/-
3.	Loss of estate	15,000/-
	Total	**1,90,000/-**

M.C.O.P.No.387 of 2019:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of parental consortium	1,60,000/-
2.	Funeral expenses	15,000/-
3.	Loss of estate	15,000/-
	Total	**1,90,000/-**

The above compensation was directed to be paid along with interest at

7.5% p.a.

5. The claimants, not being satisfied with the quantum of compensation fixed by the Tribunal, have filed the present appeals before this Court.

6. Heard Ms.Sithi Fathima Samt, learned counsel for appellants/claimants and Mr.T.K.Premkumar, learned counsel for second respondent insurance company.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. **C.M.A.No.209 of 2023 [M.C.O.P.No.385 of 2019]**

9.1. In this case, the claimant sustained fracture in the right hand coronoid process ulna, right foot 1 to 5 metatarsal. The claimant was admitted in the hospital on 10.03.2019 and was discharged on

15.03.2019. No disability was fixed by the Medical Board. The Tribunal had granted compensation of Rs.21,926/- under the head 'Medical Expenses' and lump sum compensation of Rs.25,000/- was granted. Accordingly, total compensation of Rs.46,926/- was granted by the Tribunal.

9.2. The claimant underwent treatment as an inpatient from 10.03.2019 to 15.03.2019 and a plate was also fixed. The claimant also proved that medical expenses to the tune of Rs.22,019/- was incurred. Hence, a sum of Rs.22,019/- is granted towards medical expenses. Instead of lump sum compensation of Rs.25,000/-, considering the nature of injuries suffered by the claimant and the period of treatment undergone, this Court is inclined to award compensation under the heads 'Pain and Suffering', 'Transportation', 'Loss of earnings', 'Extra Nourishment' and 'Attender Charges' and accordingly, a sum of Rs.10,000/-, Rs.10,000/-. Rs.7,500/-, Rs.5,000/- and Rs.5,000/- is awarded under these heads respectively.

9.3. In view of the same, this Court modifies the compensation as follows:

Sl. No.	*Compensation awarded under the head*	*Amount awarded by the Tribunal (in Rs.)*	*Amount awarded by this Court (in Rs.)*
1.	Medical expenses	21,926/-	22,019/-
2.	Lump sum compensation	25,000/-	-
3.	Pain and suffering		10,000/-
4.	Transportation		10,000/-
5.	Loss of earnings		7,500/-
6.	Extra nourishment		5,000/-
7.	Attender charges		5,000/-
	Total	**46,926/-**	**59,519/-**

10. **C.M.A.No.863 of 2023 [M.C.O.P.No.384 of 2019]**

10.1. In this case, the claimant sustained 3 parts fracture in the left proximal humerus. The claimant underwent treatment as an inpatient from 13.03.2019 to 16.03.2019 and a plate was fixed. The Medical Board has assessed the disability at 20%.

10.2. The Tribunal had adopted per percentage method and had fixed only a sum of Rs.3,000/- per percentage for the accident that took place in the year 2019. This Court is inclined to fix Rs.7,000/- per percentage and accordingly, the compensation under the head 'disability' works out to Rs.1,40,000/- [7000 x 20]. Further, the compensation awarded under the heads 'pain and suffering', 'loss of earnings' and 'extra nourishment' is on the lower side and hence, the same is enhanced to Rs.25,000/-, Rs.15,000/- and Rs.10,000/- respectively. This Court also finds that no sum has been granted towards attender charges and hence, a sum of Rs.7,500/- is granted under this head.

