



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2259 of 2023 & CMA No.1775 of 2024
and CMP No.14078 of 2024

CMA No.2259 of 2023

Basheeruddin

..Appellant

.VS.

1.Nazinee

2.K.Venkatesan

3.The Manager,
United India Insurance Co., Ltd.,
No.134, Silingi Building,
4th Floor, Greams Road,
Chennai – 600 006.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 27.02.2023, passed in MCOP No.6255 of 2017 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Ms.A.B.Fathima Sulthana

For Respondents : Mr.P.Sankaranarayanan for R3



CMA No.1775 of 2024

The Manager,
United India Insurance Co., Ltd.,
No.134, Silingi Building,
4th Floor, Greams Road,
Chennai – 600 006.

..Appellant

.VS.

1.Nazinee

2.K.Venkatesan

3.Basheeruddin

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the dated 27.02.2023, passed in MCOP No.6255 of 2017 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.N.M.Elumalai for R1
Ms.A.B.Fathima Sulthana for R3

JUDGMENT

The appeals arise against the award passed by the Tribunal in MCOP No.6255 of 2017, dated 27.02.2023, seeking for enhancement of compensation.



2.CMA No.2259 of 2023 has been filed by the father of the deceased on the ground that the Tribunal has not granted any compensation to the father.

3.CMA No.1775 of 2024 has been filed by the Insurance Company questioning the quantum of compensation fixed by the Tribunal.

4.The claimant in this case is the mother of the deceased. The case of the claimant is that the deceased was riding his two wheeler on 18.10.2017 at Madyravoyal bypass bridge and at about 23.50 hours, the offending vehicle which was a lorry which also came in the same direction was driven in a rash and negligent manner. This lorry was abruptly stopped, as a result of which, the deceased lost his control and he dashed on the rear side of the lorry. The deceased sustained grievous injuries and succumbed to the injuries. It is under these circumstances, the claim petition came to be filed by the mother seeking for payment of compensation.

5.The father of the deceased filed a counter affidavit in the claim petition and took a stand that he is also one of the legal heir of the deceased and he is entitled for 50% of the compensation amount.



WEB COPY

6.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 driver of the offending vehicle.

7.The Tribunal thereafter went into the question of compensation. The total compensation was fixed at Rs.34,43,000/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	33,66,000
2.	Loss of Consortium	44,000
3.	Loss of Estate	16,500
4.	Funeral Expenses	16,500
	Total	34,43,000

8.The above compensation was directed to be paid to the claimant with interest at the rate of 7.5% per annum.

9.The Tribunal took into consideration the judgment of the Apex Court in *Sarla Verma & others Vs. Delhi Transport Corporation & another*



reported in **2009 (2) TNMAC 1 SC Supreme Court** and came to a conclusion

that in the case of the bachelor, the mother alone must be taken to be a dependent unless the father is able to prove before the Tribunal whether he is also dependent on the earnings of the deceased. It must be kept in mind that the claimant and the 3rd respondent before the Tribunal were separated and the son was taken care by the claimant. In view of the same, the Tribunal held that the mother of the deceased alone is entitled for the compensation.

10.The 3rd respondent who is the appellant in CMA No.2259 of 2023 has filed the appeal on the ground that he is entitled for 50% of the compensation amount. The Insurance Company has filed the appeal questioning the quantum of compensation.

11.Heard Ms.A.B.Fathima Sulthana, learned counsel appearing on behalf of the appellant in CMA No.2259 of 2023 and Mr.P.Sankaranarayanan, learned counsel appearing on behalf of the appellant in CMA No.1775 of 2023, P.Sankaranarayanan, learned counsel appearing on behalf of the 3rd respondent in CMA No.2259 of 2023, Mr.N.M.Elumalai, learned counsel appearing on behalf of the 1st respondent and Ms.A.B.Fathima Sulthana,



WEB CDM

learned counsel appearing on behalf of the 3rd respondent in CMA No.1775 of 2023.

12. When the matter was taken up for hearing, the learned counsel for the appellant Insurance Company and the learned counsel for the claimant submitted that both the parties have reached a settlement and that the claimant is willing to receive a total compensation of Rs.31,93,000/- by giving up a sum of Rs.2,50,000/-. In the light of this agreement between the Insurance Company and the claimant, there is no need for this Court to go into the issue of quantum of compensation and it will suffice to fix the total compensation at Rs.31,93,000/-.

13. Insofar as the appeal filed by the 3rd respondent in the claim petition in CMA No.2259 of 2023, it was contended that the appellant was dependent on the income of the claimant and he is now aged more than 60 years and the father cannot be left high and dry without payment of any compensation. Therefore, it was contended that a portion of the compensation must be paid to the father of the deceased.



WEB COPY

14. In order to appreciate the stand taken by the appellant, it is necessary to look into the counter affidavit that was filed by the appellant/3rd respondent and also the proof affidavit. Both in the counter as well as in the proof affidavit, there is not a single word that the appellant/3rd respondent was not earning any income and that he was dependant on the income of the deceased. In view of the same, merely on the *ipse dixit* of the learned counsel for the appellant/3rd respondent, this Court cannot assume that the appellant/3rd respondent is jobless and is dependant on the income of the deceased.

15. The Apex Court in the judgment in **Sarla Verma** referred *supra* has made it clear that subject to the evidence to the contrary, the father is likely to have his own income and he will not be considered as a dependant and mother alone will be considered as a dependant. Therefore, even if the deceased who is a bachelor is survived by his parents, only his mother will be considered to be a dependant and 50% will be deducted towards the personal expenditure of the deceased.

16. In the instant case, the father who is the appellant in CMA No.2259 of 2023 has not even pleaded that he is jobless and that he was dependant on



the income of the deceased. Therefore, in the absence of any evidence to the contrary, the mother alone can be taken to be a dependant of the deceased.

17.The learned counsel for the appellant submitted that the appellant will be able to produce some evidence at this stage to establish that he is jobless and he was dependent on the income of the deceased. In the considered view of this Court, if any additional evidence is to be considered under Order XLI Rule 27 of C.P.C., the requirements under the said provision must be satisfied. The appellant/3rd respondent was duty bound to establish before the Tribunal that he was jobless and that he was dependant on the income of the deceased. If the said fact had not even been pleaded and proved, the appellant cannot be allowed to improve his case in this appeal and that will not come within the scope of Order XLI Rule 27 of C.P.C.

18.In the light of the above discussion, this Court does not find any illegality in the finding of the Tribunal to the effect that the father of the deceased is not entitled for any compensation.



WEB COPY

19. In the result, CMA No.2259 of 2023 stands dismissed. CMA No.1775 of 2024 stands disposed of in terms of the agreement between the Insurance Company and the claimant to the extent that the claimant will receive a total compensation of Rs.31,93,000/- along with interest at the rate of 7.5% per annum. On such deposit, the claimant will be entitled to withdraw the amount. No Costs. Consequently, connected miscellaneous petition is closed.

10.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

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



WEB COPY



N. ANAND VENKATESH., J

SSR

CMA No.2259 of 2023 & CMA No.1775 of 2024
and CMP No.14078 of 2024

10.07.2024