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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1223 and 1224 of 2018

CMA.No.1223 of 2018:-

V.Krishnamoorthy

..Appellant/Petitioner

Vs

1.M.Sethu

2.K.Prabu

3.The New India Assurance Company Limited

No.106, Big Street, First Floor

Thiruvannamalai

(1st and 2nd respondents exparte in lower court)

..Respondents/Respondents

C.M.A.No.1224 of 2016:-

V.Krishnamoorthy

..Appellant/Petitioner

Vs

1.M.Sethu

2.K.Prabu

3.The New India Assurance Company Limited

No.106, Big Street, First Floor

Thiruvannamalai

(1st and 2nd respondent exparte in lower court)

..Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, against the order and decree dated 10.04.2014 made



in M.C.O.P.No.505 of 2010 (CMA.No.1223/2018-fatal) and M.C.O.P.No.904 of 2010 (CMA.No.1224 of 2017-injured) respectively on the file of Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Coimbatore.

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For appellant

in both appeals

For Respondents

: : Mr.K.Varadhakamaraj

: : Mr.D.Nadhamuni for R3.

R1 and R2 -exparte before Tribunal

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

The Appellant is the Petitioner in both MCOPs and fled the above appeals challenging the order and decree dated 10.04.2014 made in M.C.O.P.Nos.505 and 904 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Coimbatore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the injured Petitioner in MCOP.No.904 of 2010 is that on 05.07.2008 at about 5.30 a.m., while the Petitioner was proceeding with his family in a car bearing Reg.No.TN-33-AB-3900 in Chittoor to Tirupati Road, while going near Kotha Indlu of Chandragiri Mandal, a bus bearing Reg.No.AP-03U-4791 came in the opposite direction, dashed against the car, in which the Petitioner was proceeding with his family, causing fatal injuries to the wife of the Petitioner, his son and another person. The Petitioner was injured and he took treatment in a Private Hospital, Chittoor and thereafter, at Gangal Hospital, Coimbatore. The Petitioner suffered multiple injuries. Due to the injuries, suffered, he is unable to attend to his regular work. According the Petitioner, the accident took place due to the negligence of the 1st respondent vehicle driver. The said bus was belonging to the 2nd respondent and insured with the 3rd respondent. For the Partial Permanent Disability suffered by the petitioner in MCOP.No.904 of 2010, the Petitioner V.Krishnamoorthy claimed Rs.32,12,366/- as compensation from the respondents.

3. Likewise, the Petitioner V.Krishnamoorthy/husband of Pushpa Bai filed Claim Petition in MCOP.No.505 of 2010 [CMA.No.1223/2018], averred that in the above said accident, Pushpa Bai died and she was aged 57 years and was employed as a Reader in Department of Home Science and she was earning Rs.45,817/- per month. According to the Petitioner, due to untimely death of his wife, he has lost his companion and her contribution to the family. Thus, the Petitioners sought for a sum of Rs.5,00,000/- as compensation.



4. On the other hand, opposing the claim of the Petitioner, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The accident occurred only due to negligence of the Petitioner's son who was driving the vehicle in a careless manner. The Rough Sketch of the accident spot will clearly prove that the Petitioner son while driving the car lost control and dashed on the corner of the road, resulting in the accident. Thus, the negligence of the Petitioner's car driver alone resulted in the accident. The amount claimed by the petitioner in both the claim petitions is excessive. Thus, the 3rd respondent sought for dismissal of both the Petitions.

5. Before the Tribunal, both MCOPs are taken up together for joint trial and the Petitioner examined P.W.1 to P.W.5 produced documents Ex.P.1 to Ex.P.46 to prove his claim. On the side of the 3rd respondent, R.W.1 was examined, but no documents was produced. On careful analysis of the evidence available on record, the Tribunal found both the vehicle drivers are negligent and as such, fixed negligence at 25% : 75% on the claimant's car driver and on the 1st respondent vehicle driver respectively and passed an award for a sum of Rs.2,35,000/- in MCOP.No.904 of 2010 [CMA.No.1224 of 2018] and Rs.5,00,000/- in MCOP.No.505 of 2010 [CMA.No.1223/2018].

6. Being not satisfied with the quantum of the award, the Petitioner/appellant has come forward with the present appeals.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the appellant/petitioner contends that the Tribunal failed to appreciate the evidence on record properly and wrongly applied multiplier 5 instead of 7 as the age of the deceased was 62 years. The Tribunal inspite of available evidence on record, fixed the monthly income of the deceased wrongly at Rs.11,922/- instead of Rs.45,817/-. The amount awarded under other heads is very nominal. The Petitioner sought for enhancement of the award amount by entertaining the appeal in CMA.No.1223 of 2018.

