

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1749 & 1750 of 2016

CMA No.1749 of 2016

P.Ponnammal Appellant/petitioner

vs.

1. S.P.Ramagiri
2. Shriram General Insurance Co., Ltd.,
City Centre Complex, 2nd Floor,
No.66, Thirumalai Pillai Road,
T.Nagar, Chennai - 600 017. Respondents/Respondents

CMA No.1750 of 2016

1. Palanisamy
2. Santhi Appellants/petitioner

vs.

1. S.P.Ramagiri
2. Shriram General Insurance Co., Ltd.,
City Centre Complex, 2nd Floor,
No.66, Thirumalai Pillai Road,
T.Nagar, Chennai - 600 017. ... Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common Order and Decree in MCOP Nos.4984 and 4985 of 2013 dated 18.04.2015 on the file of Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant : Mr.F.Terry Chella Raja
in both CMAs
For Respondents : Mr.S.Dhakshnamoorthy (for R2)
in both CMAs

C O M M O N J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 16.01.2013, involving a motorcycle bearing Regn.No.TN55-AB-9158 and Omni bus bearing Regn.No.TN-200BE-6950, both the motorcyclist Arjunan, aged 19 years and the pillion rider Bharathi Raja, aged 17 years, died on the same day. In this regard, a case in Crime No.16 of 2013, was registered against the driver of the Omni bus, on the file of Thirukkokarnam Police Station, Puthukottai District. Claiming that the deceased Arjunan, as a welder, earned Rs.12,000/- per month, his sole legal representatives viz., mother aged 42 years, filed MCOP No.4984 of 2013 on the file of MACT [Chief Judge, Court of Small Causes], Chennai, seeking compensation of Rs.25,00,000/-. As regard, the pillion rider, Bharathi Raja, claiming that he was a student of Diploma Engineering and a part-time Designer, his parents aged about 49 and 40 years, respectively, claimed compensation of Rs.25,00,000/- in MCOP No.4985 of 2013 on the file of MACT [Chief Judge, Court of Small Causes], Chennai,

2. As evidence adduced is common in both claims, they were tried together and a common award has been passed on 18.04.2015, whereby, the driver of the omni bus bearing Regn.No.TN-20-BE-6950 was found negligent and the insurer of the said bus, the 2nd respondent-insurance Company was fastened with liability to pay compensation.

3. On the quantum of compensation, the tribunal has fixed the income of the deceased in both the claims as Rs.6,000/-. Applying '18' multiplier and deducting 50% towards personal and living expenses, arrived at the loss of contribution to the family as Rs.6,48,000/-. In both claims, a sum of Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation, has been awarded. Rs.50,000/- each, has been awarded to the legal representatives. Altogether, the tribunal awarded a sum of Rs.7,28,000/ [MCOP No.4984 of 2013] and Rs.7,78,000/- [MCOP No.4985 of 2013], with interest at the rate of 7.5% per annum, from the date of claim till realisation.

4. Not satisfied with the quantum of compensation, the legal representatives have filed separate appeals, seeking enhancement.

5. Going through the award and material on record, we could deduce that income of the deceased in both the cases has been fixed as Rs.6,000/- and addition towards future prospects has not been made. Award of Rs.50,000/- to the sole legal representative/mother of the deceased in MCOP No.4985 of 2013,

under the head loss of love and affection, is less. There is no award under heads loss of estate and conventional damages.

6. In MCOP No.4984 of 2013, the deceased was aged 19 years and was ITI Qualified welder. To prove avocation and income, though Ex.P15, Miscellaneous Receipt and Ex.P16, Salary certificate have been marked and PW5, Muniyandi, proprietor of Kadhirvel Engineering Works, in which the deceased was working, has deposed evidence, in the absence of material proof, such as registration certificate, salary register and voucher, attendance register, the tribunal has declined to accept avocation and income and fixed the notional income at Rs.6,000/- per month.

7. Likewise in MCOP No.4985 of 2013, despite marking Ex.P11, Identity card of the deceased issued by St.Joseph Polytechnic, Ex.P13, registration certificate and Ex.P13, salary certificate and evidence adduced through one Prakash Babu (PW4), Proprietor of Design Plus Associates, in which the deceased was working as a part-time designer, the tribunal has fixed the notional income at Rs.6,000/- per month.

