IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

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

CMA NOS.156 AND 1122 OF 2015
AND M.P.NO.1 OF 2015

CMA NO.156 OF 2015

1.C.Koyilan
2.P.Tamilselvi ... Appellants/Petitioners

Versus

1.The Commissioner
Alandur Municipality
Alandur,
Chennai - 600 016.

2.National Insurance Company Ltd.,
Rep. by its Deputy Manager
Divisional Office - VIII
Mamaji Centre, S-7,
Thiru.Vi.Ka. Industrial Estate,
Chennai - 600 032. ... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2014 passed in M.A.C.T.O.P.No.1151 of 2012 by the Motor Accidents Claims Tribunal (IV Small Causes Court) Chennai.

For Appellants : Ms.Thenmozhi Shivaperumal

For Respondent-2 : Ms.K.Saraswathi

R1 : No Appearance

CMA NO.1122 OF 2015

National Insurance Company Ltd.,
Rep. by its Deputy Manager
Divisional Office - VIII
Mamaji Centre, S-7,
Thiru.Vi.Ka. Industrial Estate,
Chennai - 600 032. ... Appellant/2nd Respondent

Versus

1.C.Koyilan ..1st Respondent/1st Petitioner
2.P.Tamilselvi ..2nd Respondent/2nd Petitioner

3.The Commissioner
Alandur Municipality
Alandur, Chennai - 600 016.
...3rdRespondent/1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2014 passed in M.A.C.T.O.P.No.1151 of 2012 by the Motor Accidents Claims Tribunal (IV Small Causes Court) Chennai.

For Appellant : Ms.K.Saraswathi

For Respondents
1 and 2 : Ms.Thenmozhi Shivaperumal

R3 : Exparte

COMMON JUDGMENT

[JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.]

Not satisfied with the award of compensation dated 10.10.2014, passed in M.C.O.P.No.1151 of 2012, by the Motor Accidents Claims Tribunal (IV Small Causes Court) Chennai, the claimants have preferred the appeal in C.M.A.No.156 of 2015.

2. Against the very same award, challenging the liability and quantum of compensation, the Insurance Company has preferred an appeal in C.M.A.No.1122 of 2015.

3. Since the very same award is under challenge in both the appeals, they are disposed of by a common judgment.

4. The version of the claimants is that on 14.07.2011, when the deceased K.Vigneswaran was riding his motorcycle, bearing Registration No.TN 22-CY-2790, from Pallikaranai to Chennai, at about 10.15 am, near Centre for Wind Energy Technology, Mayilai Balaji Nagar, Velachery Main Road, Chennai, a Garbage Truck, bearing Registration No.TN 22-AM-7657, belonging to Alandur Municipality and insured with National Insurance Company Limited, was driven in a rash and negligent manner, hit the deceased, knocked him down on the ground and ran over him and caused fatal injury to the deceased. The deceased died on the spot. Claimants

have filed MCOP No.1151 of 2012 before the Motor Accidents Claims Tribunal (IV Small Causes Court) Chennai, for a compensation of Rs.50,00,000/-.

5. Before the Tribunal, the National Insurance Company Limited has denied its liability on the grounds that at the time of accident, the driver of the offending vehicle was not holding valid driving license and the said vehicle was not covered by valid insurance policy. On the aspect of negligence, it was attributed to the deceased, as the accident had taken place due to the rash and negligent driving of the deceased, without seeing the oncoming vehicles. Further, the claim was objected as it is exorbitant and the same shall be restricted and sought for dismissal of the claim petition.

6. On the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 13 documents were marked as Exs.P1 to P13. No witnesses were examined and no documents were marked on the side of the respondents.

7. Before the Tribunal, the respondent Alandur Municipality remained exparte. The Tribunal went on to decide the matter on the issues of negligence and quantum of compensation. Upon considering the evidence of the eyewitness P.W.2 and P.W.1 - First Information Report and Sketch - Ex.P6, negligence was found on the driver of the Garbage Truck, belonging to Alandur Municipality. Since the vehicle was insured with the second respondent / insurance company, it was held that the second respondent is liable to pay the compensation.

