



C.M.A(MD)Nos.733 to 735 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)Nos.733 to 735 of 2019

and

C.M.P.(MD).Nos.9405, 9407 and 9408 of 2019

C.M.A(MD)No.733 of 2019

The Branch Manager,
M/s.National Insurance Company Limited,
Branch Office-2, First Floor,
Hotel President,
8A, Yanaikkal Street,
Madurai.

: Appellant/2nd Respondent

vs.

1. T.Malathi

2. T.Vishakan

(Minor 2nd respondent declared as major and guardianship of his mother (R1) is discharged vide court order dated 16.03.2022 made in CMP(MD)Nos.2172 & 2177 of 2022 in CMA(MD)No.733 of 2019)

3. Minor T.Miruthula

T.C.Arunachalam (died)

(R3 is represented through her

1/20



C.M.A(MD)Nos.733 to 735 of 2019

mother and guardian 1st respondent) : Respondents 1 to 3/Petitioners

4. S.T.Rajan : 4th Respondent/1st Respondent

5. A.Kannan : 5th Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Karur, dated 22.03.2018 in MCOP.No.2 of 2017.

For Appellant : Mr.J.S.Murali

For R1 to R3 : Mr.P.Gunasekaran

For R4 : No appearance

C.M.A(MD)No.734 of 2019

The Branch Manager,
M/s.National Insurance Company Limited,
Branch Office-2, First Floor,
Hotel President,
8A, Yanaikkal Street,
Madurai.

: Appellant/2nd Respondent

vs.

1. Rathinam : 1st Respondent/Petitioner

2. S.T.Rajan : 2nd Respondent/1st Respondent

3. A.Kannan : 3rd Respondent/3rd Respondent



C.M.A(MD)Nos.733 to 735 of 2019

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Karur, dated 22.03.2018 in MCOP.No.4 of 2017.

For Appellant : Mr.J.S.Murali

For R1 & R2 : No appearance

C.M.A(MD)No.735 of 2019:

The Branch Manager,
M/s.National Insurance Company Limited,
Branch Office-2, First Floor,
Hotel President,
8A, Yanaikkal Street,
Madurai.

: Appellant/2nd Respondent

vs.

T.C.Arunachalam (Died)

1. A.Pandian

2. T.A.Mathivanan

3. Minor T.Vishakan

4. Minor T.Miruthula

(Minor respondents 3 & 4 are represented through their mother and guardian – T.Malathi

: Respondents 1 to 4/Petitioners

5. S.T.Rajan

: 4th Respondent/1st Respondent

3/20



C.M.A(MD)Nos.733 to 735 of 2019

6. A.Kannan

: 5th Respondent/3rd Respondent

WEB COPY

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Karur, dated 22.03.2018 in MCOP.No.5 of 2017.

For Appellant : Mr.J.S.Murali

For R3, R4 & R5 : No appearance

COMMON JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Being aggrieved over the common award passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Karur, in M.C.O.P.Nos.2, 4 and 5 of 2017, dated 22.03.2018, the insurance company has filed the present appeals.

2. The appellant insurance company is the 2nd respondent in the claim petitions and the respondents 1 to 3 in CMA.733/19 are claimants in MCOP.No.2/17, 1st respondent in CMA.734/19 is the claimant in



C.M.A(MD)Nos.733 to 735 of 2019

MCOP.No.4/17 and respondents 1 to 4 in CMA.735/19 are claimants in MCOP.No.5/17. The respondent 4, 2 and 5 respectively in CMA.Nos.733 to 735/17 is owner of the offending Tempo Van and respondent 5, 3 and 6 respectively in CMA.Nos.733 to 735/19 is the driver of the said offending vehicle. The respondents/claimants filed claim petitions in M.C.O.P.Nos. 2, 4 and 5 of 2017 claiming a sum of Rs.50,00,000/-, 5,00,000/- and 15,00,000/- respectively, as compensation for the death of one Tamilselvan, and the injuries caused to the claimant/Rathinam and for the death of one Chellammal respectively, in the accident that occurred on 14.10.2010. By a common judgment and decree dated 22.03.2018, the Tribunal awarded a sum of Rs.30,10,000/-, 1,51,500/- and Rs.7,60,000/- respectively in M.C.O.P.Nos.2, 4 and 5 of 2017 as compensation.