8. Further, placing reliance on the judgment of the Supreme Court in National Insurance Company Limited Vs. Pushpa and other, reported in 2015 (9) SCC 166 and also Shashikala and others Vs. Gangalakshamma and another, reported in 2015 (6) SCC 150, tribunal has declined to consider the aspect of future aspects.

9. Accident has occurred on 16.01.2013. In the light of the judgements of Hon'ble Supreme Court in Sri Ramachandrappa Vs. The Manager, Royal Sundaram alliance Company Ltd., reported in 2011 (13) SCC 236, Syed Sadiq and others Vs. DM UIIC Ltd., reported in CDJ 2014 SC 044, and Munna Lal and another Vs. Vipin Kumar Sharma and others, reported in CDJ 2015 SC 476, sum of Rs.6,000/- fixed as monthly income of the deceased, who were ITI and Diploma holders, requires, consideration.

10. On the appeals filed for enhancement of compensation, we have requested the learned counsel for both parties to consider the various heads under which compensation could be enhanced, on the principle of just compensation.

11. Going through the same, learned counsel for the parties on consensus, agreed that compensation awarded by tribunal should be enhanced to Rs.15,90,000/- and Rs.14,28,000/-, respectively, as hereunder:

CMA No.1749 of 2016 [MCOP No.4984 of 2013]

Monthly Income is fixed at	: Rs. 9,000/-
Future prospects 50%	: Rs. 4,500/-
Total income	: Rs.13,500/-
Loss of Income	
[Rs.13,500/- x 12 x 18 x 50%]	: Rs.14,58,000/-
Love and affection	: Rs. 1,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 5,000/-
Damages to Cloths	: Rs. 2,000/-
Total	: Rs.15,90,000/-
Compensation awarded by the Tribunal	: Rs. 7,28,000/-
In the light of consensus, amount is enhanced by this Court	: Rs. 8,62,000/-

CMA No.1750 of 2016 [MCOP No.4985 of 2013]

Monthly Income is fixed at	: Rs. 8,000/-
Future prospects 50%	: Rs. 4,000/-
Total income	: Rs.12,000/-
Loss of Income	
[Rs.12,000/- x 12 x 18 x 50%]	: Rs.12,96,000/-
Love and affection	: Rs. 1,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 5,000/-
Damages to Cloths	: Rs. 2,000/-
Total	: Rs.14,28,000/-
Compensation awarded by the Tribunal	: Rs. 7,78,000/-
In the light of consensus, amount is enhanced by this Court	: Rs. 6,50,000/-

12. In the light of consensus arrived, legal representatives of the deceased in MCOP No.4984 of 2013, are entitled to an enhanced compensation of Rs.15,90,000/- as against Rs.7,28,000/-, awarded by the tribunal, with interest, at the rate of 7.5% per annum, from the date claim till deposit. Similarly, legal representatives of the deceased in MCOP No.4985 of 2013, are entitled to an enhanced compensation of Rs.14,28,000/- as against Rs.7,78,000/-, awarded by the tribunal, with interest, at the rate of 7.5% per annum, from the date claim till deposit.

13. It is represented by the learned counsel for the Insurance company that the amount awarded by the tribunal with proportionate interest and costs has already been deposited to the credit of concerned MCOPs.

14. In view of the above, we direct Shriram General

Insurance Company Limited, the 2nd respondent herein, to deposit the balance enhanced amount now arrived at by this Court, with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, less the statutory deposit, to the credit of MCOP Nos.4984 & 4985 of 2013 on the file of Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the same, by making necessary applications before the tribunal.

15. The Civil Miscellaneous Appeals are allowed as indicated above. No costs.

-s/d-

Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Chief Court of Small Causes), Chennai.

+2 Ccs to M/s. S. Mr.S.Dhakshnamoorthy , sr 15888,15889

+2 Ccs to M/s. M. Malar, Advocate sr 15622,15623

C.M.A.Nos.1749 & 1750 of 2016

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