9. It is further contended that in the other claim petition, the Tribunal failed to appreciate the disability properly and awarded Rs.90,000/- only. The amount awarded under different heads is very meagre. Hence, the Petitioner/appellant sought for enhancement of the award amount.

10. Both the appeals are purely quantum appeals. There is



no dispute between the Parties about the conclusion of the Tribunal that negligence of the 1st respondent bus driver as well as the car driver caused the accident. The person who travelled in the car which met with the accident, who is the Petitioner in both MCOPs viz., Krishanmoorthy deposed as P.W.1 and clearly stated that the car was driven by his son Ravikumar at about 5.30 a.m.. Admittedly the accident took place between the two vehicles which were moving in the opposite direction. It is head on collision between the two moving vehicles. It is clear from the evidence on record that the Petitioner's car was keeping to the left but accident occurred only near the centre of the road. Ex.P.5-Rough Sketch of the occurrence spot clearly proves it. The Tribunal correctly concluded that the negligence of the 1st respondent bus driver and negligence of the car driver will be 75% : 25%. The same is based on the available evidence on record, and the same appears to be just and proper and it does not require any interference.

11. It is pointed out by the Petitioner counsel that as per Ex.P.45 and Ex.P.46, the deceased can continue in his employment till 65 years and as he was aged 62 years at the time of her death, she could have continued for three more years. As per the Sarla Verma case, the deceased being 62 years old, the correct multiplier to be applied is '7'.

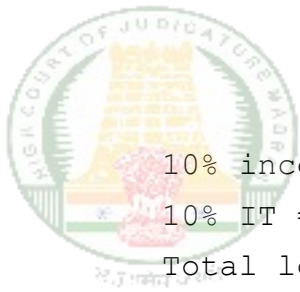
12. The Petitioner in MCOP.No.505 of 2010 states that the deceased was his wife. The deceased was stated to be employed as Reader in the College and as per Ex.P.11-Salary Certificate, her last drawn salary was Rs.45,817/- per month. The age of the deceased is 62. The copy of the deceased Passport is produced as Ex.P.13, wherein, her Date of Birth is stated to be 17.08.1946. As such, her age is 62 years on the date of the accident. As stated above, the deceased being aged 62 years at the time of death, she could have continued in her post for three more years. It is evident from Ex.P.11 salary certificate that she was employed as Reader in Avinashilingam University and her last drawn salary was Rs.45,817/- per month. There is no need to add future prospects for the said age. As the Petitioner/claimant/husband of the deceased is the only dependant and the deceased was aged 62 years at the time of accident, the Tribunal is justified in fixing multiplier as "5". Thus, the loss of dependency calculated by the Tribunal as detailed below is just and proper and the same is to be confirmed.

Last drawn salary/Monthly salary - Rs.45,817/-

Loss of income per year comes to Rs.5,49,804/-.

The remaining period is 3 years.

So the total loss of income is Rs.16,49,412/-.



10% income tax to be deducted.

10% IT = 1,64,941/-.

Total loss of income Rs.16,49,412/- - Rs.1,64,941/-

= Rs.14,84,471/-.

From this amount, 1/3rd is to be deducted towards her personal expenses.

1/3rd amount is Rs.4,94,823/-.

Balance amount is Rs.9,89,640/-.

So, the total loss of income for 3 years is Rs.9,89,640/-.

The remaining year in the multiplier is 2. For the period, the loss of income has to be calculated on the basis of family pension. After retirement she is entitled for full family pension. Since she died, only half of the amount will be given as family pension of the family members. As per the evidence of P.W.5, revised family pension after 17.08.2011 is Rs.16,261/- and from 06.07.2008 to 16.08.2011 is Rs.23,845/-. So balance amount can be taken into account for the purpose of calculating the loss of income. Rs.23,845/- divided by 2 = Rs.11,922/-. So this amount Rs.11,922/- has been multiplied by 12 x 2 = Rs.2,86,128/-. So from this amount 10% has to be deducted towards Income Tax. So, Rs.2,86,128/- 10% deduction towards income tax = Rs.28,612/-. So, Rs.2,86,128/- minus Rs.28,612/- = Rs.2,57,516/-. From this amount, 1/3rd of the amount has to be deducted towards her personal expenses. Rs.2,57,516/- divided by 3 = Rs.85,838/-. Balance amount Rs.2,57,516/- minus Rs.85,838/- = Rs.1,71,678/-. This amount is rounded to Rs.1,71,670/-/ So the total loss of income for 5 years is Rs.9,89,640/- plus Rs.1,71,670/- = Rs.11,61,310/-. Thus, the total loss of dependency is Rs.11,61,310/-.