8. In so far as the quantum of compensation is concerned, the Claimants have let in evidence that the deceased was 22 years at the time of accident and earned a sum of Rs.24,000/- per month, as he was a Software Engineer. The age of the deceased was ascertained on the basis of the appointment letter, along with educational certificates, which were marked as Ex.P12. The HR Manager of the Company, where the deceased was working at the time of accident was examined as P.W.3 and he deposed that the deceased was earning a sum of Rs.24,000/- per month. However, neither salary certificate nor bank passbook or statement of accounts or even accounts ledgers were produced to prove the income of the deceased. The Tribunal, on considering the evidence of P.W.3 and Ex.P12, has fixed the monthly income of the deceased at Rs.15,000/- and added 50% towards future prospects as the deceased was aged 22 years at the time of accident. Thus, the monthly salary of the deceased was fixed at Rs.22,500/- (Rs.15,000/- + Rs.7,500/- = Rs.22,500/-).

9. The matter was referred to National Lok Adalat on 11.07.2015. The learned counsel for the claimants said to have submitted a bank statement, in support of their claim for enhancement. The Tribunal has fixed Rs.15,000/- as monthly income, whereas the Bank statement produced by the learned counsel for the claimants reveals a sum of Rs.19,446/- has been credited towards salary every month. From the appointment order, we could see that there was a deduction of Rs.1,152/- towards Employees Provident Fund. It is also submitted that the net salary is credited to the account, after deducting the income tax. Therefore, we propose to add a sum of Rs.1,152/- in the monthly income and also decided that there shall not be any income tax deduction to the net salary which has already suffered income tax. Therefore, the monthly income of the deceased is fixed at Rs.20,598/- and 50% is added towards future prospects (Rs.20,598/- + Rs.10,299/- = Rs.30,897/-)

10. The deceased was a Bachelor. The Tribunal has deducted 1/3rd towards personal and living expenses. The insurance company has preferred the above appeal and raised an objection on this aspect. Since the deceased was a bachelor at the time of accident, 50% should have been deducted. Accordingly, 50% is deducted towards personal and living expenses. Applying multiplier 18, on the basis of the judgment of SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the loss of contribution is computed at Rs.33,36,876/- [Rs.30,897/- X 12 X 18 / 2].

11. The Tribunal has awarded a sum of Rs.50,000/- each to both claimants towards loss of love and affection. The deceased was 22 years at the time of accident and the claimants have lost their son at the prime age. Considering the grief and loss of love affection, we deem it fit to increase the award under the head loss of love and affection from Rs.1,00,000/- to Rs.2,00,000/-. The Tribunal has awarded Rs.25,000/- towards funeral expenses.

12. Apart from the above, we award a sum of Rs.10,000/- towards loss of estate and Rs.10,000/- towards transportation and a sum of Rs.2,000/- towards damages.

13. The Tribunal has awarded a sum of Rs.33,65,000/- as total compensation. Because of the reworking done, as above, the compensation is modified on various heads as under:

S.No.	Head	Amount Rs.
1	Loss of income	33,36,876.00
2	Loss of love and affection	2,00,000.00
3	Funeral expenses	25,000.00
4	Loss of estate	10,000.00
5	Transportation	10,000.00
5	Damages	2,000.00
	Total	35,83,876.00

There will be enhancement of Rs.2,18,876/-. Thus, the total compensation now determined by this Court is Rs.35,83,876/-.

14. It is submitted that already a sum of Rs.20,00,000/- has been deposited by the insurance company.

15. In view of the enhancement, we direct the respondent National Insurance Company Limited to deposit the balance amount of Rs.15,83,876/- with proportionate interest at the rate of 7.5% per annum to the credit of MCOP No.1151 of 2012, on the file of Motor Accidents Claims Tribunal (IV Court of Small Causes) Chennai, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the same, by filing proper application before the Tribunal.

16. In the result, C.M.A.No.156 of 2015 filed by the claimants is partly allowed. C.M.A.No.1122 of 2015 filed by the insurance company is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

TK
To

The Motor Accidents Claims Tribunal
(IV Small Causes Court)
Chennai.
Copy to:
The Section Officer,
VR Section,HIgh Court, Madras

+1cc to M/s.C.R.Krishnamoorthy,Advocate sr.44328
+2cc to M/s.Thenmozhi,Advocate sr.44408 & 44409

CMA NOS.156 AND 1122 OF 2015

mp(co)
ss(21/8/2017)