IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal Nos. 2290 and 2338 of 2015

C.M.A. No. 2290 of 2015

D.M. Manoharan .. Appellant/Petitioner

Versus

1. S.B. Mohammed Ashraf Ali
2. The Reliance General Insurance Co Ltd
   Reliance House, 6th Floor
   No.6, Haddows Road
   Nungambakkam, Chennai-600 009 .. Respondents/Respondent

C.M.A. No. 2338 of 2015

The Reliance General Insurance
Company Ltd.,
Reliance House, 6th Floor
No.6, Haddows Road
Nungambakkam, Chennai - 600 009 .. Appellant/2nd Respondent

Versus

1. D.M. Manoharan ..1st Respondent/Petitioner

2. S.B. Mohammed Ashraf Ali ..2nd Respondents/1st Respondent

C.M.A. No. 2290 and 2338 of 2015:- Appeals filed under Section 173 of The Motor Vehicles Act, against the Judgment and Decree dated 19.07.2013 made in M.C.O.P. No. 1508 of 2010 on the file of Chief Small Causes Court Judge, Chennai/ Motor Accident Claims Tribunal, Chennai.

C.M.A. No. 2290 of 2015

For Appellant : M/s. Anand and Suryas
For Respondent : Mr. S. Arunkumar for R2

C.M.A. No. 2338 of 2015

For Appellant : Mr. S. Arunkumar
For Respondent : M/s. Anand and Suryas for R1

COMMON JUDGMENT
(Judgment of the Court was delivered by R. SUBBIAH, J)

Both these appeals arise out of the Judgment and Decree dated 19.07.2013 passed in M.C.O.P. No. 1508 of 2010 on the file of Chief Small Causes Court Judge, Chennai/ Motor Accident Claims Tribunal, Chennai. While C.M.A. No. 2290 of 2015 has been filed by the claimant seeking enhancement of the compensation amount awarded by the Tribunal, C.M.A. No. 2338 of 2015 has been filed by the Insurance Company questioning the compensation amount awarded by the Tribunal. Therefore, both these appeals are taken up for hearing together and they are disposed of by this common judgment.

2. For the sake of convenience, the parties shall be referred to as 'claimant' and 'insurance company' in this appeal.

3. The claimant is the father of the deceased Suresh, aged 28 years and working as a Softwre Engineer (Technical-Lead) at Trianz Holdings Private Limited, Perungalathur. According to the claimant, on 20.03.2010 at about 23.30 hours, when the deceased was travelling in the Maruti Car bearing Registration No. TN 20 AJ 2091 on Tiruvannamalai-Chennai Main Road, near Padalam Koottu Road, Maduranthagam, due to the rash and negligent driving of the driver of the car, the front tyre of the car bursted, with the result, the Car rammed the Central Median and thereafter hit an ongoing lorry bearing Registration No. TN 45 D 9295. In the impact, the deceased sustained grievous head injuries and died on the spot. According to the claimant, the deceased was unmarried and his mother pre-deceased him and therefore, he was the only surviving legal heir entitled for payment of compensation. The claimant therefore filed the Claim Petition claiming a sum of Rs.81,00,000/- as compensation for the death of his deceased son.

4. The claim petition was resisted by the Insurance company by contending that the accident did not occur due to rash and negligent driving of the driver of the car. The Insurance company also denied the age, occupation of the deceased and the entitlement of the claimant to file the claim petition.

5. Before the Tribunal, on behalf of the claimant, the claimant examined himself as PW1 and two other witnesses as PW2 and 3 besides Exs. P1 to P17 were marked. On behalf of the respondents in the claim petition, no one was examined or any document marked. The Tribunal, on analysis of the oral and documentary evidence, concluded that the accident had occurred due to the rash and negligent driving of the driver of the car and therefore, the insurance company as well as the owner of the car are jointly and severally liable to pay the compensation amount to the claimant. As regards the compensation amount, taking into consideration the earning of

the deceased, the Tribunal awarded a total sum of Rs.36,11,720/- as compensation.

6. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed C.M.A. No. 2290 of 2015 for enhancement. Contending that the compensation amount awarded by the Tribunal is excessive, the Insurance company has come forward with C.M.A. No. 2338 of 2015. As both these appeals are filed questioning the quantum of compensation alone, we are not dealing with the other aspects of the award passed by the Tribunal.

