IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.11.2016

Judgment Pronounced on : 04.08.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.856 & 857 of 2009
and MP.Nos.1 & 1 of 2009

CMA.No.856 of 2009 :
National Insurance Co. Ltd.
No.19, Officer's Line,
Vellore. ... Appellant

Vs.

1.Vanaroja
2.Minor Lalitha
3.Minor Soniya
4.Minor Vijayalakshmi
5.Minor Vijayakumari
6.P.Samraj ... Respondents

CMA.No.857 of 2009:

National Insurance Co. Ltd.
No.19, Officer's Line,
Vellore. ... Appellant

Vs.

1.Valliammal
2.P.Samraj ... Respondents

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.11.2005 made in MCOP.No.192 of 2001 and MCOP.No.223 of 2000 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Tirupattur, Vellore District.

For Appellant : Mr.S.Arunkumar

For Respondents : No Appearance

JUDGMENT

On 30.05.1998 at about 04.45 a.m. one Murugaiyyan was riding his bullock cart. Along with him in the cart were one Kamalanathan and another Varadhan. They were travelling along Umarabath-Ambur Road when a bus bearing No.TAL-2131 belonging to the first respondent before the Tribunal and insured with the second respondent-insurance company ran over the bullock cart killing Varadhan instantly. Both Murugaiyan and Kamalanathan suffered major injuries. The bullocks too had died. While Murugaiyyan was stated to have died without responding to his treatment on 19.01.2001, Kamalanathan too met a similar fate, but on 22.12.1999. Separate claims were made by the widow, children and mother of Murugaiyan as well as by the mother of Kamalanathan. Though both the cases arise out of the same accident, the Tribunal has not consolidated them, but decided them on the same day Vide separate awards. These both are challenged by the insurance company on a solitary point of quantum of compensation awarded.

2. CMA.No.856 of 2009 : This case relates to claim made by the heirs of Murugaiyan. According to them, Murugaiyan was earning around Rs.3,000/- a month and he was 40 years at the time he died. One critical defence of the insurance company was that Murugaiyan during his life time had filed MCOP.32/1999 seeking compensation for his injuries and therefore, award should have been passed only for the injuries he had suffered and hence a claim by his heirs for his death is untenable and not maintainable.

3. In dealing with this, the Tribunal has reasoned that owing to the death of Murugaiyan the said MOCP was not prosecuted further and inasmuch as no compensation was received by the claimants, the MCOP filed is maintainable. In this context it would also be relevant to mention that there is no pleading for the insurance company that Murugaiyan did not die owing to the injuries he suffered some three years prior to his death. The Tribunal found that the very amount claimed by the claimants as the monthly income of Murugaiyan was reasonable enough and quantified the compensation by applying a multipier of 15 and reduced there from 1/3 towards his personal expenses and arrived at Rs.3,60,000/- However, since the claimants have made a claim only for Rs.1,50,000/- on this head, the Tribunal limited the value of compensation payable on the head of loss of support to this amount to the amount claimed. For loss of consortium Rs.30,000/-, and for loss of love and affection Rs.30,000/- were awarded. Towards damages to bullocks and bullock cart Rs.8,000/- and Rs.5,000/- were awarded and towards medical expenses it awarded Rs.5,000/- and for transportation it awarded Rs.3,000/-. In total, the Tribunal awarded a compensation of Rs.2,31,000/-. However, it again reduced the total sum of Rs.2,31,000/- by another 30% towards uncertainty of Murugaiyan life and for fast forwarding the support the family would have received during the entire life time of Murugaiyyan. In the final result, it passed an award for Rs.1,61,700/- and directed the same to be paid with interest of 7.5% per annum. The solitary point argued was that the Tribunal ought not to have passed an award in the present petition but should have passed an award only for the injuries suffered by him in MCOP.32/99. As already indicated it passed an award for Rs.1,61,700/-.

4. On the point of maintainability, this Court endorses the reasoning of the Tribunal below and affirms it. So far as quantum of compensation is concerned notwithstanding the fact that the Tribunal has ample powers to enhance compensation beyond the amount claimed since the duty is cast on the Tribunal to determine just and fair compensation, yet it has ventured to not only half the compensation amount, but also made further reduction by 30%. Under circumstances, this itself is a bonanza to the insurance company, yet it has chosen to prefer this appeal.