Further, following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. VS. Pranay Sethi and others] under conventional heads, the following amounts are awarded:-

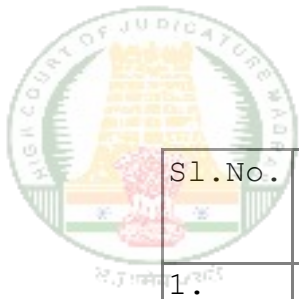
Loss of consortium - Rs.40,000/-

Loss of Estate - Rs.15,000/-

Funeral expenses - Rs.15,000/-.

Further, the sum of Rs.5,000/- provided by the Tribunal towards Transport expenses is confirmed.

13. In view of the foregoing reasonings, the modified award amount provided by this court is as under:-

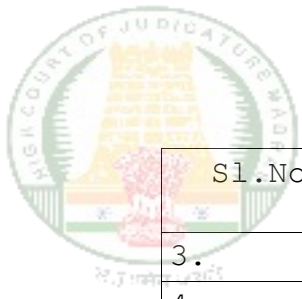


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Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss/Loss of dependency	11,61,310	11,61,310/-
2.	Funeral expenses	5,000	15,000
3.	Loss of love and affection	5,000	----
4.	Loss of estate	---	15,000
5.	Transport	5,000	5,000
6.	Loss of consortium	---	40,000
	Total	11,81,310/- correct total 11,76,310/- Since claim amount is restricted to Rs.5,00,000/-, the compensation is fixed at Rs.5,00,000/-.	12,36,310/-

14. In respect of MCOP.No.904 of 2010, for the injured Petitioner, it is stated the petitioner is suffering the malunion disability at 45%. The disability certificate shows that he has sustained 45% disability. The Tribunal also fixed 45% disability and per percentage of disability, given compensation at the rate of Rs.2000/-. Considering the age of the Petitioner and the attendant circumstances, it will be appropriate to provide Rs.3000/- per percentage of disability and thus, Rs.3000/- x 45% disability = Rs.1,35,000/- is awarded under the head "disability". Considering the nature of injury and that the petitioner's wife also died in the same accident, the petitioner would have undergone pain and suffering to a larger extent and therefore, towards Pain and suffering, instead of Rs.10,000/- granted by the Tribunal, it is appropriate to provide Rs.20,000/- and towards Extra Nourishment instead of Rs.10,000/-, this court is inclined to provide Rs.20,000/-. The compensation granted under other heads is found to be just and proper and hence, the same is confirmed. Accordingly, the modified compensation is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Disability	90,000	1,35,000
2.	Pain and suffering	10,000	20,000



Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
3.	Transport	5,000	5,000
4.	Nutrition	10,000	20,000
5.	Medical expenses	1,20,500	1,20,500
	Total	2,35,500	3,00,500

15. In the result, (i) Civil Miscellaneous Appeal Nos.1223 and 1224 of 2018 are allowed.

(ii) The award amount in both the appeals are enhanced as under:-.

CMA.No/MCOP.No.	Amount awarded by the Tribunal	Amount awarded by this Court.
CMA.No.1223/2018 (Fatal) MCOP.No.505/201	Rs.5,00,000/-	Rs.12,36,310/-
CMA.No.1224/2018-injury (MCOP.NO.904/2010)	Rs.2,35,500/-	Rs. 3,00,500/-

(iii) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;

(iv) The third respondent/Insurance company is directed to deposit the modified award amount as ordered by this court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) The appellant/claimant in both CMAs shall withdraw the modified award amount along with accrued interest. For the enhanced award amount, the cross objectors/claimants shall pay necessary court fee, if necessary, before obtaining copy of the decree. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. No costs. The appellant in both CMAs is not entitled to interest for the delay of 1161 days in filing the CMAs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
IV Additional District and Sessions Judge, Coimbatore.



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

+2cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.42944 & 42945

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C.M.A.Nos.1223 and 1224 of 2018

SJ (CO)
GSP (24/12/2018)