

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:01.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.845 & 846 of 2013

1.Periasamy
2.Maheswari

...Appellants/Petitioners
in CMA No.845 of 2011

1.Gopalswamy
2.Anbalagi
3.G.Anandhi

...Appellants in CMA No.846 of 2011

Vs.

1.Antoni Samy

2.The Manager,
New India Assurance Company Ltd,
No.66, W.B. Road,
Trichy-620 008.

... respondents/Respondents
in both the appeals

Prayer: Civil Miscellanies Appeals are filed against the award and decree dated 26.11.2012 and made in M.C.O.P.Nos.185 of 2008 & 215 of 2008 respectively, on the file of the Motor Accident Claims Tribunal, Sub Court, Ariyalur.

For Appellants (in both appeals) :Mr.P.G.Rajagopal
For RR1 :Mr.C.Prabhakaran
For RR2 :Mr.N.Vijayaraghavan

COMMON JUDGMENT

Having not been satisfied with the award dated 26.11.2012 and made in the claim petitions in MCOP Nos.185 & 215 of 2008, these civil miscellaneous appeals have been filed by the claimants seeking enhancement of compensation.

2.The appellants 1 and 2 in CMA No.845 of 2013 are the parents of the deceased Karthikeyan(MCOP No.185 of 2008), whereas, the appellants 1 to 3 in CMA. No.846 of 2013 are the

parents and sister of the deceased Chandramohan(MCOP No.215 of 2008).

3.The appellants in CMA No.845 of 2013 had moved the Motor Accidents Claims Tribunal(Sub Court), Ariyalur with a claim petition in MCOP No.185 of 2008 claiming a total sum of Rs.20,00,000/- towards the compensation for the death of their son Karthikeyan in a road traffic accident, said to have been taken place on 14.01.2008 at about 11.30 a.m involving a two wheeler(Honda Splendor Plus) bearing registration No.TN 49AB 0060 and a Tractor bearing registration No.TN 46 D 3981 attached with the Trailer bearing registration No.TN 46 D 6550. Similarly, the appellants in CMA No.846 of 2013 had also moved the Motor Accidents Claims Tribunal(Sub Court), Ariyalur with a claim petition in MCOP No.215 of 2008, claiming a total sum of Rs.20,00,000/- for the death of one Chandramohan, who is none other than the son of the appellants 1 & 2 and brother of the third appellant in the very same road traffic accident as afore stated involving the above said vehicles.

4.The first respondent being the owner of the offending vehicle and the second respondent being the insurer, had contested the above said claim petitions by filing their respective counter statements.

5.With the issue involved in both the claim petitions is one and the same and the parties to the claim petitions are also one and the same, both the claim petitions were consolidated together, tried jointly and disposed of in a common award dated 26.11.2012. Insofar as the claim petition in MCOP No.185 of 2008 is concerned, the Claims Tribunal had totally awarded a sum of Rs.4,88,000/- under the following heads:

(i)Towards the pecuniary loss
to the family of the deceased

Karthikeyan(17x2000x12) सत्यमेव जयते Rs. 4,08,000/-

(ii)For loss of love and affection
fortheclaimantsland 2 Rs. 60,000/-

(iii)Transport Expenses Rs. 10,000/-

(iv)FuneralExpenses Rs. 10,000/-

Total Rs. 4,88,000/-

Insofar as the claim petition in MCOP No.215 of 2008 is concerned, the Claims Tribunal had awarded totally a sum of Rs.5,42,000/- under the following heads:

(i) Towards pecuniary loss to
the family of the deceased
Chandramohan (18x2000x12)

Rs.4,32,000/-

(ii) Towards loss of love and affection
in respect of the claimants 1 to 3

Rs 90,000/-

(iii) Transport Expenses

Rs. 10,000/-

(iv) Funeral Expenses

Rs. 10,000/-

Total

Rs.5,42,000/-

Since the award amount of Rs.4,88,000/- and Rs.5,42,000/- respectively, according to the appellants, is very low the claimants in both the claim petitions stand before this Court with these appeals for the enhancement of compensation.

6. Heard Mr.P.G.Rajagopal, learned counsel for the appellants, Mr.C.Prabhakaran, learned counsel for the first respondent and Mr.N.Vijayaraghavan, learned counsel for the second respondent.