3. Facts of the Case:-

According to the respondents/claimants, on 14.10.2010 about 12.15 p.m., the deceased Tamilselvan who is husband of the 1st respondent in CMA.733/19, and the mother of Tamilselvan namely, Chellammal along with their house servant one Rathinam were proceeding from Karur to Madurai in a Maruthi Car bearing registration



C.M.A(MD)Nos.733 to 735 of 2019

No.TN-09-H-2709 for taking eye treatment for Chellammal. While the Car was driven by Tamilselvan on Madurai NH-7 Road opposite to Annamalaiyar Millmedu Chettinadu Mess, a Tempo Van bearing registration No.TNJ-59-T-2286 driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the Maruthi Car and due to the said impact, Tamilselvan and Chellammal sustained fatal injuries and died on the spot. Rathinam sustained grievous injuries. The FIR was registered against the driver of the Tempo Van in Crime No.341/2010 under Sections 279, 337 and 304A IPC against the driver of the Tempo Van. The accident occurred only due to the rash and negligent driving by the driver of the Tempo Van insured with the appellant. Therefore, the respondents/claimants filed the claim petitions claiming compensation as stated above.

4. The appellant filed the counter statement denying the manner of accident contending that the accident did not occur due to the rash and negligent driving of the driver of the Tempo Van and it is the driver of the Maruthi Car who caused the accident. The appellant also disputed the quantum of compensation claimed under various heads and prayed for



C.M.A(MD)Nos.733 to 735 of 2019

dismissal of the claim petition.

WEB COPY

5. Before the Tribunal, a joint trial was held. The wife of deceased Tamilselvan namely, T.Malathi/1st respondent in CMA.733/19 examined herself as P.W.1; the injured claimant Rathinam/1st respondent in CMA. 734/19 examined himself as PW2; two Doctors were examined as PW3 and PW4 and 18 documents were marked as Exs.P1 to P18. The driver of the Tempo Van namely, Kannan was examined as RW1 and an Assistant from the appellant insurance company was examined as RW2 and Exs.R1 to R3 were marked on the side of the appellant.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the Tempo Van and directed the appellant to pay a sum of Rs.30,10,000/-, 1,51,500/- and Rs.7,60,000/- respectively in M.C.O.P.Nos.2, 4 and 5 of 2017 as compensation and the details are as follows:



C.M.A(MD)Nos.733 to 735 of 2019

MCOP.No.2 of 2017:-

Sl. No.	Heads	Amount in Rupees
1	Loss of Income	27,00,000/-
2	Loss of love and affection to 1 st petitioner	2,00,000/-
3	Loss of love and affection to 2 nd petitioner	50,000/-
4	Loss of love and affection to 3 rd petitioner	50,000
5	Funeral expenses	10,000
Total		30,10,000/-

MCOP.No.4 of 2017:-

Sl. No.	Heads	Amount in Rupees
1	Disability (20%)	50,000/-
2	As per Ex.P16	11,500/-
3	Loss of income	6,000/-
4	Nutrition	2,000/-
5	Transportation	2,000/-
6	Pain and suffering	80,000/-
Total		1,51,500/-



C.M.A(MD)Nos.733 to 735 of 2019

MCOP.No.5 of 2017:-

WEB COPY

Sl. No.	Heads	Amount in Rupees
1	Loss of Income	4,50,000/-
2	Loss of love and affection to 2 nd petitioner	1,00,000/-
3	Loss of love and affection to 3 rd petitioner	1,00,000/-
4	Loss of love and affection to 4 th petitioner	50,000
5	Loss of love and affection to 5 th petitioner	50,000
6	Funeral expenses	10,000
Total		7,60,000/-

Aggrieved over the same, the appellant filed these appeals questioning the negligence as well as quantum of compensation awarded by the Tribunal.

7. Submission of the learned counsel for the appellant:

The learned counsel for the appellant submitted that it is a head-on collision of two vehicles and the driver of the Tempo Van was examined who deposed that the driver of the Maruthi Car came in a rash and negligent manner. Hence, the Tribunal ought to have held that there was



C.M.A(MD)Nos.733 to 735 of 2019

contributory negligence by the drivers of the Maruthi Car as well as Tempo Van.

