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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

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THE HON'BLE DR.JUSTICE S.VIMALA
C.M.A.Nos.2837 and 2838 of 2017
and
C.M.P. Nos.16246 and 16247 of 2017

The Oriental Insurance Co. Ltd.,
Motor Third Party Claims Office,
Esplanade Road,
Esplanade,
Chennai - 600 108.

... Appellant in C.M.A.Nos.2837
and 2838 of 2017/2nd Respondent in
both MCOPs

Versus

1. S.Ramasamy
2. R.Chandreswari
3. P. Mohan

... Respondents in C.M.A.Nos.2837
and 2838 of 2017/Petitioner 1 & 2
in both MCOP/1st Respondent in both MCOPs

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the common award and decree dated 17.03.2004 passed in M.C.O.P. No.5612 and 5613 of 2001, on the file of the Motor Accident Claims Tribunal, Chennai, (Chief Judge, Court of Small Causes, Chennai) respectively.

For Appellant : Mr.R.Sivakumar

COMMON JUDGEMENT

Aggrieved over the common order dated 17.3.2004, passed by the Motor Accidents Claims Tribunal, Chennai, made in MCOP Nos.5612 and 5613 of 2001, the appellant is before this Court by filing the present appeals.

2. In respect of the death of R.Maheswaran, the parents of the deceased, viz., respondents 1 and 2, filed claim petition in MCOP No.5612 of 2001 claiming in all a sum of Rs.8,00,000/-.

3. In respect of the death of their daughter R.Mugundhapriya, the claimants preferred a claim petition in



MCOP No.5613 of 2001 claiming a sum of Rs.8,00,000/-.

4. On 18.7.1999, the deceased Maheswaran, aged 13 years, a student studying in 8th standard in SBOA School & Junior College, Anna Nagar and R.Mugundhapriya, aged 18 years, a student studying B.Com II year in Bakthavatchalam Memorial College, Kundrathur, Chennai, while travelling as pillion riders in the vehicle bearing Registration No. TN-02-F-6768 at Poonamalle High Road, Chennai, met with an accident. The Tribunal, on consideration of the oral and documentary evidence adduced on behalf of the claimants, passed an award for a sum of Rs.5,00,000/- each in respect of the death of the deceased Maheswaran and Mugundhapriya. Contending that the compensation awarded is excessive, the insurance company/appellant is before this Court by filing the appeal.

5. The main contention addressed by the appellant before the Tribunal was that the deceased persons, being students, have no earning and therefore, there is no loss of income.

6. The first claimant Ramasamy and his son and daughter, were travelling in the Motor Cycle from a temple to the residence. At that time a lorry bearing Registration No.TN-28-B-5377, which came behind, driven in a rash and negligent manner hit the motor cycle from behind due to which both the deceased fell down and the lorry ran down on the head of the children and both the deceased died on the spot.

7. In respect of the claim made towards the death of the deceased, Maheswaran, the Tribunal, considering all the documents, viz., the age of the deceased, being 13 years at the time of accident, his educational qualification and his proficiency in Hindi, which is evident from Exs.P-2 and P-3, held that the deceased was a bright student. The Tribunal, further considering his extra-curricular activities and co-curricular activities, as is evident from Ex.P-5, came to the conclusion that there are bright chances for the deceased to earn well in future. Reliance was placed upon the decision of the Apex Court in Lata Wadhwa & Ors. - Vs - State of Bihar & Ors. (2001 ACJ 1735) which was a case in which 60 persons died and 113 persons were injured. In the above case, the Apex Court held that even though many children, aged between 10 to 15 years, studying in classes 6th to 10th died, however, fixed the notional income at Rs.24,000/- per annum and adopting multiplier of 15, quantified the loss of income at Rs.3,60,000/-. To the said amount, a conventional amount of Rs.50,000/- was awarded to each of the child and the total compensation awarded was quantified at Rs.4,10,000/-.



8. The above judgment has been subsequently followed by the Supreme Court in the case of M.S.Grewal & Anr. - Vs - Deep Chand Sood & Ors. (2001 ACJ 1719), in which children in the age group of 10 to 12 (studying in classes IV to V) died awarded a sum of Rs.5,00,000/- to the parents of each child, who died in the accident.

9. Considering the totality of the circumstances, for the death of the deceased Maheswaran, the Tribunal passed an award in a sum of Rs.5,00,000/- following the decisions referred to above.

10. Insofar as death of Mugundhapriya is concerned, the deceased was aged 18 at the time of accident, the Tribunal found the deceased Mugundhapriya also a bright student and had qualified herself in Hindi, besides her academic record also found to be good. In such view of the matter, in tune with the judgment of the Apex Court, referred to above, the Tribunal quantified the pecuniary loss at Rs.4,50,000/- and adding the conventional damages at Rs.50,000/-, in all, awarded a sum of Rs.5,00,000/-.

11. Considering the above facts and the findings arrived at by the Tribunal on the basis of oral and documentary evidence and also the ratio laid down by the Apex Court in cases, where students have died, the award of Rs.5,00,000/= each for the death of Maheswaran and Mugundhapriya, by no stretch of imagination, could be termed as excessive or unreasonable. The Tribunal has applied its mind to the materials available on record and arrived at a well considered finding and has awarded the amount of Rs.5,00,000/= each, which this Court finds to be just and reasonable. Though the accident is of the year 1999, the award has been passed for an amount of Rs.5,00,000/=, which could only be said to be very low and cannot be termed to be exorbitant. However, the interest has been awarded at 9%, which seems to be on the higher side considering the fact that the accident is of the year 1999. Therefore, this Court reduces the interest from 9% to 7.5%.

12. The claimants not having filed any appeal, this Court sees no reason to enhance the award. For the reasons stated above, this Court finds no infirmity in the award passed by the Tribunal and, accordingly, these appeals are disposed of by confirming the award passed by the Tribunal, but with modification that interest on the award amount shall be paid at the rate of 7.5%. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.



13. The appellant Insurance Company is directed to deposit the award amount along with interest @ 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, 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 claimants, as per the apportionment fixed by the Tribunal, through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal, Chennai,
(Chief Judge, Court of Small Causes, Chennai)
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

C.M.A.Nos.2837 and 2838 of 2017

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