7. The common facts which are absolutely necessary for the disposal of these appeals are as under:

That on 14.01.2008 at about 11.30 a.m., the deceased Karthikeyan (MCOP No.185 of 2008) and the deceased Chandramohan, in (MCOP No.215 of 2008) were proceeding in a Honda Splendor Plus Motor Cycle bearing registration No.TN 49 AB 0060 in order to go to Kumbakonam. While the deceased Karthikeyan was riding the motor cycle, the deceased Chandramohan was sitting on the pillion. When they were proceeding at Anaikarai to Kumbakonam road, the Tractor bearing registration No.TN 46 D 3981, attached with a trailer bearing registration No.TN 46 D 6550 which was coming from the opposite direction had hit against the motor cycle, and as a result of which, the deceased Karthikeyan had succumbed to injuries instantaneously on the spot and the deceased Chandramohan had also succumbed to injuries while he was on the way to Thanjavur Medical College Hospital. The deceased Karthikeyan was aged about 24 years, whereas, the deceased Chandramohan was aged about 26 years. According to the claimants, the occurrence was taken place due to the rashness and negligence on the part of the driver, who was on the steering wheel of the Tractor.

8. The first respondent being the owner of the Tractor, in his counter statement has contended that at the time of accident his Tractor was stationed on the side of the road facing northern side. While so, the rider of the motor cycle was trying to over take a bus which was proceeding in front of him.

During this process, unfortunately and unexpectedly the rider had lost balance over his motor cycle and allowed the same to hit against the right side of the Trailer and thereby invited the accident. According to the first respondent, his Tractor was stationed when the accident was taken place.

9.The second respondent being the insurer has contended in his counter statement that, when the first respondent's driver was driving the tractor from the south to north direction a bus was coming from the opposite direction. While so, the rider of the two wheeler was trying to overtake the bus which was proceeding in his front. On seeing the two wheeler which was trying to over take the bus, the first respondent's driver had reduced the speed and swerved the Tractor to the extreme left side and brought to a complete halt. However, the rider of the two wheeler had allowed the motor cycle to hit against the stationed tractor and on account of this reason, both the inmates of the two wheeler had fallen on the surface of the road and succumbed to injuries, for which no fault could be attached with the driver of the Tractor.

10.The first appellant in CMA No.845 of 2013(first claimant in MCOP No.185 of 2008) was examined as PW1. Similarly, the first claimant in MCOP No.215 of 2008, Gopalsamy was examined as PW2. One Gnanasekaran, was examined as PW3. During the course of their examination, Exs.P1 to P33 were marked. On the other hand, One Kanchi, who was serving as the Regional Transport Officer, Grade-I at Kumbakonam, RTO Office, was examined as RW1. One Ramalingam, who was serving as a Junior Assistant at Arialur Regional Transport Office was examined as RW2. One Pandian, who was serving as an Executive Officer at second respondent Insurance Company was examined as RW3. During the course of their examination, 6 documents were exhibited.

11.PW1, who is the father of the deceased Karthikeyan would state that he had heard about the accident at about 1.00 p.m. At the relevant point of time, in fact, he did not witness the occurrence directly. PW2, is the father of the deceased Chandramohan. He had also not witnessed the occurrence directly. He was informed about the occurrence by one Gnanasekaran. PW3, Gnanasekaran claims to be an eye witness for the occurrence. According to PW3, he had purchased the Hero Honda Splendor Plus Motor cycle bearing registration No.TN 49 AB 0060 and for the purpose of servicing the said vehicle at Raman and Raman Company at Kumbakonam, the deceased Karthikeyan had taken the said two wheeler to Kumbakonam. While so another deceased Chandramohan had accompanied him by sitting on the pillion. PW3 being the owner of the said motor cycle had followed the deceased persons in an another motor cycle (Hero Honda Fashion Plus), bearing Registration No.TN 46 D 2018. He has further deposed that the driver of the Tractor bearing

Registration No.TN 46 D 3981 attached with the Trailer bearing Registration No.TN 46 D 6550 had driven the said Tractor in a hectic speed from the opposite direction and dashed against the motor cycle driven by the deceased Karthikeyan. Even after the accident, the driver had not stopped the vehicle immediately but proceeded to some distance towards north and thereafter, stopped the vehicle and run away after abandoning the Tractor. With reference to the negligence of the driver of the Tractor, both the first respondent being the owner and the second respondent being the Insurer have given contradictory statements in their respective counter statements. The Tribunal on a meticulous analysis of the evidence both oral and documentary had answered to the first issue saying that the occurrence was taken place only due to the rashness and negligence on the part of the driver of the Tractor.

11.It is pertinent to note here that neither the first respondent nor the second respondent had challenged the award of the Tribunal. Only the claimants in both the claim petitions have alone filed their respective appeals for the enhancement of compensation. With reference to the quantum, this court would like point out that the deceased Karthikeyan(MCOP No.185 of 2008) was aged about 24 years at the time of occurrence. According to the claimants he was working as General Assistant at Emirates Flight Catering Co.(L.L.C), Dubai and earned a sum of Rs.8190 per mensum i.e., (455 dhiram =Rs.8190/- at Indian Rs.18/- per dhiram, as evidenced by Ex.P15. The claimants in the claim petition in MCOP No.185 of 2008 had totally claimed a sum of Rs.20,00,000/- but as detailed in the foregoing paragraph No.5, the Tribunal had awarded only a sum of Rs.4,88,000/- under the heads enumerated therein.