8. Submission of the learned counsel for the respondents/claimants:

Per contra, the learned counsel for the respondents/claimants submitted that the Tempo Van came in the wrong direction but the driver of the Maruthi Car drove the same in the right direction. According to the learned counsel for the insurance company, the Tempo Van was diverted into the lane meant for Car. However, there was no evidence adduced by the appellant to prove the factum of diversion. In the said circumstances, without any evidence, this Court has no jurisdiction to interfere with the finding of the Tribunal regarding negligence.

9. We have heard the learned counsel appearing for the appellant and the learned counsels appearing for the respondents and also perused all the materials available on record.



WEB COPY **10. Discussion on negligence**

It is the specific case of the claimants that the Maruthi Car was proceeding in the right direction. According to the appellant and RW1, he diverted the Tempo Van into the lane meant for Maruthi Car. To appreciate the said fact, this Court perused the evidence of both sides. Except RW1, there was no other evidence adduced to prove the said fact. In the said circumstances, this Court perused Exs.R1 and R2-Motor vehicle inspector's reports in respect of Tempo Van and Maruthi Car. This Court finds no merit in the contention of the appellant that contributory negligence should be fixed on both drivers of the vehicles. Hence, the finding of the Tribunal is confirmed.

11. Discussion on quantum

CMA.733/19:

(i) According to the learned counsel for the insurance company, to prove the income of the deceased Tamilselvan, Ex.P8 and P9-income tax returns of Tamilselvan for 2009-10 and PAN card of Tamilselvan were produced. From that, the income of the deceased comes only Rs.13,200/-

11/20



C.M.A(MD)Nos.733 to 735 of 2019

but the Tribunal has fixed Rs.20,000/- as monthly income which is more than the amount mentioned in the income tax returns. Further, when there are four dependents, the Tribunal ought to have deducted $1/4^{\text{th}}$ towards the personal expenses of the deceased instead of $1/3^{\text{rd}}$ as per and the age of the deceased was 42 years at the time of accident and the correct multiplier as per Sarla Verma's case is 14 instead of 15 adopted by the Tribunal. Hence, he seeks reduction on the quantum.

(ii) Per contra, learned counsel for the respondents/claimants submitted that the deceased was running a business and paid income tax and there would be a rise in his income every year and hence, fixation of monthly income at Rs.20,000/- by the Tribunal need not be interfered with.

(iii) This Court perused the income tax returns filed before the Tribunal and the income comes around Rs.13,600/-. However, considering the submission of the respondents/claimants that the deceased was successfully running his business, we fix a sum of Rs. 16,000/- as the monthly income of the deceased. After adding 40% future

12/20



C.M.A(MD)Nos.733 to 735 of 2019

prospects (Rs.6,400/-) and deducting 1/3rd towards personal expenses (Rs. 7,466/-) as per the judgment in **Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC)**, the income comes to Rs.14,934/-. After calculating annual income and applying 14 multiplier as per Sarla Verma's case, the loss of income comes to Rs.25,08,912/- (Rs.14,934x12x14). The award of Rs.2,00,000/- to the 1st respondent/claimant and Rs.50,000/- each to respondents 2 and 3/ claimants towards loss of love and affection is on the higher side and therefore, it is reduced to Rs.45,000/- each. The award of Rs.10,000/- towards funeral expenses is low and therefore, it is increased to Rs.25,000/-. There is no amount granted for loss of estate and transportation. This Court is inclined to award a sum of Rs.25,000/- under the said head.

12. Conclusion

In the light of the above said discussion, respondents/claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:



C.M.A(MD)Nos.733 to 735 of 2019

<i>Sl. No.</i>	<i>Compensation</i>	<i>Amount in Rupees</i>
1	Loss of Income	25,08,912/-
2	Loss of love and affection to 1 st petitioner	45,000/-
3	Loss of love and affection to 2 nd petitioner	45,000/-
4	Loss of love and affection to 3 rd petitioner	45,000/-
5	Funeral expenses	25,000/-
6	Loss of estate	25,000/-
7	Transportation	25,000
<i>Total</i>		<i>27,18,912/-</i>

12. Accordingly, **CMA(MD)No.733 of 2019** is partly allowed and the judgment and award passed by the Tribunal is reduced to **Rs.27,18,912 from Rs. 30,10,000/-** . The appellant is directed to deposit the award amount of Rs.27,18,912/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective shares with proportionate accrued interest and costs in the ratio apportioned by the Tribunal. The share of the 3rd respondent/minor shall be deposited in a Nationalised Bank till she attains majority. The interest accruing on such deposit is permitted to be withdrawn by the mother

14/20



C.M.A(MD)Nos.733 to 735 of 2019

minor/1st respondent herein once in three months directly from the Bank.

