IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.1352 and 2010 of 2018
and
CMP.No.16139 of 2018

C.M.A.No.1352 of 2018:

1.T.Murugesan
2.M.Ananddayee .. Appellants/Respondents 3 & 4

Vs.

1.K.Durai Raj
(set exparte before Tribunal)

2.The United India Insurance Company,
No.13-Am Nethaji Road,
Manjakuppam, Cuddalore.

3.B.Sheela

4.Minor B.Shivani

5.Minor B.Srija
Minors rep. by their mother B.Sheela.
.. Respondents/Respondents

C.M.A.No.2010 of 2018:

1.B.Sheela

2.Minor B.Shivani

3.Minor B.Srija
Minors rep. by their mother B.Sheela.
.. Appellants/Petitioner

Vs.

1.K.Durai Raj

2.The Divisional Manager,
United India Insurance Company,
No.13-Am Nethaji Road,
Manjakuppam, Cuddalore.

3.T.Murugesan

4.M.Anandhayee .. Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 12.4.2018 passed in M.C.O.P.No.2270 of 2016 by the Motor Accidents Claims Tribunal (Special Sub Judge), Cuddalore.

For Appellants in CMA.1352/2018 and respondent Nos.3 & 4 in CMA.2010/2018	:	Mr.R.Sreedhar
For Respondent No.2 in CMA.1352 & 2010/2018	:	Mr.D.Baskaran
Respondent No.1 in CMA.1352 & 2010/2018	:	Ex parte
For Appellants in C.M.A.No.2010/2018 in R3 to 5 in C.M.A.No.1352 of 2018	:	Mrs. Ramya V.Rao

COMMON JUDGMENT

Being dissatisfied with the quantum of compensation and apportionment, parents of the deceased have filed C.M.A.No.1352 of 2018. Similarly, dissatisfied with the quantum of compensation of Rs.13,35,000/- awarded by the Tribunal for the death of the deceased Balamurugan, the wife and children of the deceased have filed C.M.A.No.2010 of 2018. Since the appeals arise under the same award, both the appeals were taken up together and disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their array before the Tribunal.

3. It is the case of the claimants that 31.10.2016 at about 11.00 P.M., the deceased was riding his motorcycle bearing registration No.TN-31 AJ 1386 on the left side of Arasoor-Panruti road and while he was nearing Aanathur, a lorry bearing registration No.TNS 1737 belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner dashed against the motorcycle. Due to

the impact, the deceased sustained grievous injuries all over the body and head. Immediately, he was admitted in Government Medical College Hospital, Mundiyampakkam where from he was taken to JIPMER Hospital, Puducherry for better treatment, however, he succumbed to injuries on 01.02.2016. Regarding the accident, a criminal case in Crime No.84 of 2016 was registered by Thiruvennainallur Police Station against the driver of the first respondent's lorry. At the time of accident, the deceased was aged 28 years and was earning Rs.25,000/- per month by employing in VST Motors, Kondur. The claimants are wife and minor children. The respondents 3 and 4 are parents of the deceased. Stating that the accident occurred due to rash and negligent driving of the driver of the lorry, the claimants have filed the claim petition claiming compensation of Rs.50,00,000/-.

4. On the other hand, opposing the claim petition, by filing counter, the second respondent insurance company contended that the genuineness and the manner of the accident is to be proved by the claimants. It is further contended that the driver of the first respondent's lorry was not holding a valid driving licence at the time of accident. According to the second respondent, the claimants have to prove the monthly income and avocation of the deceased. Thus, the second respondent seeks dismissal of the claim petition.

5. Before the Tribunal, the first claimant examined herself as P.W.1 and one Sundaramoorthy was examined as P.W.2. Exs.P1 to P5 were marked. No oral and documentary evidence was adduced on the side of the second respondent insurance company. The third respondent examined himself as R.W.1 and no document was marked.

6. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the first respondent. Finding that at the time of accident, the offending lorry was insured with the second respondent insurance company, the Tribunal directed the second respondent to pay the compensation. Taking the monthly income of the deceased at Rs.9,000/- after giving 50% addition towards future prospects and adopting multiplier 15 and also deducting one-fourth towards personal expenses, the Tribunal awarded total compensation of Rs.13,35,000/-.

7. The learned counsel for respondent Nos.3 and 4/appellants in C.M.A.No.1352 of 2018 submitted that the Tribunal ought to have awarded the compensation as claimed by the claimants at Rs.50,00,000/- in the claim petition. He would submit that the Tribunal failed to consider the fact that the respondents 3 and 4 are the parents of the deceased, who are equally suffered by the death of their son. The Tribunal also failed to look into

the ground reality that the deceased wife had filed the claim petition by showing the appellants as respondents would itself clearly proves that they were ignored by the deceased widow. The learned counsel further submitted that the Tribunal ought to have awarded a sum of Rs.2,50,000/- each as they are all also the legal heirs of the deceased and the apportionment of the Tribunal is liable to be revisited by this Court.

8. Assailing the quantum, the learned counsel for the claimants/appellants in C.M.A.No.2010 of 2018 submitted that the Tribunal went wrong in fixing the notional income of the deceased at Rs.6,000/- per month and it ought to have atleast taken the monthly income at Rs.12,000/-. He would submit that the Tribunal awarded very less compensation under the head loss of love and affection and considering the age of the children, the Tribunal ought to have awarded Rs.1,00,000/- each. Similarly, the amount awarded under the head loss of consortium is also very low and the same needs enhancement.

9. Per contra, the learned counsel for the second respondent insurance company submitted that the compensation of Rs.13,35,000/- awarded by the Tribunal is just and reasonable and there is no need to enhance the same.

10. Insofar as the issue of negligence is concerned, the Tribunal, on the basis of the evidence of P.W.1 and P.W.2 and Ex.P1-FIR, held that the first respondent's lorry driver alone is responsible for the accident. Further, it is pointed out that the second respondent has not examined any witness on its side to disprove the case of the claimants. Therefore, the finding of the Tribunal that the accident occurred due to rash and negligent driving of the first respondent's lorry driver and the second respondent being the insurer of the offending lorry is liable to pay the compensation warrants no interference and the said conclusion arrived at by the Tribunal is confirmed.

11. The only point to be considered in these appeals is whether the compensation of Rs.13,35,000/- awarded by the Tribunal is just and reasonable.

12. According to the claimants, at the time of accident, the deceased was aged 28 years and was earning Rs.25,000/- per month. To prove the age of the deceased, the claimants have marked Ex.P4-post mortem certificate, where from, it is seen that the deceased was aged 37 years and accordingly, the Tribunal fixed the age of the deceased as 37 years. However, during the course of arguments, the learned counsel for the claimants has produced the Transfer Certificate of the deceased issued by the Government Higher Secondary School, Naduverappatu, Cuddalore District. On a perusal of the said Transfer Certificate, it is seen that the age of the deceased has been

mentioned as 15.5.1986. The date of accident is 31.01.2016. Thus, as per the Transfer Certificate produced by the claimants, the age of deceased is 31 years at the time of accident.

13. The Tribunal has taken the monthly income of the deceased at Rs.6,000/- and after giving 50% addition towards future prospects, it had taken the notional monthly income at Rs.9,000/-.

14. The learned counsel for the appellants in C.M.A.No.2010 of 2018 submitted that at the time of accident, the deceased was an employee in VST Motors and was earning Rs.25,000/- per month. According to the learned counsel, the Tribunal ought to have fixed the monthly income atleast Rs.12,000/- per month.

