IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.2299 of 2016 and 2040 of 2015
and
CMP.No.16227 of 2016 in CMA No.2299 of 2016

CMA No.2299 of 2016
United India Insurance Company Limited,
No.5-B/11, State Bank of India Upstairs,
Salem Main Road,
Thiruchengodu ... Appellant/ 2nd Respondent

vs.

1. Ramya
2. Minor Madhan
3. Saroja
4. Krishnan ... Respondent 1 to 4/ Petitioners

5. S.Ponmalai ... 5th Respondent/ 1st Respondent

[Minor 2nd respondent rep by his mother & N.F. Ramya]

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.P.Thangavel (for R1 to R4)

CMA No.2040 of 2015
1. Ramya
2. Minor Madhan
3. Saroja
4. Krishnan ... Appellants/Petitioners

vs.

1. S.Ponmalai

2. United Insurance Company Limited,
No.5-B/11, State Bank of India Upstairs,
Salem Main Road,
Thiruchengodu ... Respondents/
Respondent

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arun Kumar (for R2)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.772 of 2014 dated 20.03.2015 on the file of Motor Accidents Claims Tribunal, [Additional District Judge], Namakkal.

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 21.03.2014, Senthilkumar, stated to be aged 31 years, Engineer in Lotus Promoters and Constructions, Thuraiyur Road, Namakkal and earned Rs.25,000/- per month, died. A case in Crime No.39/14 under Sections 279 and 304-A IPC was registered against the offending vehicle viz., Tipper Lorry bearing Regn.No.TN28-AT-1156, and insured with United India Insurance Company Limited, Tiruchengode. Wife, minor son and parents filed MCOP No.772 of 2014 on the file of the MACT [Additional District Court], Namakkal, claiming compensation of Rs.50,00,000/-, under various heads.

2. Opposing the claim, United India Insurance Company denied negligence attributed to the driver of Tipper Lorry bearing Regn.No.TN28-AT-1156, insured with them. Insurance company disputed its liability to pay compensation. Without prejudice to the above, Insurance company disputed the age, avocation, income and compensation claimed under various heads.

3. Before the tribunal, PW1, wife reiterated the manner of accident as averred. PW2, is the eye witness. Exs. P1, First Information Report, Ex.P2, Postmortem Report, Ex.P3, copy of Insurance policy, Ex.P4, Motor Vehicles Inspector Report, Ex.P5, Charge sheet, Ex.P6, Death Certificate, Ex.P7 Legalheir certificate, Ex.P8, Driving licence, Ex.P9, Diploma Certificate in Civil Engineering, Ex.P10, Provisional Certificate of B.E. Civil Engineering, Ex.P11, Degree certificate in Civil Engieering, Ex.P12, Course Completion certificate and conduct certificate, Ex.P13, Salary certificate, Ex.P14, Registration

certificate of Lotus Promoters, Ex.P15, Lotus Promoters Deed of Partnership and Ex.P16, SARAL Form, have been marked. There was no rebuttal.

4. On evaluation of pleadings and evidence, the claims tribunal held that driver of Tipper Lorry bearing Regn.No.TN28-AT-1156 and insured with United India Insurance Company Limited, Tiruchengode, was negligent in causing the accident.

5. Based on the testimony of PW1 and Exs.P10, B.E. Civil Engineering-Provisional certificate, Ex.P11, Degree certificate, Ex.P12, Course completion and conduct certificate, Ex.P13, salary certificate issued by Lotus promoters, Ex.P14, Registration certificate of Lotus Promoters issued by the competent authority, Registrar of Firms, Namakkal, Ex.P15, Deed of Partnership of Lotus Promoters and Ex.P16, SARAL Form of the said company, the tribunal accepted the avocation of the deceased, Engineer in the Construction Company.

6. Though, legal representatives claimed that the monthly income of the deceased was Rs.25,000/-, by observing that in 2014, the year in which the accident occurred, even an office assistant, would have earned Rs.10,000/- as monthly income and taking note of the educational qualification of the deceased viz., B.E. Civil Engineering, the tribunal determined the monthly income as Rs.20,000/-. Following the decision of the Hon'ble Supreme Court in Reshma Kumari and others Vs. Madan Mohan and another, reported in 2013 (1) TNMAC 481 (SC), the tribunal added 50% of the monthly income under the head future prospects.

