



C.M.A.(MD) No.1018 & 1019 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CMA(MD)Nos.1018 & 1019 of 2024
and
CMP(MD)Nos.10540 & 10542 of 2024

The Deputy Manager,
United India Insurance Company Ltd.,
TP Claims HUB,
7A, West Veli Street,
Madurai.

... Appellant in both C.M.As

Vs.

1.Minor V.Vanisri
2.Minor V.Seemsri
3.Minor V.Eswarapandi
4.P.Muniyandi

... Respondents in
C.M.A.(MD)No.1018 of 2024

[Minor petitioners 1 to 3 are represented through their Guardian/next friend grandmother Tmt.Meena]

1.Minor V.Vanisri
2.Minor V.Seemsri
3.Minor V.Eswarapandi
4.K.Meena

... Respondents in
C.M.A.(MD)No.1019 of 2024

[Minor petitioners 1 to 3 are represented through their Guardian/next



C.M.A.(MD) No.1018 & 1019 of 2024

friend grandmother Tmt.Meena]
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Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Award passed by the Motor Accidents Claims Tribunal/VI-Additional District Judge, Madurai, in a common order dated 30.10.2023 in M.C.O.P.Nos.86 & 87 of 2020.

In both C.M.A.s.

For Appellant : Mr.A.Shajahan

For Respondents : Mr.V.Sakthivel

COMMON JUDGMENT

This instant Civil Miscellaneous Appeals have been filed by the Insurance Company challenging the compensations awarded by the Motor Accidents Claims Tribunal/VI-Additional District Judge, Madurai *vide* its common Judgment and Decree dated 30.10.2023 passed in M.C.O.P.Nos. 86 & 87 of 2020.

2. The respondents 1 to 4/claimants had filed two separate claim petitions in M.C.O.P.Nos.86 & 87 of 2020, one for the death of their father and the other for the death of their mother. M.C.O.P.No.86 of 2020



C.M.A.(MD) No.1018 & 1019 of 2024

[C.M.A.(MD)No.1019 of 2024] was filed for the death of the father of the claimants 1 to 3 and son of the 4th claimant. M.C.O.P.No.87 of 2020 [C.M.A.(MD)No.1018 of 2024] was filed for the death of the claimants' mother.

3. In the claim petitions, the claimants stated that on 11.12.2019, at about 10.15 a.m., while their parents were travelling in their two-wheeler, the Tipper Lorry bearing Reg.No.TN-67-AH-2471 insured with the appellant came from the opposite direction in a rash and negligent manner without adhering to the traffic rules and dashed against the two-wheeler, which resulted in fatal injuries to their parents.

4. The owner of the Tipper lorry remained *ex parte* before the Tribunal.

5. The appellant insurance company filed a counter to the claim petition stating that the accident took place only due to the negligence of the rider of the two-wheeler and that in any case, the compensation awarded is excessive.



C.M.A.(MD) No.1018 & 1019 of 2024

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6. Before the Tribunal, the claimants examined PW1 to PW3 besides marking Ex.P1 to Ex.P27. The appellant insurance company neither examined any witness nor marked any documents.

7. The Tribunal, after taking into consideration the oral and documentary evidences, held that the accident took place due to the negligence of the driver of the Tipper lorry and awarded compensation of Rs.41,03,000/- for the death of the father of the claimants 1 to 3 and awarded a sum of Rs.29,17,000/- for the death of the mother of the claimants.

8. The learned counsel for the appellant/claimant submitted that the rough sketch would show that the accident took place only due to the negligence of the rider of the two-wheeler and the Tribunal erroneously fixed the negligence on the driver of the insured vehicle; that in any case, the postmortem certificate would reveal that the deceased sustained head injury which suggest that the deceased did not wear helmet and hence contributory negligence ought to have been fixed by the Tribunal; and that



C.M.A.(MD) No.1018 & 1019 of 2024

WEB COPY

the notional income fixed by the Tribunal for both the deceased was excessive and prayed for deduction of compensation.

