IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.M.A.Nos.48 of 2016 & 2854 of 2015
& C.M.P.Nos.385 & 4558 of 2016

Cholamandalam MS General Insurance Company Limited,
Head Office, Dare House,
2nd Floor, No.2, N.S.C. Road,
Chennai 600 001 ... Appellant in CMA No.48/2016
& R-2 in CMA No.2854/2015

versus

1. Kaliammal
2. Rasappan ... R-1 & R-2 in CMA No.48/2016
& Appellants in CMA No.2854/2015
3. Thamizharasan ... R-3 in in CMA No.48/2016 &
& R-1 in CMA No.2854/2015

Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the judgment and decree in MCOP No.1161 of 2013, dated 03.06.2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellant in CMA No.48/2016 &
& For R-2 in CMA No.2854/2015 : Mr. N.Vijayaraghavan
R-1 & R-2 in CMA No.48/2016 &
Appellants in CMA No.2854/2015 : Mr. Ma.Pa.Thangavel

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

(Judgment of the Court was delivered by S.Vimala, J.,)

Though CMA No.2854 of 2015 is not listed before this Court today, by consent of the learned counsel appearing for both sides and also considering the fact that it is the connected appeal filed by the claimants (arising out of the same accident), both the Appeals were taken together and a common judgment is pronounced.

2. The parents have filed the claim petition for compensation in respect of death of their son, Gnanasekaran, who was aged 22, at the time of accident. The deceased was the Supervisor, earning a sum of Rs.20,000/- per month, in a company called, Lotus Promoters and Constructions, Thuraiyur Road, Namakkal.

3. It is the case of the claimants that the deceased was their only son and he had better future prospects and on account of that they have suffered loss and damage to the extent of Rs.50 lakhs.

4. The claim was disputed by the Insurance Company on the ground that the salary of the deceased cannot be Rs.20,000/- and when the claimants have not proved the income by providing documentary evidence, the salary ought not to have been fixed on such a higher slab.

5. The Tribunal, on a consideration of the materials placed before it, has quantified the compensation at Rs.22,23,986/-, under the following breakup details:-

Loss of income	-	Rs.19,44,000/-
Loss of love and affection	-	Rs. 50,000/-
Funeral expenses	-	Rs. 25,000/-
Transport	-	Rs. 10,000/-
Medical expenses	-	Rs. 1,94,986/-
Total	-	Rs.22,23,986/-
Rounded off to	-	Rs.22,23,000/-

6. While fixing the loss of income, the monthly income has been taken at Rs.18,000/- and deducting 50% towards the personal expenses of the deceased and adopting the multiplier of 18, the Tribunal has quantified (Rs.18,000/- (-) 50% x 12 x 18) the loss of income at Rs.19,44,000/-and awarding compensation under other heads, the Tribunal has quantified the total amount of compensation at Rs.22,23,986/-.

7. The fact remains that after the accident, the deceased had been alive for a period of nine days and only thereafter, he has died.

8. Challenging the quantum of compensation as excessive and disproportionate, CMA No.48 of 2016 has been filed by the Insurance Company and challenging the quantum of compensation as inadequate to the income of the deceased, CMA No.2854 of 2015 has been filed by the claimants.

9. The main contention raised by the learned counsel appearing for the Insurance Company is that the monthly income of the deceased has been taken at a higher side and it should not have been done, in the absence of any documentary evidence. It is contended that the monthly income can be taken at the most only at Rs.6,500/- and not more than that.

10. The learned counsel appearing for the claimants contended that when the qualification of the deceased as the Diploma Holder in Civil Engineering has been proved through documentary evidence, the income can be reasonably taken as per the claim and as per the decision reported in 2012 (12) SCC 198 (New India Assurance v. Gopali and Others) 100% future prospective increase in income should have been considered by the Tribunal.

11. A perusal of the award would go to show that the monthly income has been taken at Rs.12,000/- and awarding 50% towards the future prospective increase in income and deducting 50% towards the personal expenses, the loss of income has been calculated.

12. It is relevant to point out that the Tribunal did not consider the passing of the award in respect of pain and sufferings undergone by the deceased, during treatment period, while he was alive. Therefore, if that is taken into account and in the event of the monthly income having been taken at a lower level, (i.e., below Rs.12,000/-) and if compensation for pain and sufferings is added, the total amount of compensation would be the same.

13. Therefore, considering the overall facts and circumstances, this Court is of the opinion that the amount of compensation awarded by the Claims Tribunal is just, fair and reasonable.

14. Under the circumstances, (both the Appeals) CMA No.48 of 2016 filed by the Insurance Company and CMA No.2854 of 2015 filed by the claimants stand dismissed and the Award passed by the Claims Tribunal in MCOP No.1161 of 2013 shall stand confirmed. No costs. Consequently, the connected CMPs are closed.

15. At this juncture, the learned counsel appearing on both sides submitted that the claim petition as against the father has been dismissed on the ground that the legal heirship certificate does not disclose the name of the father.

16. Time and again this Court has pointed out that the legal heirship certificate issued by the Tahsildar cannot confer any legal status upon the claimants. The father, being the

legal representative of the son / dependent, cannot be deprived of the compensation awarded. Therefore, we make it clear that the compensation awarded by the Claim Tribunal is to be shared equally between the father and the mother / claimants.

17. It is submitted by the learned counsel appearing on both sides that the Insurance company has already deposited the compensation amount, as awarded by the Claims Tribunal, along with interest at 7.5% per annum and 50% of the deposited amount has already been withdrawn by the mother / first claimant.

18. In view of the said submission, the Tribunal is directed to transfer the balance amount of compensation to the Savings Bank Account of the second claimant / father, through RTGS, forthwith.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

srk

To
1. Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

+ 1 cc to Mr. N.Vijayaraghavan Advocate,SR.91724

+ 1 cc to Mr. Ma.Pa.Thangavel Advocate,SR.91652

C.M.A.Nos.48 of 2016 & 2854 of 2015
& C.M.P.Nos.385 & 4558 of 2016

rr(co)
nr 24/04/2018