7. Deceased was aged 31 years. Having regard to the number of dependants, the tribunal deducted 1/4 towards personal and living expenses. Thereafter, applied '18' multiplier and computed loss of contribution to the family at Rs.48,60,000/-. Added further, the tribunal awarded Rs.1,00,000/- under the head loss of consortium, Rs.1,00,000/- towards loss of love and affection to the minor son and Rs.25,000/- for funeral expenses. Altogether, the tribunal awarded Rs.50,85,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs. Tribunal apportioned Rs.30,85,000/- to the wife, Rs.10,00,000/- to the minor son and Rs.5,00,000/- each to the parents.

8. Being aggrieved by the quantum of compensation of Rs.50,85,000/-, with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded in MCOP No.722 of 2014, dated 20.03.2015 on the file of Motor Accidents Claims Tribunal, [Additional District Judge], Namakkal, United India Insurance Company Limited, has filed the instant appeal

contending inter alia that the tribunal erred in fixing Rs.20,000/- as the monthly income of the deceased in the absence of any material, except Ex.P13, Salary certificate issued by Lotus Promoters and Constructions.

9. According to the Insurance Company, when employment itself has not been proved, addition of 50% under the head future prospects is erroneous. Application of '18' multiplier has also been questioned. Insurance company has contended that '16' would be the appropriate multiplier.

10. Not satisfied with the quantum of compensation, legal representatives of the deceased have filed CMA No.2040 of 2015, for enhancement. Supporting the prayer sought for Mr.Ma.P.Thangavel, learned counsel for the legal representatives submitted that the tribunal ought to have taken Rs.25,000/- as the monthly income for the purpose of computing loss of contribution to the family. He also submitted that parents have not been awarded any compensation under the head loss of love and affection.

11. As both the appeals revolve around quantum of compensation, in particular, determination of monthly income, they are taken up together and disposed of by this common judgment.

12. To substantiate that the deceased was an Engineer, legal representatives have marked Ex.P9, certificate of Diploma in Engineering, Ex.P10, Provisional certificate in B.E. Civil Engineering issued by Anna University, Chennai and Ex.P11, Degree certificate issued by the same University. Perusal of the above certificates show that after completing Diploma Course in Civil Engineering, in April 2004, the deceased had pursued his B.E. Civil Engineering course, in Sengunthar Engineering College, Namakkal. and obtained first class, in B.E. Civil Engineering. Ex.P12, is the Course Completion and Conduct Certificate.

13. Perusal of Ex.P15, Partnership Deed dated 13.11.2011, shows that Mr.A.M.Avinashi and his father Mr.A.Marudhaveeran have intended to carry on business in the name and style of 'Lotus Promoters'. The said construction company has been registered on 07.09.2012 with Regn.No.841 of 2012 by the Registrar of Firms, Namakkal and Ex.P14, is the document of Registration. Ex.P16, is the income tax returns of Mr.Avinashi for the assessment year 2014-15.

14. As per Ex.P13, salary certificate, issued by the Managing Partner of Lotus Promoters, deceased was employed as Civil Engineer for the past three years, prior to death and that

he was paid a sum of Rs.25,000/- per month. Ex.P13, is not corroborated by any other documentary evidence. Neither the employer nor his representative has been examined by the legal representatives of the deceased supporting the above contention.

15. Though, Mr.S.Arun Kumar, learned counsel for the insurance company contended that the monthly income of Rs.20,000/- fixed by the tribunal is excessive and on the contra, Mr.Ma.P.Thangavel, learned counsel for the legal representatives contended that as per the entry in Ex.P13, salary certificate tribunal should have fixed the monthly income as Rs.25,000/-, for the purpose of computing the loss of contribution to the family, this Court is not inclined to accept the contentions of both parties, for the reason that mere production of salary certificate alone is not sufficient. There should be some corroboration. As observed earlier, there is not even supportive evidence from the employer or his representative.

