

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.9.2016

CORAM:

**THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.AUTHINATHAN**

**C.M.A. Nos.2398 and 2399 of 2016
and
C.M.P.Nos.16661 to 16663 of 2016**

General manager
ICICI Lombard General Insurance
Company Ltd.
Mumbai

... Appellant in both
CMAs

Vs.

1.Panneerselvam
2.Minor Dhileebhan
3.Minor Bhavithra
4.Santhoshkumar

... Respondents in
C.M.A.No.2398

1.Selvi @ Kalaiselvi
2.Radhika
3.Ramya
4.Ranjitha
5.Vasantharaja

... Respondents in
C.M.A.No.2399

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decrees, dated 22.9.2014 made in MCOP Nos.151 and 152 of 2012, on the file of Motor Accidents Claims Tribunal (Subordinate Judge), Chidambaram.

For Appellant : Mrs.R.Sree Vidhya

For Respondents :

COMMON JUDGMENT
(delivered by **S.MANIKUMAR, J.**)

Compensation of Rs.13,35,000/- and Rs.17,50,000/- with interest, at the rate of 7.5% per annum, from the date of claim till realisation awarded to the legal representatives of the deceased in MCOP Nos.152/2012 and 151/2012 respectively dated 22.9.2014 on the file of Motor Accident Claims Tribunal (Subordinate Judge), Chidambaram, is the only challenge by ICICI Lombard General Insurance Co. Ltd., the appellant herein on the grounds that the Tribunal has erred in deducting a lesser amount towards the personal and living expenses of the deceased, and the multiplicand in each case, is on the higher side.

2. In view of the restricted challenge, there is no need to advert to the aspect of negligence and liability.

3. Material on record discloses that in the accident, which occurred on 20.05.2012, two persons, namely P.Rajakumari and R.Rajaselvam died. Legal representatives of Rajakumari, filed MCOP No.151/2012 claiming compensation of Rs.40,00,000/-. Legal representatives of Rajaselvam, filed MCOP No.152/2012 claiming compensation of Rs.30,00,000/-. As facts leading and

evidence are common, Motor Accident Claims Tribunal (Sub Court), Chidambaram, tried both the claim petitions together.

4. Owner of the Mahindra Maxi cab involved in the accident, contested the claim petitions. ICICI Lombard General Insurance, the appellant herein, opposed the claim petitions, on the grounds of liability and without prejudice to the same, disputed the age, avocation, income of the deceased and the compensation claimed under various heads, in the claim petitions.

5. Insofar as MCOP No.151/2012 is concerned, the legal representatives submitted that, at the time of accident, the deceased was aged 38 years engaged in tailoring, embroidery and manufacturing of bags at home, and thus earned Rs.15,000/- per month. Though there was no proof for income, taking note of the oral testimony, the Tribunal determined the monthly income as Rs.7,500/-, applied '16' multiplier and after deducting 1/4th towards personal and living expenses, computed the loss of contribution to the family as Rs.10,80,000/-. Further, the Tribunal has awarded Rs.10,000/- for transportation.

6. On the basis of Ex.P10 and P11 - Medical Bills, the Tribunal by observing that prior to death, the respondents have

incurred hospital expenditure, the Tribunal, awarded Rs.4,50,000/- , Rs.10,000/- for funeral expenses. For loss of consortium, a sum of Rs.1,00,000/- has been awarded. For loss of love and affection to the minor children, a sum of Rs.50,000/- each has been awarded. Altogether the Tribunal awarded a sum of Rs.17,50,000/- with interest, at the rate of 7.5% per annum, from the date of claim till realisation.

7. Though Mrs.R.Sreevidhya, learned counsel for the appellant contended that the quantum of compensation is excessive, on the grounds that there is no proof for income, this court is not inclined to accept the same for the reason that even if gratuitous service of the deceased is measured in terms of money, determination of monthly income of Rs.7,500/- cannot be said to be excessive. Further, for self-employed persons there cannot be any documentary evidence, except in the cases, where such persons register themselves, with the competent authorities in respect of any avocation.

8. A woman, either a house wife or employed, voluntarily engages herself in all household works and extend her valuable and gratuitous services to her husband, children and other members, in the family. In **Arun Kumar Agarwal v. National**

Insurance Company Ltd., reported in **2010 (9) SCC 218**, the Hon'ble Apex Court, after considering the word "services", which the husband and the family members stand to lose, as per **kemp on Negligence**, held as follows:

"It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

9. Accepting the contentions of the learned counsel for the appellant, if 1/3rd is deducted, the loss of contribution to the family works out to Rs.9,60,000/- (Rs.5,000/- x 12 x 16). By deducting 1/4th towards personal and living expenses, the Tribunal

has computed the loss of contribution as Rs.10,80,000/-, the excess amount is Rs.1,20,000/-. The difference amount is Rs.60,000/-. At the time of accident, the minor children were aged 14 years and 9 years respectively. The Tribunal has awarded a sum of Rs.50,000/- each, under the head love and affection.

