



WEB COPY



C.M.A.Nos.2671 and 2291 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2671 and 2291 of 2017

And

C.M.P.No.14829 of 2017

The New India Insurance Co. Ltd.,
No.45, 2nd Line Beach, Moore Street,
Chennai – 600 001. ... Appellant in C.M.A.2671/2017

1.J.Revathi
2.P.S.Jayaraman ... Appellants in C.M.A.2291/2017

Vs.

1.J.Revathi
2.P.S.Jayaraman
3.P.Thilak Kumar

(The 3rd respondent herein
was set exparte before the
Lower Court) ... Respondents in C.M.A.2671/2017

1.P.Thilak Kumar

2.The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach,
Moore Street,
Chennai – 1. ... Respondents in C.M.A.2291/2017

Prayer in C.M.A.No.2671 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor



C.M.A.Nos.2671 and 2291 of 2017

Vehicles Act, 1988, to set aside the judgment and decree dated 27.01.2017 made in M.C.O.P.No.2199 of 2011 on the file of the Motor Accidents Claims Tribunal (I Special Judge, Court of Small Causes) at Chennai and be pleased to dismiss the said claim petition.

Prayer in C.M.A.No.2291 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the judgment and decree dated 27.01.2017 in M.C.O.P.No.2199 of 2011 on the file of the Motor Vehicle Accidents Claims Tribunal, Special Sub Court No.1 Judge, Small Causes Court, Chennai.

For Appellants : Mr.C.Ramesh Babu
in C.M.A.No.2671 of 2017

Mrs.Ramya Rao
in C.M.A.No.2291 of 2017

For Respondents : Mrs.Ramya Rao for R1
R2 – No Appearance
R3 – Exparte (vide in EB)
in C.M.A.No.2671 of 2017

R1 – NRN
Mr.C.Ramesh Babu for R2
in C.M.A.No.2291 of 2017

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the judgment and decree dated 27.01.2017 in M.C.O.P.No.2199 of 2011



C.M.A.Nos.2671 and 2291 of 2017

passed by the Motor Accident Claims Tribunal, Full Additional Charge of Special Sub Judge, No.1, to deal with MCOP Cases, Small Causes Court, Chennai.

2.The petitioners before the Motor Accident Claims Tribunal are the appellants in C.M.A.No.2291 of 2017 (hereinafter referred to as 'claimants'). The second respondent before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.2671 of 2017 (hereinafter referred to as 'Insurance Company').

3.The learned counsel appearing for the claimants submitted that on 06.12.2010 at about 19.15 hours, the deceased Mohanraj travelled as pillion rider in the motorcycle bearing Registration No.TN 02 AP 2977 from West to East in Poonamalle High Road which was driven in a rash and negligent manner and hit an unknown motorcycle, due to which, the deceased lost his life. Thereafter, the parents of the deceased filed claim petition claiming compensation of Rs.10 Lakhs and the Tribunal after adjudication arrived at a compensation of Rs.13,03,000/-, however, observed that the claimants are entitled to only 50% of the compensation since the rider of the motorcycle in



C.M.A.Nos.2671 and 2291 of 2017

which the deceased travelled, drove the vehicle in a rash and negligent manner and contributed to the accident and awarded only a sum of Rs.6,51,500/- as compensation to the claimants.

4.The learned counsel appearing for the claimants further submitted that the first respondent in C.M.A.No.2291 of 2017 is the owner of the motorcycle bearing Registration No.TN 02 AP 2977 and he is the eye witness, however, he was not examined before the Tribunal and he remained exparte. However, the Tribunal fastened 50% liability on the rider of the motorcycle in which the deceased travelled as pillion rider and awarded only 50% of the compensation arrived at as compensation to the claimants, which is not sustainable one and this Court may award reasonable compensation to the claimants.

5.The learned counsel appearing for the Insurance Company submitted that P.W.2 in his evidence has deposed that on 06.12.2010 at about 07.15 p.m., when he was proceeding nearby Vaanagaram Jesus Calls, the motorcycle bearing Registration No.TN 02 AP 2977 was going rashly and negligently in a distance of 10 feet before him and at



C.M.A.Nos.2671 and 2291 of 2017

that time a motorcycle, which number could not be identified, when passing on him and hit on the right side, due to which the motorcycle bearing Registration No.TN 02 AP 2977 grazed on the right side and the rider lost his control and fell down and the pillion rider sustained injuries and lost his conscious. Hence, the accident occurred due to the rash and negligent driving of the driver of the motorcycle, which number could not be identified and hence the claimants are not entitled to claim any compensation as against the Insurance Company.

6.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimants and perused the materials available on record.

7.The fact in the present case is not in dispute. Admittedly, the Insurance Company has not examined any witness and has not marked any documents before the Tribunal. The claimants have examined one eye witness as P.W.2 and P.W.2 in his evidence has deposed that on 06.12.2010 at about 07.15 p.m., when he was proceeding nearby Vaanagaram Jesus Calls, the motorcycle bearing Registration No.TN 02 AP 2977 was going rashly and negligently in a



C.M.A.Nos.2671 and 2291 of 2017

distance of 10 feet before him and at that time a motorcycle, which number could not be identified, when passing on him and hit on the right side, due to which the motorcycle bearing Registration No.TN 02 AP 2977 grazed on the right side and the rider lost his control and fell down and the pillion rider sustained injuries and lost his conscious.