12.On coming to the appeal in CMA No.846 of 2013(claim petition in MCOP No.215 of 2008), the deceased Chandramohan was aged about 26 years at the time of occurrence. According to the claimants, who are the parents of the deceased Chandramohan, he was working as a Driver/Mechanic in Roma Pizza at Dubai and thereby earned a sum of Rs.32400/- per mensum(1800 Dhiram) =32400/- @ Indian money of Rs.18/- per Dhiram, as evidenced by Ex.P32. Both the deceased were unmarried. Insofar as the claimants in claim petition in MCOP No.215 of 2008 is concerned, the plaintiff also claimed a total sum of Rs.20,00,000/- towards compensation. However, the Tribunal had awarded a sum of Rs.5,42,000/- as detailed in foregoing paragraph No.5.

13.Mr.P.G.Rajagopal, learned counsel for the appellants in both the appeals, has adverted to that the award passed by the Tribunal in both the claim petitions was not in consonance with the real pecuniary loss suffered by the claimants due to death of their sons.

14. Insofar as the appeal in CMA No.845 of 2013 (MCOP No.185 of 2008) is concerned, Mr. P.G.Rajagopal, learned counsel has submitted that the monthly salary of the deceased Karthikeyan, could be fixed at Rs.6500/- and besides this, a sum of Rs.3250/- towards 50% of future prospects can be added with the monthly salary as the deceased was aged about 24 years. Accordingly, his monthly salary can be calculated @ Rs.9750/-. It is a settled principle of law that since the deceased was bachelor, out of Rs.9750/-, 50% can be given as deduction towards personal and living expenses of the deceased. On this calculation, the remaining 50% would be Rs.4875/-. Since the deceased was aged about 24 years, the multiplier of 18 would be appropriate and accordingly, the pecuniary loss of the family would be Rs.10,53,000/- (4875X12X18). The learned counsel has also submitted that the appellants, apart from the option, the said amount can also be awarded with a sum of Rs.2,00,000/- (Rs.1 lakh each) under the head of loss of love and affection. He has also added that towards transport expenses a sum of Rs.10,000/- and towards funeral expenses a sum of Rs.25,000/- may also be awarded, in addition to the pecuniary loss of the appellants. Therefore, according to Mr. P.G.Rajagopal, learned counsel, a sum of Rs.12,18,000/- may be awarded to the appellants. He has also submitted that minimum calculation to that effect, which was received and considered by the learned counsel for the second respondent viz., New India Assurance Company Ltd. Accordingly, the award of Rs.4,88,000/-, which is made in claim petition in MCOP No.185 of 2008 may be enhanced to Rs.12,88,000/-, as there is no objection on behalf of the respondents. Similarly, to that effect, Mr.P.G.Rajagopal, learned counsel has also filed a memo of calculation and the copy of the same was received by the second respondent viz., the New India Assurance Company Ltd and he has also raised no objection. Therefore, this Court finds that the award of the Tribunal viz., a sum of Rs.5,42,000/- and made in the claim petition in MCOP No.215 of 2008 may be enhanced to Rs.18,65,000/-. Accordingly, the award of Rs.4,88,000/- and made in the claim petition in MCOP No.185 of 2008 is enhanced to Rs.12,88,000/-. Similarly, the award of Rs.5,42,000/- and made in the claim petition in MCOP No.215 of 2008 is enhanced to Rs.18,65,000/-.

15. Accordingly, both the appeals are partly allowed. Since the offending vehicle belonging to the first respondent was insured with the second respondent viz., the New India Assurance Company Ltd., at the material point of time, the second respondent viz., the New India Assurance Company Ltd is directed to pay the above said enhanced award amount to the appellants in both the appeals alongwith the interest @ 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit

being made by the second respondent viz., the New India Assurance Company Ltd, the appellants in both the appeals are entitled to withdraw the entire award amount alongwith the accrued interest and costs without filing any formal application seeking permission. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Sub Judge,
Ariyalur

2. The Section Officer
VR Section High Court Madras

+2 ccs to Mr.P.G.Rajagopal Advocate sr 37148,37149
+2 ccs to Mr.C.Prabakaran Advocate sr 37569 & 37570
+2 ccs to M/s.N.Vijayaraghavan Advocate sr 37385 & 37386

C.M.A.No.845 & 846 of 2013

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