10. In **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55**, the Hon'ble Apex Court has awarded Rs.1,00,000/- each for the loss of love and affection. Therefore, a sum of Rs.60,000/- can be adjusted against the lesser compensation under the head love and affection.

11. Tribunal has awarded only Rs.10,000/- for funeral expenses. In **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55**, the Hon'ble Apex Court has awarded Rs.25,000/- under the head funeral expenses. Therefore, a sum of Rs.15,000/- can be added under the head funeral expenses. Perusal of the award shows no compensation has been awarded for the clothes and conventional damages. A sum of Rs.5,000/- can be awarded. If reworking is done as stated supra, there is no excessive compensation. Compensation of Rs.17,50,000/- with interest, at the rate of 7.5% from the date of claim till realisation awarded to

the legal representatives of the deceased is sustained and apportioned as hereunder.

Loss of earning	: Rs.10,80,000
Transportation	: Rs. 10,000
Medical Expenses	: Rs. 4,50,000
Funeral Expenses	: Rs. 10,000
Loss of love and affection to the husband	: Rs. 1,00,000
Loss of love and affection to the son and daughter @ Rs.50,000/- each	: Rs. 1,00,000
Total	: Rs.17,50,000

12. In MCOP No.152/2012, the deceased was aged about 50 years. He was stated to be a provisions merchant and also engaged in sale of newspapers and magazines. Legal representatives, namely wife, three major children and one minor son about 13 years, claimed that their breadwinner earned Rs.30,000/- per month. They claimed compensation of Rs.30,00,000/- under various heads. The appellant herein opposed the claim. Exs.P21 to P30 have been marked to support the avocation that the deceased was a provisions store merchant and engaged in sale of newspapers. Though a sum of Rs.35,000/- was claimed as monthly income, in the absence of proof, the Tribunal fixed the same as Rs.10,000/-. Based on the entries in Ex.P19-

death certificate and postmortem certificate, the Tribunal fixed his age as 55 years. After deducting 1/6th towards his personal and living expenses, the Tribunal arrived at the loss of contribution to the family as 11,00,000/- (Rs.10,000/- x 12 x 11).

13. In addition to the above, the Tribunal awarded Rs.5,000/- for transportation, Rs.10,000/- for funeral expenses, Rs.1,00,000/- for consortium, Rs.10,000/- each, for love and affection to the married daughters, Rs.50,000/- each, to the unmarried daughter and minor son. Altogether, the Tribunal awarded a sum of Rs.13,35,000/-, as compensation with interest, at the rate of 7.5% per annum from the date of claim till realisation.

14. The Tribunal has deducted 1/6th towards personal and living expenses of the deceased and computed the loss of contribution to the family, as Rs.11,00,000/-. It is the contention of the appellant that 1/5th ought to have been deducted. Accepting the said contention, if 1/5th is deducted, the loss of contribution to the family would be Rs.10,58,000/-. The excess compensation under the head loss of contribution would be Rs.42,000/-. Quantum of compensation under the heads funeral expenses, loss of love and affection is less. There is no award under the head

conventional damages. Sum of Rs.42,000/- can be adjusted against the lesser compensation awarded under other heads. The overall quantum of compensation awarded to the legal representatives of the deceased cannot be said to be on the higher side warranting interference. Thus, compensation awarded to the legal representatives of the deceased in both the claim petitions is confirmed.

15. Perusal of the award shows that the first respondent in both MCOPs, owner of the vehicle bearing Registration No.TN-31 AU-6738, has entered appearance in the Tribunal, and contested the claim petitions.

16. At paragraph No.6 of the decree, the Tribunal has recorded that MCOPs have been dismissed against the first respondent, which in our opinion, is an error to be rectified. Unless and until the owner is held responsible, liability cannot be fastened on ICICI Lombard/appellant herein, the insurer.

17. Appeal is a continuation of original proceedings. As per section 152 of the Code of Civil Procedure, clerical or arithmetical error can be rectified by the Court. Therefore, paragraph No.6 of the decrees, made in M.C.O.P.Nos.151 and 152 of 2012, by the

Motor Accident Claims Tribunal (Subordinate Judge), Chidambaram is modified and there shall be a decree against the first respondent also.

In the result, the appeal is dismissed. The judgment and decree of the Motor Accident Claims Tribunal (Subordinate Judge), Coimbatore, dated 22.09.2014 made in M.C.O.P.Nos.151 and 152 of 2012, is modified to the extent indicated above. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petitions are closed. Registry is directed to communicate the order of this court to the Motor Accident Claims Tribunal (Subordinate Judge), Chidambaram, for effecting suitable correction in the decrees.

(S.M.K., J.) (N.A.N., J.)
23.9.2016

Index : Yes/No
Internet : Yes/No
asr

To
The Motor Accidents Claims Tribunal
(Subordinate Judge), Chidambaram

S. MANIKUMAR, J.
AND
N. AUTHINATHAN, J.

asr

C.M.A. Nos.2398 and 2399 of 2016

23.09.2016