

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. Nos. 2000 and 2001 of 2017
and
C.M.P. Nos.10800 and 10801 of 2017

1. K.Sumathy

2. The National Insurance Company Limited
Divisional Office,
K.R.T. Building,
33, Paramanedu Road,
Trichy-1

..Appellant in both the appeals

Versus

Barnath Leedia

.. Respondent for C.M.A. No.2000 of 2017

K.Lakshmiammal

.. Respondent for C.M.A. No.2001 of 2017

Prayer in C.M.A No.2000 of 2017: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 07.09.1999 made in M.C.O.P. No.21 of 1999 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.

Prayer in C.M.A No.2001 of 2017: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 07.09.1999 made in M.C.O.P. No.22 of 1999 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellants : Mr. Sunikumar
in both the appeals

COMMON JUDGMENT

C.M.A. SR11775 of 2015 has been filed by the petitioners against the award passed in M.C.O.P No.21 of 1999. The said Petition in M.C.O.P. No.21 of 1999

<http://www.judis.nic.in> was filed by the respondent (Barnath Leedia) herein seeking compensation for the

death of her son Antony Gruce @ Stalin, who was aged 20 years, running a Hotel and earning a sum of Rs.3,000/- per month at the time of his death in the road accident on 18.12.1997. The accident took place when the deceased was travelling in the Maruti Car bearing Registration No. TN 09 B 6134 which was driven by his partner Mathesh. At that time, the lorry bearing Registration No. TN 67 0633 owned by the first appellant herein and insured with the second appellant was driven by its Driver and dashed against the car. In the accident, the son of the respondent Antony Gruce @ Stalin died on the spot. The Tribunal fixed the age of the deceased Antony Gruce @ Stalin as 20 based on school certificate as well as Post Mortem Certificate. Fixing the monthly income at Rs.3,000/- per month and adopting multiplier of 16, the loss of earning capacity has been calculated as Rs.5,76,000/-. After deducting 1/3rd amount towards personal expenses of the deceased, the Tribunal arrived awarded a sum of Rs.3,84,000/- under the head of loss of income alone. However, as the Claimant/respondent herein has filed the claim petition only seeking Rs.3,00,000/- as compensation, the Tribunal restricted the award at Rs.3,00,000/-.

2. C.M.A. SR11778 of 2015 has been filed by the petitioners against the award passed in M.C.O.P No.22 of 1999. The claimant in M.C.O.P. No.22 of 1999 is the mother of one Mathesh, aged 20 years who is running a Hotel and earning a sum of Rs.3,000/- per month. The said Mathesh was the Driver of the Car in which the son of the claimant in MCOP No. 21 of 1999 was travelling and died on the spot. In the very same accident, the son of the claimant in MCOP No.22 of 1999 also died on the spot while he was driving the Maruti van. The Tribunal fixed the age of the deceased Mathesh as 20, as per the Postmortem Certificate and fixed

his monthly income at Rs.3,000/- per month. By adopting multiplier of 16 and after giving 1/3rd deduction towards personal expenses, the Tribunal arrived at a sum of Rs.3,84,000/- towards loss of earning. As the Claimant herself filed the claim petition claiming only Rs.3,00,000/-, the restricted the award of compensation at Rs.3,00,000/-.

3. Both the awards are under challenge in these appeals at the instance of the owner of the lorry bearing Registration No. TN 67 0633 as well as the Insurance Company.

4. The main contention of the Insurance Company is that the Tribunal, without considering any evidence adduced on behalf of the claimant/respondent, has notionally taken Rs.3,000/- per month as income of the deceased and awarded excessive compensation.

5. The claimants in both the Original Petitions has claimed a sum of Rs.3,00,000/- as compensation for the death of their respective sons. The Tribunal determined the loss of income of the deceased by taking their monthly income of Rs.3,000/- per month out of which 1/3rd amount was deducted towards their personal expenses. The amount determined by the Tribunal under the head of Loss of Income itself exceeded the amount claimed in the claim petition and therefore, the Tribunal, without awarding any other conventional amount to the claimant such as funeral expenses, transportation expenses, loss of love and affection, future prospects of the deceased etc., has confirmed the award amount to Rs.3,00,000/- as prayed for by the claimants. This Court under normal

circumstances would have chosen to enhance the compensation as the quantum is not circumscribed by the claim made but the quantum must be based on the justness. But, the accident is of the year 1999, the claimants have not filed any appeal. Under the circumstances this Court dismiss the appeal filed by the Insurance Company challenging the award as excessive.

6. In the result, both the Civil Miscellaneous Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

7. The second appellant/ Insurance Company is directed to deposit the entire award amount, along with interest as ordered by the Tribunal and costs as ordered by the Tribunal, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

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30.06.2017

Index : Yes/No
Internet : Yes / No
Speaking / Non speaking
vsi2/rkp

To

1. Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.

2. The Section Officer, VR Section,

<http://www.judis.nic.in> High Court, Madras.

Dr.S. VIMALA, J.

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