10.3. In view of the same, this Court modifies the compensation as follows:

Sl. No.	*Compensation awarded under the head*	*Amount awarded by the Tribunal (in Rs.)*	*Amount awarded by this Court (in Rs.)*
1.	Disability	60,000/-	1,40,000/-
2.	Medical expenses	61,771/-	61,771/-
3.	Transportation	15,000/-	15,000/-
4.	Pain and suffering	10,000/-	25,000/-
5.	Loss of earnings	6,500/-	15,000/-
6.	Extra nourishment	5,000/-	10,000/-
7.	Attender charges	-	7,500/-
	Total	**1,58,271/-**	**2,74,271/-**

11. **C.M.A.No.394 of 2023 [M.C.O.P.No.386 of 2019]**

11.1. The claimants are the son and daughters of the deceased Kaveri. The claimants had intimated the age of the deceased as 48 years. There was absolutely no material available before the Tribunal to determine the age of the deceased. In any case, the age of the deceased could not have been 48 years since the age of the eldest daughter at the time of filing the claim petition was 44 years. Therefore, obviously the age of the deceased was much higher than what was claimed in the claim petition. That apart, there is absolutely no material to show that the claimants were in any manner dependant on the income of the deceased.

11.2. Learned counsel for appellants brought to the notice of this Court the judgment of the Apex Court in ***National Insurance Company Limited v. Birender and Ors. [Civil Appeal Nos.242-243 of 2020, dated 13.01.2020].*** Learned counsel specifically relied upon paragraph Nos.14 and 15 of the said judgment, which are extracted hereunder:

> "14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Majuri Bera (supra), the Court observed thus:-
>
> > "9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that

where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. …..The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the

> deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

11.3. Learned counsel submitted that the Tribunal had assumed that the son and daughters were living away and therefore, they are not dependant on the deceased. It was, therefore, contended that the Tribunal ought to have calculated the compensation under the head 'loss of dependency'.

11.4. In the first instance, there is absolutely no proof for the age of the deceased and in this case, the deceased must have been aged more than 65 years. It is true that the Apex Court has held that compensation also constitutes a part of the estate of the deceased and that even if the legal representatives are not purely dependant on the deceased, the Tribunal is duty bound to look into the evidence and see if the dependents were dependant on the earning of the deceased to sustain themselves. In other words, there is no legal presumption that just because the dependents are major and living elsewhere, they can never be dependant on the income of the deceased. A case may arise where the deceased has sufficient income through earnings or by virtue of her financial position and she was taking care of the dependents, who are living somewhere and who are also sustaining themselves with a meagre income. In such cases, the dependents can always establish that they were dependant on the income or the contribution made by the deceased. In such cases, the Court can always fix a separate compensation under the head 'loss of dependency'/'loss of income'. In the absence of any such material, a Court cannot assume the dependency and fix the compensation. This is more so in the present case since the age of the deceased itself is under controversy and going by the age of the dependents, the deceased would not have been less than 65 to 70 years at the time of her demise.

11.5. In view of the above, this Court is not inclined to interfere with the finding of the Tribunal to the effect that the claimants are not entitled for compensation under the head 'loss of dependency'. However, this Court is inclined to enhance the compensation under the head 'loss of estate' to Rs.2,00,000/- [50000 x 4].

11.6. In view of the same, this Court modifies the compensation as follows:

Sl. No.	***Compensation awarded under the head***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Loss of parental consortium	1,60,000/-	1,60,000/-
2.	Funeral expenses	15,000/-	15,000/-

Sl. No.	*Compensation awarded under the head*	*Amount awarded by the Tribunal (in Rs.)*	*Amount awarded by this Court (in Rs.)*
3.	Loss of estate	15,000/-	2,00,000/-
	Total	**1,90,000/-**	**3,75,000/-**

12. **C.M.A.No.1442 of 2024 [M.C.O.P.No.387 of 2019]**

12.1. The claimants are the son and daughters of the deceased Parameshwari. The claimants had intimated the age of the deceased as 49 years. There was absolutely no material available before the Tribunal to determine the age of the deceased. In any case, the age of the deceased could not have been 49 years since the age of the eldest daughter at the time of filing the claim petition was 40 years. Therefore, obviously the age of the deceased was much higher than what was claimed in the claim petition. That apart, there is absolutely no material to show that the claimants were in any manner dependant on the income of the deceased.

