IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1488 of 2015

and C.M.A.No.2797 of 2014

and M.P.No.1 of 2015

C.M.A.No.1488 of 2015

M/s.New India Assurance Co.Ltd.,
Motor Third Party Cell, 5th Floor
No.45, Moore Street
Chennai-600 001 ...Appellant/2nd Respondent

Vs

1.V.Chinna Ponnu
2.R.Venkatesan
3.V.Jothi
4.M/s.Runjith Water Suppliers
No.5, 3rd Dam Street
Veera Raghavapuram
Thiruverkadu
Chennai-77 ... Respondents/Petitioner 1 to 3
1st Respondent

C.M.A.No.2797 of 2014

1.V.Chinna Ponnu
2.R.Venkatesan
3.V.Jothi ..Appellants/Petitioners

Vs

1.M/s.Runjith Water Suppliers
No.5, 3rd Dam Street
Veera Raghavapuram
Thiruverkadu, Chennai-77
(Remained Ex-Parte before the Trial Court)

2.The New India Assurance Co.Ltd
Motor Third Party Cell, 5th Floor
No.45, Moore Street, Chennai-1 ..Respondents/Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree passed in M.C.O.P.No.5663 of 2012 on 23.04.2014 on the file of Motor Accident Claims Tribunal (II Judge) Small Causes Court, Chennai.

For appellant/Insurance Company : Mr.J.Chandran
in CMA No.1488/15
& Respondent in CMA 2797/14

For respondents/claimants : Mr.N.M.Muthurajan for R1 to R3
in CMA 1488/15 and
Appellant in CMA 2797 of 2014 R4- No appearance

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The New India Assurance Company filed C.M.A.No.1488 of 2015 challenging the compensation granted by the Tribunal. The claimants filed C.M.A.No.2797 of 2014 seeking enhancement of compensation.

2. It is a case of fatal accident. As per the claim petition filed before the Tribunal in M.C.O.P.No.5663 of 2012 by claimants viz., mother, father and sister of the deceased/Manikandan, it is stated that on 30.10.2012 at about 07.50 hours, while the deceased was riding Motor Cycle bearing Reg.No.TN-07-BR-4824 from Tharamani to Vijay Nagar along Tharamani 100 Feet Road, east to west direction, opposite to TCS Company, a Lorry bearing Reg.No.TN-20-BW-7903 driven in a rash and negligent manner came from behind and hit against the on going Motor Cycle. In the resultant accident, V.Manikandan fell down and suffered serious head injuries and died on the spot. The claimants claimed a compensation of Rs.27,00,000/- stating the deceased was 23 years old, working as Customer Support Associate in M/s.Thinksysq Solution Pvt.Ltd., Royapettah, Chennai.

3. In support of the claim, the mother of the deceased was examined as P.W.1; an eyewitness viz., E.Velu was examined as P.W.2 and the employer of the deceased viz., S.Padmanabhan was examined as P.W.3. Exhibits P.1 to P.12 were marked, the details of which are as follows:-

Ex.No.	Details
1	Copy of F.I.R. In Crime No.635/2012 registered at J3-Guindy Traffic Investigation.
2	Copy of driving licence of the deceased
3	Post Mortem certificate
4	Death Report
5	Copy of Charge sheet
6	Legal Heir Certificate
7	B.E.Course completion certificate
8	Appointment order of the deceased
9	Identity Card of the deceased
10	Copy of Family Card of the deceased
11	Copy of Identity Card of P.W.3
12	Copy of Appointment order of the deceased

On behalf of the Insurance Company, no witness was examined and no exhibit was marked before the Tribunal.

4. The Tribunal based on the available evidence before it, held that the accident occurred solely due to rash and negligent driving of the driver of the Runjith Water Suppliers, the vehicle owner and Insurance Company are liable to pay compensation. The Tribunal in paragraph 8 further held as under:-

> " It is not at all in dispute that the first respondent is the owner of the offending vehicle. It is the contention of the petitioner that the said vehicle was insured with the second respondent and also furnished the Policy Number as 71270031129100000437 and period of validy as 17-4-2012 to 16-4-2013 which covers the date of accident i.e., 30.10.2012. The 2nd respondent/Insurance Company in counter denied the existence of valid insurance policy and valid driving licence for the driver of the offending vehicle, but there is no supportive evidence. Since at the time of accident, the insurance was in subsistence, as owner and as insurer both the 1st and 2nd respondents are jointly and severally liable to pay compensation to the injured petitioner. As insurer of the 1st respondent's vehicle, the 2nd respondent is liable to pay the same and Point No.2 is answered accordingly."