9. The learned counsel for the claimants, per contra, submitted that the evidence adduced on the side of the claimants would show that the finding of the Tribunal fixing the liability on the driver of the insured vehicle cannot be faulted; that the claimants have proved the avocation of both the deceased through documentary evidence; that in any case, the compensation awarded by the Tribunal is just and reasonable and no interference is called for and prayed for the dismissal of these appeals.

10. The only questions involved in the instant appeal are as follows:

(i) Whether the finding of the Tribunal holding the driver of the insured vehicle guilty of negligence is in accordance with law ?

(ii) Whether the compensation awarded by the Tribunal is just and reasonable?.

11. As regards the first question, the claimants had examined the eyewitnesses PW2 and had marked Ex.P1-FIR. The rough sketch



C.M.A.(MD) No.1018 & 1019 of 2024

produced on the side of the appellant herein also corroborates the evidence of PW2. The evidence discloses that the two-wheeler proceeded from north to south, the insured offending vehicle proceeded from south to north and the accident took place on the eastern side of the road, thereby suggesting the two-wheeler was on the correct side of the road and the offending vehicle had gone on the wrong side. Therefore, the findings of the Tribunal holding that the driver of the insured vehicle had caused the accident by driving it in a rash and negligent manner is in accordance with law. Thus the first question is answered accordingly.

12. As regards the submission that since the deceased suffered head injuries, it has to be presumed that they did not wear helmet, this Court is of the view that such a presumption cannot be made in the absence of any evidence. Further, PW2 in the cross-examination had deposed that both the deceased were wearing helmet at the time of accident.

13. As regards the compensation, it is seen that the claimants had marked Ex.P6 in MCOP.86/2020 (CMA(MD)No.1018/2024) to prove the avocation of the father of the claimants 1 to 3. Ex.P7 is receipt for



C.M.A.(MD) No.1018 & 1019 of 2024

payment of trade licence fees for running a flower shop at Veerapandi Town Panchayat, Theni District. That apart, the claimants had also marked Ex.P7 to show that the deceased was paying the premium of Rs. 3000/- half-yearly and Rs.1,400 quarterly for two insurance policies with the Life Insurance Corporation of India. The above would show that the deceased was earning substantially. However, there is no evidence to prove the exact income earned by the deceased Velmurugan.

14. Considering the fact that the deceased was running the flower shop and was capable of paying substantial premium for LIC policies, the year of accident and his age, this Court is of the view that it would be just and reasonable to fix his notional income at Rs.18000/- instead of Rs. 20,000/- fixed by the Tribunal. The deceased was aged 33 years at the time of accident and the multiplier applicable is 16. Considering the number of dependents, 1/4th has to be deducted towards his personal expenses. Hence, by adding 40% towards future prospects, the compensation under the head Loss of Income has to be fixed as under:

Loss of Income:

[Age of the deceased is 33 years]

Notional monthly income : Rs.18,000/-



C.M.A.(MD) No.1018 & 1019 of 2024

WEB COPY

Add:Future Prospects at 40%
[18,000*40/100] : Rs.7,200/-

Rs.25,200 /-

Less: Personal Expenses at 1/4th
[25,200 x 1/4] : Rs. 6,300/-

Rs. 18,900/-

Annual contribution to the family
[Rs.18,900/- x 12] : Rs.2,26,800/-

Multiplier - 16 [2,26,800 x 16] : **Rs.36,28,800 /-**

15. The compensation under other heads is just and reasonable except for compensation under the head Loss of Love and Affection. Since there are four claimants, the compensation under the head Loss of Love and Affection has to be enhanced to Rs.1,76,000/- (Rs. 44,000x4=1,76,000/-). Thus the modified compensation is as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal Rs.</i>	<i>Amount awarded by this Court Rs.</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	40,32,000/-	36,28,800/-	Reduced
2	Funeral expenses	15,000/-	15,000/-	Confirmed
3	Loss of Estate	15,000/-	15,000/-	Confirmed
4	Loss of Love and affection	40,000/-	1,76,000/-	Enhanced
5	Transportation Charges	1,000/-	1,000/-	Confirmed