16. From the perusal of the educational qualifications, Ex.P9, Diploma Certificate in Civil Engineering, Ex.P10, Provisional Certificate of B.E. Civil Engineering, Ex.P11, Degree certificate in Civil Engieering, Ex.P12, Course Completion certificate and conduct certificate, it could be deduced that the deceased had acquired a Diploma in 2001 and thereafter obtained first class in B.E. Civil Engineering.
Aptitude of the deceased to acquire higher educational qualification and earning cannot be lost sight off while fixing the monthly income and consequently estimating loss of earning. Educational qualifications have to be respected.

17. As rightly observed by the tribunal, in the year 2014, even an office assistant, employed in an organised or unorganized sector would have been paid a reasonable monthly income of Rs.10,000/-. In the case on hand, deceased is survived by wife, minor son and parents. Even taking it for granted that no other material document was filed, justifying employment in Lotus Promoters and Constructions company, with the above educational qualification, possibility of the deceased, engaged in some other private company, to maintain his family cannot be lost sight off. For the foregoing reasons, we are not inclined to reduce or increase the monthly income of the deceased.

18. At the time of accident, deceased was aged 31 years. As per the decision in Smt.Sarla Varma & others Vs. Delhi Transport Corporation and another, reported in 2009 (5) LW 561, for the age group of persons between 31 and 35, the proper multiplier would be '16'. As rightly pointed out by Mr.S.Arun Kumar, learned counsel for the insurance company, tribunal has erred in applying '18' multiplier. We are not inclined to reduce the

deduction towards personal and living expenses of the deceased. If '16' multiplier is applied and 1/4th deduction is made, loss of contribution to the family works out to Rs.43,20,000/-.

19. Perusal of the award shows that the tribunal has failed to award a just and reasonable compensation under the head loss of love and affection to the parents. Having regard to the age of the parents, a sum of Rs.50,000/- each, would be reasonable. There is no compensation for transportation, loss of estate and conventional damages. Sum of Rs.10,000/- each, is awarded for transportation and loss of estate, respectively and Rs.2,000/- is awarded under the head conventional damages.

20. After reworking, compensation due and payable to the legal representatives of the deceased / appellants in CMA No.2040 of 2015, works out to Rs.46,67,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs and the same is apportioned as hereunder.

Loss of contribution to the family	: Rs.43,20,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	
to Minor son	: Rs. 1,00,000/-
to parents at Rs.50,000/- each	: Rs. 1,00,000/-
Funeral expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Loss of estate	: Rs. 10,000/-
Damages to clothes	: Rs. 2,000/-
Total	: Rs.46,67,000/-

21. Compensation awarded by the tribunal is Rs.50,85,000/-. On appeal by the Insurance Company, compensation determined by this Court is Rs.46,67,000/-. Therefore, there will be a reduction in quantum of compensation by Rs.4,18,000/-, from the share apportioned to the wife.

22. We had given our anxious consideration to the submissions made in the appeal filed for enhancement and after considering the material on record, not inclined to enhance the same. CMA No.2299 of 2016, is allowed in part by reduction of the abovesaid sum. CMA No.2040 of 2015, filed by the legal representatives of the deceased is dismissed. No Costs. CMP No.16227 of 2016 in CMA No.2299 of 2016, is closed.

23. United India Insurance Company Limited, Tiruchengode, appellant in CMA No.2299 of 2016, is directed to deposit Rs.46,67,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs to the credit of MCOP No.772 of 2014 on the file of MACT [Additional District Court], Namakkal, less the statutory deposit, within a period of four

weeks from the date of receipt of a copy of this order.

24. On such deposit, except the minor respondent/claimant, other claimants are permitted to withdraw their share, as apportioned by the tribunal, with proportionate interest, by making necessary applications. Share apportioned to the minor claimant, shall be in the bank deposit till he attains majority. The interest accruing on the share of the minor shall be paid to the mother of the minor viz., Ramya, 1st appellant in CMA No.2040 of 2015, once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
[Additional District Judge], Namakkal.

2.The Section Officer
V.R.Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.22397
+2cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.22145

C.M.A.Nos.2299 of 2016 and 2040 of 2015
and CMP.No.16227 of 2016
in CMA No.2299 of 2016

ad(co)
rmp(16/05/17)