5. The award passed shocks the conscience of this Court. It therefore, fixes the loss of support to the family of the victim at Rs.3,60,000/- as per the calculation indicated by the Tribunal without limiting it to Rs.1,50,000/-. On other heads the award is confirmed. In final analysis, the final figure of compensation awarded by this Court reads as below :

Heads	Amount Enhanced (Rs.)
Loss of dependency	3,60,000.00
Transportation	3,000.00
Loss of two bullocks	8,000.00
Loss to bullock cart	5,000.00
Medical expenses	5,000.00
Loss of love and affection	30,000.00
Loss of consortium	30,000.00
Total	4,41,000.00

6.CMA No.857 of 2009: This appeal is preferred for the loss of death of Kamalanathan. Kamalanathan was stated to be doing some business and was earning Rs.3,000/- per month. Since from the date of the accident he was stated to be in continuous treatment and ultimately died. He was 22 years when he died and was stated to be earning Rs.3,000/- a month. The Tribunal however assessed the compensation only for the grievous injury the victim had suffered and not for the death that ensued. On the head of permanent disability it has awarded Rs.54,000/-; for medical expenses it has awarded Rs.10,000/-; for transportation it has awarded Rs.5,000/-; and for pain and suffering another 30,000/- and towards 90% permanent disability it has awarded 30,000/- and for loss of earning capacity it has awarded Rs.30,000/- and arrived at total sum of Rs.1,59,000/-.

7. It is very unfortunate that the Tribunal should determine the compensation amount as unjustly and as unfairly and as insensitively as it has done in this case. True, there is no cross objection seeking enhancement of compensation, but where

the approach of the Tribunal is hardly anywhere near reasonable compensation, it is incumbent upon this Court to re-visit the same to arrive at a just and fair compensation. Already a poor is compensated lowly in accident claims, and it will be unforgiving on the system if it counts on the ignorance of the litigant to claim what in law should be just and fair compensation. The approach of this Court is going to be premised on the pleading of the insurance company. First as to the factum of accident, it is not disputed; on the factum of negligence, the Tribunal has held that the driver of the bus belonging to the insured was responsible. This was not challenged. And the insurance company has not pleaded that Kamalanathan's death was not related to the injuries he had suffered. If that is so, it is a million dollar question as to how the Tribunal determined the compensation for the injuries suffered and not for the death of the victim.

8. Kamalanathan was barely 22 years at that time. His income then could be safely fixed at about Rs.2,000/- and if 50% is deducted towards his personal expenses, his annual support to the family would have been Rs.12,000/-. Applying a multiplier of 18, the total compensation is Rs.2,16,000/- is determined on the head of loss of dependency. He has suffered pain for two years for which compensation of Rs.1,00,000/- is awarded which will accrue to his estate. However, as to compensation on other heads, the award of Tribunal is confirmed. The break-up details of the enhanced compensation is as below :

Heads	Amount Enhanced (Rs.)
Loss of dependency	2,16,000.00
Towards Pain and suffering underwent by the victim for two years	1,00,000.00
Transportation	5,000.00
Medical expenses	10,000.00
Permanent disability	30,000.00
Loss of earning capacity	30,000.00
Total	3,91,000.00

Thus the award granted by MACT in MCOP No.192 of 2011 is suo moto enhanced from Rs.1,61,700/- to Rs.4,41,000/- and the award in MCOP.No.223 of 2000 is enhanced from Rs.1,59,000/- to Rs.3,91,000/- respectively.

9. In the result, both the appeals in CMA Nos.856 and 857 of 2009 preferred by the insurance company are dismissed without costs. The appellant-insurance company is directed to deposit the

enhanced award amount to the claimants along with accrued interest @ 7.5% p.a, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. So far as CMA.No.856 of 2009 is concerned, the proportionate share of the amount to the appellants is as determined by the Tribunal. The share of the award amount of the minor claimants shall be initially deposited in any one of the Nationalised Banks under reinvestment scheme, initially for a period of three years, renewable thereafter and the interest accrued on such deposit shall be withdrawn by their natural guardian, once in three months, till they attain majority. The claimants are directed to pay the necessary court fee for the enhanced portion of the award amount. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1.The Sub Judge,
Motor Accidents Claims Tribunal
Tirupattur,
Vellore District.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Arunkumar, Advocate, S.R.No.56179
+1cc to Mr.Kothandaraman, Advocate, S.R.No.56489

CMA.Nos.865 & 867 of 2009

MG(CO)
GN(05/10/2017)