15. Even though the claimants have not produced any proof to show that at the time of accident the deceased was employing in VST Motors, considering the age of the deceased and also in the facts and circumstances of the case, it would be appropriate to fix the notional monthly income of the deceased at Rs.9,000/-. Since the deceased was aged 31 years at the time of accident, it would also be appropriate to give 40% addition towards future prospects. Adding 40% of the salary i.e., Rs.3,600/-, the monthly income of the deceased is fixed at Rs.12,600/-, i.e., Rs.1,51,200/- per annum.

16. As stated supra, at the time of accident, the deceased was aged 31 years. For the age group 31 - 35 years, the multiplier to be adopted is "16". Adopting multiplier "16", the loss of dependency is calculated at Rs.24,19,200/-.

17. As far as the deduction towards personal expenses is concerned, in the present case, the dependent members of the deceased is 5 in numbers. Therefore, one-fourth has to be deducted. Deducting one-fourth, the loss of dependency is calculated at Rs.18,14,400/-.

18. Insofar as the conventional damages are concerned, the Tribunal awarded Rs.20,000/- towards loss of consortium; Rs.70,000/- for love and affection for the claimants and respondents 3 and 4; Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards transport charges.

19. Considering the age of the first claimant, who lost her husband at the age of 22 years, Rs.20,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/-. Similarly, considering the age of the minor claimants who lost their father at the age of 2 years and 1 years respectively and also the respondents 3 and 4, who lost their son, Rs.70,000/- awarded by the Tribunal towards loss of love and affection is enhanced to Rs.1,00,000/- (Rs.25,000/- each). Since

Rs.15,000/- awarded by the Tribunal towards funeral expenses is reasonable, the same is maintained. However, Rs.15,000/- awarded by the Tribunal towards transport charges is reduced to Rs.10,000/-.

20. The Tribunal has not awarded any amount towards loss of estate. Considering the facts and circumstances of the case, Rs.15,000/- is awarded towards loss of estate.

21. In view of the above discussion, the total compensation of Rs.13,35,000/- awarded by the Tribunal is enhanced to Rs.19,94,400/- as under:

Heads	Rs.
Loss of dependency	18,14,400.00
Loss of consortium	40,000.00
Loss of love and affection	1,00,000.00
Funeral expenses	15,000.00
Transport charges	10,000.00
Loss of estate	15,000.00
Total	19,94,400.00

22. Considering the relationship between the claimants and the respondents 3 and 4, the enhanced compensation of Rs.19,94,400/- is apportioned as under:

(i) 1st Claimant (wife) : Rs.8,94,400.00
(ii) 2nd Claimant (daughter) : Rs.4,00,000.00
(iii) 3rd Claimant (daughter) : Rs.4,00,000.00
(iv) Respondent No.3 (mother) : Rs.1,50,000.00
(v) Respondent No.4 (father) : Rs.1,50,000.00

23. In the result, both the Civil Miscellaneous Appeals are allowed with proportionate cost. The compensation of Rs.13,35,000/- awarded by the Tribunal in M.C.O.P.No.2270 of 2016 is enhanced to Rs.19,94,400/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the second respondent is directed to deposit the entire compensation along with interest at the rate of 7.5% per annum as aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant and the respondents 3 and 4 are permitted to withdraw their respective shares along with accrued interest as apportioned supra. Insofar as shares of the minor claimants 2 and 3 is concerned, the same are directed to be invested in anyone of the Nationalised Bank till they attain majority and the first claimant is permitted to withdraw the accrued interest once in three months directly from the Bank. The first

claimant is directed to pay the deficit court fee, if any, within a period of one month from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Special Subordinate Judge
The Motor Accidents Claims Tribunal,
Cuddalore.

2. The Section officer
VR Section, High Court, Madras 104.

+2 Ccs to Mrs.Ramya V. Rao, Advocate sr 62734.
+1 CC to Mr.S. Bhaskaran, Advocate sr 62442.

C.M.A.Nos.1352 & 2010 of 2018 and
CMP.No.16139 of 2018

SP(18/02/2019)