12.2. In support of her contention, learned counsel for appellants brought to the notice of this Court the judgment of the Apex Court in ***National Insurance Company Limited,*** referred to supra.

12.3. Learned counsel submitted that the Tribunal had assumed that the son and daughters were living away and therefore, they are not dependant on the deceased. It was, therefore, contended that the Tribunal ought to have calculated the compensation under the head 'loss of dependency'.

12.4. In the first instance, there is absolutely no proof for the age of the deceased and in this case, the deceased must have been aged more than 65 years. It is true that the Apex Court has held that compensation also constitutes a part of the estate of the deceased and that even if the legal representatives are not purely dependant on the deceased, the Tribunal is duty bound to look into the evidence and see if the dependents were dependant on the earning of the deceased to sustain themselves. In other words, there is no legal presumption that just because the dependents are major and living elsewhere, they can never be dependant on the income of the deceased. A case may arise whether the deceased has sufficient income through earnings or by virtue of her financial position and she is taking care of the dependents, who are living somewhere and who are also sustaining themselves with a meagre income. In such cases, the dependents can always establish that they were dependant on the income or the contribution made by the deceased. In such cases, the Court can always fix a separate compensation under the head 'loss of dependency'/'loss of income'. In the absence of any such material, a Court cannot assume the dependency and fix the compensation. This is more so in the present case since the age of the deceased itself is under controversy and going by the age of the dependents, the deceased would not have been less than 65 to 70 years at the time of her demise.

12.5. In view of the above, this Court is inclined to interfere with the finding of the Tribunal to the effect that the claimants are not entitled for compensation under the head 'loss of dependency'. However, this Court is inclined to enhance the compensation under the head 'loss of estate' to Rs.2,00,000/- [50000 x 4].

12.6. In the instant case, the eldest daughter of the deceased *viz.,* Sasikala died and hence, her legal representatives were brought on record and they are the son-in-law and the granddaughter of the deceased Sasikala. The son-in-law will not be entitled to any compensation that has been granted in the name of the deceased Sasikala and the entire compensation will go in favour of the granddaughter.

12.7. In view of the same, this Court modifies the compensation as follows:

Sl. No.	***Compensation awarded under the head***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Loss of parental consortium	1,60,000/-	1,60,000/-
2.	Funeral expenses	15,000/-	15,000/-
3.	Loss of estate	15,000/-	2,00,000/-
	Total	**1,90,000/-**	**3,75,000/-**

13. Accordingly, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	***C.M.A. Nos. & M.C.O.P.Nos.***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***	***Enhanced by***
1.	C.M.A.No.209 of 2023 [M.C.O.P.No.385 of 2019]	46,926/-	59,519/-	12,593/-
2.	C.M.A.No.394 of 2023 [M.C.O.P.No.386 of 2019]	1,90,000/-	3,75,000/-	1,85,000/-
3.	C.M.A.No.863 of 2023 [M.C.O.P.No.384 of 2019]	1,58,271/-	2,74,271/-	1,16,000/-
4.	C.M.A.No.1442 of 2024 [M.C.O.P.No.387 of 2019]	1,90,000/-	3,75,000/-	1,85,000/-

14. The second respondent insurance company is directed to

deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit, it will be open to the claimants to withdraw their respective share on due application. Insofar as the enhanced compensation is concerned, the appellants/claimants in C.M.A.No.1442 of 2024 will not be entitled for interest for the period of

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delay of 396 days as was ordered by this Court in C.M.P.No.24511 of 2023 in C.M.A.Sr.No.95502 of 2023 dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants.

In the result, these Civil Miscellaneous Appeals are partly allowed. No costs.

01.07.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To

The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

Civil Miscellaneous Appeal Nos.209, 394 & 863 of 2023 and 1442 of 2024