On such finding, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Pecuniary loss is calculated as Rs.7234 x 12 x 18	Rs.15,62,544/-
2	Funeral expenses	Rs. 15,000/-
3	Loss of love and affection	Rs. 75,000/-
4	Loss of expectation of life	Rs. 1,00,000/-
	Grand Total	Rs. 17,52,544/-

5. The learned counsel for the appellant-Insurance Company submitted that he is not disputing as regards the liability aspect. The learned counsel, however argued that the Tribunal erred in granting Rs.1,00,000/- towards loss of expectation of life and so too the monthly income fixed at Rs.7,234/- without pay register.

6. The learned counsel appearing for claimants submitted that the compensation granted by the Tribunal is very meagre on the heads of loss of love and affection and pecuniary loss. He further submitted that the deceased was an Engineering Graduate and if he would have been alive, he will be getting Rs.32,000/- per month after the probation period. So stating, the learned counsel sought for enhancement of the compensation.

7. This court, carefully perused the award of the Tribunal and the submissions made on both sides before this court.

8. On going through the award, it is seen that based on the deposition of P.W.3, employer of the Thinksysq Solutions Private Limited, the deceased salary was fixed at Rs.7234/-. Further, while considering the age of the deceased that is 23 years, the Tribunal, relied on the decision reported in 2013 ACJ page 1441 [Vimal Kanwar and others Vs. Kishore Dan and others] and added 100% towards future prospects on the pecuniary loss. Further, the Tribunal deducted 50% from the monthly income as the deceased was a bachelor and thereby calculated the pecuniary loss as Rs.7234/- x 100 % x 12 x 18 =Rs.15,62,544/-. Even though the contention of the learned counsel for the appellant merit acceptance as regards the addition of 100% future prospects towards pecuniary loss, this court will not lost sight of fixing Rs.10,000/- per month as salary normally to a B.E.graduate. Hence, in the facts and circumstances of the case, we are of the view that the pecuniary loss fixed at Rs.15,62,544/- by the Tribunal, could at best, be confirmed without upsetting with any addition or deletion. Accordingly, the pecuniary loss fixed at Rs.15,62,544/- is confirmed.

9. As far as the contention of the learned counsel for the Insurance Company that the Tribunal erred in granting Rs.1,00,000/- towards loss of expectation of life is concerned, we subscribe the said argument as no sum could be granted towards loss of expectation of life. Accordingly, the sum of Rs.1,00,000/- granted towards loss of expectation of life is deleted.

10. On the other hand, considering the submission of learned counsel for the claimants that very very meagre amount of Rs.75,000/- only granted towards loss of love and affection to the family of the deceased, this court deems it fit to add Rs.25,000/- under the said head. Accordingly, the compensation granted under the head loss of love and affection is now enhanced to Rs.1,00,000/-. Thus, the compensation modified by this court is as under:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Pecuniary loss is calculted as Rs.7234 x 12 x 18	Rs.15,62,544/-	Rs.15,62,544/-
2	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
3	Loss of love and affection	Rs. 75,000/-	Rs. 1,00,000/-
4	Loss of expectation of life	Rs. 1,00,000/-	--
	Grand Total	Rs. 17,52,544/-	Rs.16,77,544/-

11. Accordingly, CMA.No.1488 of 2015 is partly allowed and C.M.A.No.2797 of 2014 is dismissed.

(i) The award fixed by the Tribunal at Rs.17,52,544/- is reduced to Rs.16,77,544/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) This court by order dated 07.08.2015 directed the appellant/Insurance Company to deposit entire award amount with accrued interest. This court further directed the claimants to withdraw 50% from the amount with accrued interest.

(iv) The appellant/Insurance Company is at liberty to withdraw the excess amount deposited by them. On the other hand, the claimants 1 and 2/being the parents of the deceased are entitled to get Rs.6,00,000/- each and the 3rd claimant/sister of the deceased is entitled to get Rs.4,77,544/- and they are permitted to withdraw the said amount along with accrued interest less the amount already withdrawn by them as per the order dated 07.08.2015.

(iv) There will be no order as to costs in this appeal.

(v) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The II Judge,
The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

+2cc to Mr.N.M.Muthurajan, Advocate sr.17454
+1cc to Mr.J.Chandran, Advocate sr.17515

C.M.A.No.1488 of 2015
and C.M.A.No.2797 of 2014

kk(CO)
srg(11/05/2016)