IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM:

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

Civil Miscellaneous Appeal Nos. 1763 & 2942 of 2014

CMA No. 1763 of 2014

1. Mrs. Deona
2. Minor. Sneha
3. Minor. Sumana
   Minors appellants 2 & 3 are
   represented by her mother and
   guardian 1st appellant - Deona) .. Appellants/Petitioners

Versus

1. Padmanathan
2. United India Insurance Company Limited
   D.K.M. Salai
   Vellore - 4

3. Smt. Amirtham .. Respondents/Respondents

CMA No. 2942 of 2014

United India Insurance Company Limited
T.K.M. Salai
Vellore - 4 .. Appellant/2nd Respondent

Versus

1. Mrs. Deona
2. Minor. Sneha
3. Minor. Sumana
   Minors appellants 2 & 3 are
   represented by her mother and
   guardian 1st appellant - Deona)
4. Padmanathan
5. Smt. Amirtham .. Respondents/Petitioner 1 & 3 Respondents

Prayer in Both CMAs

Appeals filed under Section 173 of The Motor Vehicles Act, 1988 against the Decree and Judgment dated 06.08.2012 made in M.C.O.P. No. 314 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore.

CMA No. 1763 of 2014

For Appellants	:	Mr. C. Prabakaran
For Respondents	:	Mr. Y. Jyothish Chandar for R1
		Mr. M. Krishnamoorthy for R2
		Mr. S. Angamuthu for R3

C MA No. 2942 of 2014

For Appellant	:	Mr. M. Krishnamoorthy
For Respondent	:	Mr. C. Prabhakaran for RR1 to 3

COMMON JUDGMENT

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

Not being satisfied with the quantum of compensaiton awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore, in and by the award dated 06.08.2012 in MCOP No. 314 of 2008, the claimants have come forward with CMA No. 1763 of 2014. As against the very same award, the Insurance Company has filed CMA No. 2942 of 2014 on the ground that the compensation amount of Rs.19,81,532/- awarded by the Tribunal is excessive. As both the appeals arise out of the same award dated 06.08.2012 passed in MCOP No. 314 of 2008, these appeals are taken up for hearing together and are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their litigative status in MCOP No. 314 of 2008 before the Tribunal.

3. The first claimant is the wife and the minor claimants 2 and 3 are the children of the deceased Madhavan, who died in the motor accident on 03.02.2007 at about 19.15 hours in Kancheepuram to Arakkonam Koot Road. According to the claimants, on the fateful day, when the deceased was driving the Two Wheeler at a normal speed, the Car bearing Registration No. TMV 2186, insured with the second respondent Insurance Company, was driven by its driver in a rash and negligent manner and hit the two wheeler driven by the deceased. In the impact, the

deceased was thrown out of the two wheeler and sustained grievous injuries. The deceased was taken to Government Hospital, Kancheepuram for treatment, however, the Doctors have pronounced him brought dead. According to the claimants, the accident occurred due to the rash and negligent driving of the driver of the car owned by the first respondent and which was insured with the second respondent/insurance company. Therefore, the claimants have filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

4. The claim petition was resisted by the Insurance company by contending that the accident had occurred only due to the rash and negligence driving of the deceased himself and therefore the Insurance company cannot be fastened with any liability to pay compensation to the claimants. The Insurance company also denied the factum of employment of the deceased, his age and the negligence on the part of the driver of the car owned by the first respondent and which was insured with them.

5. Before the Tribunal, in order to prove the claim petition, the first claimant examined herself as PW1 along with two other witnesses namely Govindasamy and Vijayan as Pws 2 and 3 and Exs. P1 to P9 were marked. On the side of the respondents, neither any document was marked nor any witness was examined. The Tribunal, after analysing the oral and documentary evidence, concluded that the accident had occurred only due to the rash and negligent driving of the driver of the car owned by the first respondent, which was insured with the second respondent/Insurance company. As regards the quantum of compensation, taking into account the employment of the deceased and other factors, the Tribunal has awarded a total sum of Rs.19,81,532/- as compensation.

6. Since the present appeals are filed by the claimants as well as the Insurance Company only questioning the quantum of compensation, it is not necessary for us to deal with the other aspects in these appeals.

7. The learned counsel appearing for the claimants would contend that the deceased was working as Project Manager in a company called Buildcraft from 01.09.1997 until his death on 03.02.2007. Out of such employment, the deceased was earning a sum of Rs.23,492.00 and to prove the same, salary certificate was marked as Ex.P9. Further, Mr. Govindasamy, Deputy Manager of the said company, where the deceased was employed, was examined as PW2, who has confirmed the employment and the quantum of earning of the deceased in the said company. However, the Tribunal has taken only a sum of Rs.9,770/- as monthly salary of the deceased on the ground that the Basic Pay, House Rent Allowance, Project Allowance and Bonus works out to

only Rs.9,709/- and the sum of Rs.23,492/- mentioned in Ex.P9 is inclusive of petrol expenses, mobile expenses and incentive per month. Thereafter, the Tribunal, by adding 50% of the basic pay of Rs.3,870/- namely Rs.1,935/- towards future prospects, arrived at the total earning of the deceased at Rs.11,644/- per month. Thereafter, by relying upon the off-quoted decision of the Honourable Supreme Court in Sarala Verma vs. Delhi Transport Corporation (2009) (2) TN MAC Page No.1, the Tribunal has given 1/4 deduction towards personal expenses and arrived at the total monthly income of the deceased at Rs.8,733/-. By applying multiplier 17, the Tribunal arrived at a total compensation of (Rs.8733 X 12 X 17) Rs.17,81,532/- towards loss of earning. Thereafter, the Tribunal proceeded to award compensation under several heads and arrived at a total compensation of Rs.19,81,532/-. According to the learned counsel for the claimants, the amount awarded by the Tribunal is very low. Even though it was proved by oral and documentary evidence that the deceased was earning Rs.23,492/- per month, the Tribunal erred in concluding that the deceased was earning only Rs.9,709/-. Further, the amount awarded under various heads, including loss of consortium and funeral expenses were very low and it calls for interference by this Court.