No costs.

13. Discussion on quantum

CMA.734/19:

(i) According to the learned counsel for the insurance company, the Tribunal has awarded exorbitant sum of Rs.80,000/- towards pain and suffering and it requires reduction. Except the said amount, he did not dispute the quantum awarded under other heads.

(ii) Per contra, learned counsel for the respondent/claimant submitted that the claimant sustained fracture of left ribs 3, 4 and 5 and right side head temporal bone and the Doctor has issued disability certificate certifying that he suffered 20% disability. Therefore, the Tribunal correctly awarded Rs.80,000/- for pain and suffering. The award under the heads nutrition, transportation and loss of income are on the lower side deceased. Therefore, the award of the Tribunal need not be interfered with.



C.M.A(MD)Nos.733 to 735 of 2019

WEB COPY

(iii) Considering the situs of injury and fracture, this Court finds force in the submission of the counsel for the respondent/claimant. Accordingly, the quantum of compensation at Rs.1,51,500/- awarded by the Tribunal is confirmed.

14. Conclusion

12. Accordingly, **CMA(MD)No.734 of 2019** is dismissed and the judgment and award passed by the Tribunal is confirmed. The appellant is directed to deposit the award amount of Rs.1,51,500/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same. No costs.

15. Discussion on quantum

CMA.735/19:

(i) According to the learned counsel for the insurance company, the Tribunal awarded Rs.1,00,000/-, Rs.1,00,000/-, Rs.50,000/- and

16/20



C.M.A(MD)Nos.733 to 735 of 2019

Rs.50,000/- respectively to the respondents 1 to 4/claimants towards loss of love and affection which is on the higher side. Hence, he seeks reduction of the said amount.

(ii) Per contra, learned counsel for the respondents/claimants submitted that the Tribunal considering the fact that two sons and two grandchildren lost the love and affection of the deceased, has correctly awarded compensation for loss of love and affection and therefore it need not be interefered with.

(iii) Going through the award, this Court finds force in the contention of the appellant. Accordingly, the compensation for love and affection is reduced to Rs.36,000/- each. Except the same, the award under other heads are confirmed.

16. Conclusion

In the light of the above said discussion, respondents/claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

17/20



C.M.A(MD)Nos.733 to 735 of 2019

WEB COPY

<i>Sl. No</i>	<i>Compensation</i>	<i>Amount in Rupees</i>
1	Loss of Income	4,50,000/-
2	Loss of love and affection to 2 nd respondent	36,000/-
3	Loss of love and affection to 3 rd respondent	36,000/-
4	Loss of love and affection to 4 th respondent	36,000/-
5	Loss of love and affection to 5 th respondent	36,000/-
6	Funeral expenses	10,000/-
<i>Total</i>		<i>6,04,000/-</i>

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the judgment and award passed by the Tribunal is **reduced to Rs.6,04,000 from Rs 7,60,000/-**The appellant is directed to deposit the award amount of Rs.6,04,000/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective shares with proportionate accrued interest and costs in the ratio apportioned by the Tribunal. The share of the respondents 3 and 4/minors

18/20



C.M.A(MD)Nos.733 to 735 of 2019

shall be deposited in a Nationalised Bank till they attain majority. The interest accruing on such deposit is permitted to be withdrawn by the mother minor once in three months directly from the Bank. No costs. Consequently, the connected civil miscellaneous petitions are closed.

(V.B.S.J.) (K.K.R.K.J.)
11.03.2024

Index :Yes / No
Neutral Citation :Yes / No
bala/sbn

To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Karur.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)Nos.733 to 735 of 2019

V.BHAVANI SUBBAROYAN, J.

and

K.K. RAMAKRISHNAN, J.

bala/sbn

COMMON JUDGMENT MADE IN

C.M.A(MD)Nos.733 to 735 of 2019

and

C.M.P.(MD).Nos.9405, 9407 and 9408 of 2019

DATED : 11.03.2024