8.The claimants in their claim petition have not arrayed the rider of the motorcycle, which number could not be identified as party. After considering all the factual aspects, the Tribunal fastened 50% liability on the rider of the motorcycle, which number could not be identified and 50% liability on the rider of the motorcycle which was insured with the Insurance Company. Such finding of the Tribunal warrants no interference.

9.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.10,53,000/- for loss of pecuniary benefits, Rs.2,00,000/- for loss of love and affection, Rs.25,000/- for loss of estate, Rs.25,000/- for funeral expenses and arrived at a total compensation of Rs.13,03,000/- and awarded 50% of the compensation i.e.,



C.M.A.Nos.2671 and 2291 of 2017

Rs.6,51,500/- to the claimants with interest at the rate of 7.5% p.a. from the date of numbering of the claim petition (28.06.2011) till the date of realization with costs.

10.The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident took place during the year 2010, however, the Tribunal fixed the notional monthly income of the deceased at Rs.6,500/-, which in the opinion of this Court is low and this Court fix the notional monthly income of the deceased as Rs.9,000/-. The Tribunal has awarded 50% future prospects, however, this Court is inclined to award 40% future prospects. The Tribunal has rightly deducted 1/2 of the amount towards personal expenses and has rightly adopted the multiplier 18. Hence, the amount awarded for loss of pecuniary benefits works out to Rs.13,60,800/- [$\text{Rs.9,000/-} \times 40\% = \text{Rs.3,600/-}$; $\text{Rs.9,000/-} + \text{Rs.3,600/-} = \text{Rs.12,600/-}$; $\text{Rs.12,600} \times 50\% = \text{Rs.6,300/-}$; $\text{Rs.12,600/-} - \text{Rs.6,300/-} = \text{Rs.6,300/-}$; $\text{Rs.6,300/-} \times 12 \times 18 = \text{Rs.13,60,800/-}$].

11.The amount awarded under the heads loss of love and



C.M.A.Nos.2671 and 2291 of 2017

affection, loss of estate and funeral expenses, in the opinion of this Court are high and this Court is inclined to reduce the amount awarded under the said heads. Accordingly, the amount awarded under the head loss of love and affection is reduced to Rs.80,000/- [each Rs.40,000/-] from Rs.2,00,000/-, the amount awarded under the head loss of estate is reduced to Rs.15,000/- from Rs.25,000/- and the amount awarded under the head funeral expenses is reduced to Rs.15,000/- from Rs.25,000/-. This Court is of the considered opinion that some amount have to be awarded under the head transportation charges. Accordingly, a sum of Rs.10,000/- is awarded under the head transportation charges.

12. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of pecuniary benefits	Rs.10,53,000/-	Rs.13,60,800/-
2.	Funeral Expenses	Rs. 25,000/-	Rs. 15,000/-
3.	Loss of love and affection	Rs. 2,00,000/-	Rs. 80,000/-
4.	Loss of estate	Rs. 25,000/-	Rs. 15,000/-
5.	Transportation charges	---	Rs. 10,000/-
	Total	Rs.13,03,000/-	Rs.14,80,800/-



C.M.A.Nos.2671 and 2291 of 2017

13.The claimants are entitled to 50% of the total compensation

WEB COPY

i.e., Rs.7,40,400/- [50% of Rs.14,80,800/-] along with interest at the rate of 7.5% p.a. from the date of numbering of the claim petition (28.06.2011) till the date of realization.

14.The civil miscellaneous appeal filed by the Insurance Company is dismissed and the civil miscellaneous appeal filed by the claimants is partly allowed. The judgment and decree dated 27.01.2017 in M.C.O.P.No.2199 of 2011 passed by the Motor Accident Claims Tribunal, Full Additional Charge of Special Sub Judge, No.1, to deal with MCOP Cases, Small Causes Court, Chennai, is modified to the above extent.

15.The Insurance Company/ appellant in C.M.A.No.2671 of 2017 is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/ appellants in C.M.A.No.2291 of 2017 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already



C.M.A.Nos.2671 and 2291 of 2017

withdrawn, if any, on making proper and necessary application before

WEB COPY

the Tribunal. The claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the claimants/ appellants in C.M.A.No.2291 of 2017.

16.C.M.A.No.2671 of 2017 is dismissed and C.M.A.No.2291 of 2017 is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2024

pri

Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal/
Special Sub Court No.1,
Small Causes Court, Chennai.

10/11



WEB COPY



C.M.A.Nos.2671 and 2291 of 2017

M.DHANDAPANI,J.
pri

C.M.A.Nos.2671 and 2291 of 2017
And
C.M.P.No.14829 of 2017

08.11.2024