7. The learned counsel appearing for the claimant vehemently contended that the deceased was employed as Software Engineer at Trianz Holdings Private Limited and was earning a sum of Rs.68,671/- per month which was proved by examining the employer of the deceased as PW3 besides marking Ex.P14, salary slip. However, the Tribunal has taken into account only a sum of Rs.68,025/- per month, deducted 20% towards income tax and 50% towards personal expenses. It is further contended that the Tribunal failed to award any amount towards future prospectus of the deceased especially when it was proved through the evidence of employer PW3 that had the deceased been alive, he would have been promoted to the post of Project Manager with higher pay. Therefore, the claimant is entitled for 50% of the monthly earnings of the deceased towards future prospectus. It is further contended that the amount awarded under the other heads are inadequate and therefore he prayed for enhancement of the compensation amount.

8. Per contra, the learned counsel for the insurance company would contend that the court below ought to have deducted 30% towards income tax liability instead of deducting 20%, which resulted in awarding excessive compensation amount. Further, the Tribunal failed to consider that special allowance given to the deceased by his employer cannot be construed to be a permanent income and it ought not to have been taken into account for awarding compensation amount.

9. We have heard the counsel for both sides and perused the materials placed on record. In order to prove the monthly earnings of the deceased, the claimant examined himself as PW1 besides the employer of the deceased was examined as PW3. The claimant also marked Ex.P14, salary slip for the month of February 2010. The Tribunal, by taking into account the salary of the deceased at Rs.68,025/- per month as reflected in Ex.P14, deducted 20% towards income tax liability and 50% towards the personal expenses of the deceased as he died as a bachelor. Taking into account the age of the deceased as 53, on the basis of the off-quoted decision rendered by the Honourable Supreme Court in the case of (Smt. Salara Verma and others vs. Delhi Transport Corporation and another) reported in 2009 (2) TNMAC 1 SC, the Tribunal adopted multiplier '11' to arrive at the compensation amount of Rs.35,91,720/- towards loss of income of the deceased. We do not find any reason to interfere with such award passed by the Tribunal towards loss

of earning capacity awarded by the Tribunal, which is based on the evidence of the employer and the salary slip issued to the deceased during February 2010.

10. As regards future prosecuts, the learned counsel for the claimant would contend that the Tribunal ought to have awarded 50% of the amount towards future prospectus of the deceased especially when the deceased died at the age of 28 years. At this stage, the learned counsel for the Insurance Company would contend that since the claimant is the father of the deceased, aged 53 years at the time of filing the claim petition, the question of awarding future prospectus will not arise. We are not inclined to accept such submission. Admittedly, the deceased died at the age of 28 years and the prospects of the deceased getting promoted to higher post is inevitable. At the same time, as rightly pointed out by the learned counsel for the Insurance Company, the claim of future prospectus has to be decided depending upon the age of the claimant. In the present case, the claimant, being the father of the deceased was aged 53 years at the time of accident, therefore, we are inclined to award 10% towards future prospectus.

11. The Tribunal also awarded Rs.10,000/- towards love and affection, Rs.5,000/- towards transport expenses and another sum of Rs.5,000/- towards funeral expenses. We feel that the Tribunal has awarded a meager sum of Rs.10,000/- towards love and affection and Rs.5,000/- towards funeral expenses. The amount awarded under these heads, in our opinion, warrants enhancement taking into account the young age at which the deceased died leaving behind the claimant as his only legal heir. Therefore, we award Rs.50,000/- towards loss of love and affection and Rs.20,000/- towards funeral expenses.

12. Accordingly, we modify the compensation amount awarded by the Tribunal as follows:-

Loss of dependency	Rs. 35,91,720.00
Future Prospects @ 10% (Rs.68025 X 10% = Rs.6802.50 X 12 X 11)	Rs. 8,97,930.00
Love and Affection	Rs. 50,000.00
Funeral Expenses	Rs. 20,000.00
Transport Expenses	Rs. 5,000.00
	Rs.45,64,650.00

13. In the result, C.M.A. No. 2290 of 2015 filed by the Claimant is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.36,11,720/- to Rs.45,64,650.00. Consequently, C.M.A. No. 2338 of 2015 filed by the Insurance Company is dismissed. The Insurance Company is directed to deposit the sum of Rs.45,64,650.00 determined in this appeal as

compensation together with interest as awarded by the Tribunal, after adjusting the amount, if any, already deposited to the credit of M.C.O.P. No. 1508 of 2010 on the file of Chief Small Causes Court Judge, Chennai/ Motor Accident Claims Tribunal, Chennai. On such deposit, the claimant is permitted to withdraw the compensation amount together with accrued interest. No costs. Consequently, M.P. No. 1 of 2015 in C.M.A. No. 2338 of 2015 is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rsh

To

1.Chief Small Causes Court Judge
Motor Accident Claims Tribunal
Chennai.

+ 1 cc to M/s. S. Arunkumar, Advocate Sr.54140
+ 1 cc to M/s. Anand & Suriya Advocate SR.53729

CMA Nos. 2290 & 2338/2015

CNR(CO)
EU(01/11/2017)