C.M.A.(MD) No.1018 & 1019 of 2024

Total	Rs.41,03,000/-	Rs.38,35,800/-	Reduced by Rs.2,66,200 /-
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16. As regards the compensation for the death of the mother of the claimants which is the subject matter of the claim made in MCOP.No. 87/2020 (CMA(MD)No.1019/2024), this Court is of the view that the claimants had proved that the deceased was working and had also taken a loan for pursuing her avocation. The loan application would show that she was also doing flower business. However, considering her age, avocation and the year of the accident, this Court is of the view that it is just and reasonable to fix the notional monthly income at Rs.13,000/- instead of Rs.15,000/- fixed by the Tribunal. The deceased was aged 29 years at the time of accident and the multiplier applicable is 17. Considering the number of dependents, 1/3rd has to be deducted towards her personal expenses. Hence, by adding 40% towards future prospects, the compensation under the head Loss of Income has to be fixed as under:

Loss of Income:

[Age of the deceased is 29 years]

Notional monthly income : Rs.13,000/-

Add:Future Prospects at 40%



WEB COPY



C.M.A.(MD) No.1018 & 1019 of 2024

[13,000*40/100] : Rs.5,200/-

Rs.18,200/-

Less: Personal Expenses at 1/3rd
[18,200 x 1/3] : Rs. 6,000/-

Rs. 12,200/-

Annual contribution to the family
[Rs.12,200/- x 12] : Rs.1,46,400/-

Multiplier - 17 [1,46,400 x 17] : **Rs.24,88,800 /-**

17. The compensation under the other heads is confirmed except the compensation under the head loss of love and affection which has to be enhanced to Rs.1,32,000/- (for the 3 claimants Rs.44,000 x 3 = 1,32,000/-). Hence, the award of compensation has modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal Rs.</i>	<i>Amount awarded by this Court Rs.</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	28,56,000/-	24,88,800/-	Reduced
2	Funeral expenses	15,000/-	15,000/-	Confirmed
3	Loss of Estate	15,000/-	15,000/-	Confirmed
4	Loss of Love and affection	30,000/-	1,32,000/-	Enhanced
5	Transportation Charges	1,000/-	1,000/-	Confirmed
Total		Rs.29,17,000/-	Rs.26,51,800/-	Reduced by Rs. 2,65,200 /-



C.M.A.(MD) No.1018 & 1019 of 2024

WEB COPY

18. The appellant insurance company is directed to deposit the modified compensation amount of Rs.38,35,800/- and Rs.26,51,800/- in these two appeals, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default, if any) and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a copy of this order.

19. On such deposit since the claimants are minors, their share shall be invested in an interest-bearing fixed deposit in any one of the nationalized banks and the guardian (4th respondent in CMA(MD)No. 1019 of 2024) is permitted to withdraw interest once in three months, to be used for the welfare of the minor children until they attain majority.

20. As regards CMA.(MD)No.1019/2024, the 4th respondent, namely, the mother of the deceased, shall be entitled to Rs.5,00,000/- and she shall be permitted to withdraw the said amount together with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.



C.M.A.(MD) No.1018 & 1019 of 2024

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21. The appellant insurance company is at liberty to withdraw the excess amount already deposited, if any, by filing appropriate application before the Tribunal.

22. In the result, these two Civil Miscellaneous Appeals are partly allowed. No Costs.

28.08.2024

Index: Yes/ No
NCC: Yes / No

PJL

To
The Motor Accidents Claim Tribunal/
VI-Additional District Judge,
Madurai.



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C.M.A.(MD) No.1018 & 1019 of 2024



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C.M.A.(MD) No.1018 & 1019 of 2024

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C.M.A.(MD)No.1018 & 1019 of 2024

28.08.2024