8. Per contra, the learned counsel appearing for the Insurance company would contend that the amount awarded by the Tribunal is in fact excessive and not proportionate to the monthly earnings of the deceased. It is mainly contended that the Tribunal ought to have deducted some amount towards Income Tax payable by the deceased, but no such amount was deducted by the Tribunal. According to the learned counsel, a sum of Rs.75,000/- awarded by the Tribunal towards loss of consortium to the first claimant and Rs.50,000/- each to the minor claimants 2 and 3 are excessive and prayed for modification of the award passed by the Tribunal.

9. Keeping the submissions of the counsel for both sides, we have perused the records placed. For the purpose of proving the income of the deceased, Ex.P9 was filed by the claimants wherein it was stated that a sum of Rs.23,492/- was the salary of the deceased at the time of his death. The details of the emoluments paid to the deceased under various heads are re-produced hereunder:-

"Particular	Salary	Contribution by the company
Basic	3870	
HRA	3010	
Project allowance	1720	
Gross Total (A)	8600	

Contribution by company to PF	464
Bonus (Two months basic pay)	646
Total contribution by company (B)	1109
Gross CTC (A + B)	9709
Add: Mobile expenses paid against bill	2100
Add : Vehicle petrol expenses paid against bill	3350
Add : Incentive per month	8333
Total Gross per month	23492 ”

10. Even though we find that Mobile expenses and petrol expenses paid to the deceased were the expenses incurred by the deceased and reimbursed at actuals, we find that the Tribunal ought to have included the sum of Rs.8,333/- paid towards incentive per month to the deceased, which would have been paid based on the contribution of the deceased to the growth of the company. Further, we find that as per Ex.P9, salary certificate of the deceased, the monthly earnings of the deceased such as basic pay, house rent allowance and project allowance was only Rs.8,600/- and if the sum of Rs.8,333/- towards incentive increment per month is added, the monthly earnings of the deceased will come to Rs.16,933/- per month to which 10% amount shall be deducted towards payment of income tax. There is no dispute with respect to the multiplier '17' adopted by the Tribunal. Therefore, the quantum of compensation arrived at by the Tribunal at Rs.17,81,532/- is modified to Rs.34,97,427.00 (Rs.16,933/- X 12 X 17 X ¼ X 50% - 10% Tax) which will be the fair and reasonable compensation payable to the claimants.

11. As regards the compensation awarded under other heads, we find that the amount of Rs.50,000/- awarded to the minor claimants 2 and 3, who were aged 4 years and one month respectively at the time of accident of the deceased, is very low. Similarly, we find that for funeral expenses, the Tribunal could have awarded a sum of Rs.10,000/-. Therefore, we enhance the compensation towards loss of love and affection to the minor claimants 2 and 3 from Rs.50,000/- each to Rs.1,00,000/- each totalling a sum of Rs.2,00,000/-. Similarly, we enhance the sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses to Rs.10,000/-. Accordingly, the amount awarded by the Tribunal at Rs.19,81,532/- is re-calculated and modified as under:-

Loss of earning	Rs.34,97,427.00
Loss of Love and Affection (1st claimant)	Rs. 75,000.00
Loss of Love and Affection to claimants 2 & 3 (Rs.1,00,000/- each to the minor children)	Rs. 2,00,000.00
Loss of love and affection to 3rd respondent (mother of deceased)	Rs. 15,000.00
Funeral Expenses	Rs. 10,000.00
Transportation charges	Rs. 5,000.00
Total compensation	Rs.38,02,427.00

12. In the result, the Appeal filed by the claimants in CMA No. 1763 is allowed and the appeal filed by the Insurance Company in C.M.A. No. 2942 of 2014 is dismissed by modifying the award dated 06.08.2012 made in M.C.O.P. No. 314 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore from Rs.19,81,532 /- to Rs.38,02,427.00. The Insurance company is directed to deposit the enhanced compensation amount, as determined in this appeal, to the credit of MCOP No. 314 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore within a period of eight weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, deposited already. On such deposit, the first claimant is entitled to withdraw a sum of Rs.15,00,000/- out of the compensation amount, the minor claimants 2 and 3 are entitled to a sum of Rs.10,00,000/- each and the balance amount shall be withdrawn by the mother/third respondent. The compensation amount payable to the minor claimants 2 and 3 is directed to be deposited in a Nationalised Bank in an Interest bearing account. Out of such deposit, the first claimant/mother is permitted to withdraw accrued interest once in three months. No costs. Consequently, MP No. 1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Vellore

+1cc to Mr. M. Krishnamoorthy, Advocate, S.R.No.51544
+1cc to Mr. Y. Jyothish Chandar, Advocate, S.R.No.51765
+1cc to Mr. C. Prabakaran, Advocate, S.R.No.57610
+1cc to Mr. S. Angamuthu, Advocate, S.R.No.51611

CMA Nos. 1763 & 2942 of 2014

KK(CO)
CS/10/10/17