

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.126 of 2017
and C.M.P.No.900 of 2017

M/s.Cholamandalam MS General
Insurance Company Limited,
2nd Floor, Dare House,
No.2, NSC Bose Road,
Chennai 600 001. Appellant (2nd Respondent)

Vs.

1.K.Rukmani
2.Karpagam
3.Jayaprakash
4.Manjula
5.Jothi Respondents 1 to 5/Claimants
6.R.Ponnuthai 6th Respondent/1st Respondent

(6th respondent set exparte in Lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.03.2016 made in M.C.O.P.No.924 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan

For RR1 to 5 : Mr.M.Selvam

For R6 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 15.03.2016 made in M.C.O.P.No.924 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

2.Appellant Insurance Company is the second respondent, respondents 1 to 5 are the claimants and 6th respondent is the 1st respondent in M.C.O.P.No.924 of 2014 on the file of the Motor

Accidents Claims Tribunal, Chief Court of Small Causes, Chennai. According to the respondents 1 to 5, the husband of the first respondent and father of the respondents 2 to 5 was riding a bicycle on 10.11.2013 at about 18.45 hours near Othiyur at ECR road. A crane bearing registration No.TN-11-Z-3841 driven by driver of the 6th respondent came in a rash and negligent manner and hit the deceased from behind, due to which he suffered multiple injuries and died on the spot. The deceased was 52 years at the time of death and was running a tea stall and earning Rs.15,000-20,000/- per month. The respondents 1 to 5 are the dependents of the deceased. They claim a sum of Rs.20,00,000/- as compensation. The 6th respondent, owner of the vehicle remained exparte.

3.The appellant filed counter affidavit and denied various allegations made by the respondents 1 to 5 and contended that the age of the deceased was 68 years at the time of accident as per the ration card. Claim of the respondents 1 to 5 is exorbitant and respondents 1 to 5 must prove the income of the deceased. The appellant denied the accident. They further stated that vehicle in question was not involved in accident and the same was falsely implicated and the vehicle is not insured with the appellant.

4.Before the Tribunal, the first respondent examined herself as P.W.1 and one Thangaraj, eye witness was examined as P.W.2 and marked 4 documents as Exs.P1 to P4. On behalf of the respondents, Haridoss, Investigating Officer was examined as R.W.1 and investigating report was marked as Ex.R1.

5.The Tribunal considering the pleadings, oral and documentary evidence and accepting the evidence of P.W.2, eye witness, came to the conclusion that the accident occurred only due to rash and negligent driving by the driver of the 6th respondent and vehicle was insured with the appellant and hence the appellant and 6th respondent are liable to pay compensation. The Tribunal fixed the age of the deceased at 55 years based on postmortem certificate, death certificate and legal heirship certificate. The Tribunal fixed the income of the deceased at Rs.9,000/- and following the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 55 (SC) in the case of Rajesh and others Vs. Rajbir Singh and others, granted 15% towards future prospects and fixed the monthly income of the deceased at Rs.10,350/- and following the judgment reported in 2009 ACJ 1298 SC in the case of Sarala Verma & Others Vs. Delhi Transport Corporation and another, applied the multiplier of 11 and after taking 1/4th towards personal expenses of the deceased, awarded total compensation of Rs.11,54,650/-.

6.Against the said award dated 15.03.2016 made in

M.C.O.P.No.924 of 2014, the present Civil Miscellaneous Appeal is filed by the appellant.

7.The learned counsel for the appellant contended that the Tribunal erred in fixing the age of the deceased at 55 years, while appellant produced copies of investigation report read with ration card to show that the age of the deceased is 65 years at the time of death. The Tribunal fixed the income of the deceased at Rs.9,000/- per month without any basis.

8.The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in 2017 16 SCC 680 in the case of National Insurance Company Limited Vs. Pranay Sethi and others and contended that for a self-employed person who died in the accident at the age of 50 - 60 years, the learned Apex Court has granted only 10% towards future prospects. The compensation granted by the Tribunal under various heads also is exorbitant.

9.With regard to age, the learned counsel for the appellant relied on the judgment of this Court dated 29.11.2016 made in C.M.A.(MD).No.758 of 2015 and the relevant paragraph is extracted hereunder:

"8.It is always known that the Doctors prescribed the age in the postmortem certificate based on the anatomical analysis and it will be certainly appropriate and can never be accurate. Therefore, in the absence of any other document like Ration card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the postmortem certificate shall be considered. When the self declared age is available in the above said Government I.D.s, the same is to be taken as conclusive and the age in the postmortem certificate can never be construed as conclusive. Therefore, this Court is not inclined to consider the arguments advanced by the learned counsel for the respondent and the findings of the Hon'ble Division Bench will prevail over and accordingly, this Court is of the unambiguous view that the age stated in the family ration card alone will prevail for the purpose of fixation of compensation by the Tribunal."

10.The learned counsel for the respondents 1 to 5 submitted that the respondents 1 to 5 proved the age of the deceased by producing postmortem certificate. In the present Appeal, the learned counsel for the respondent filed copies of the voter I.D, ration card, Aadhar card of the deceased. The deceased was running a tea stall and was earning Rs.15,000/- to 20,000/- per month. The Tribunal accepted the evidence of the first

respondent and fixed the income. The Tribunal considered all the materials in proper perspective and awarded proper compensation and prayed for dismissal of the above Civil Miscellaneous Appeal.

11. Heard the learned counsel for the appellant as well as the respondents 1 to 5 and perused the materials available on record.

12. The respondents 1 to 5 have stated that the deceased was running a tea stall and was earning Rs.15,000/- to 20,000/- per month, but they have not produced any evidence to substantiate their contention. The Tribunal fixed the notional income of the deceased at Rs.9,000/-. The contention of the learned counsel for the appellant that in the judgment reported in 2017 16 SCC 680, the Hon'ble Apex Court has granted 10% percentage towards future prospects for the self-employed person who died between the age of 50-60 has considerable force. In view of the same, 15% awarded by the Tribunal is reduced to 10%. The contention of the learned counsel for the appellant is that the deceased was aged 65 years at the time of the death and Tribunal had erred in fixing the age at 55. In the postmortem certificate marked as Ex.P2 and in the death certificate marked as Ex.P3, the age of the deceased is shown as 52. In the documents filed by the learned counsel for the respondents, as per the ration card, the age of the deceased is 68 years, voter identity card reflects the age as 64 years and as per aadhar card, he is aged 68 years. Considering the contention of the learned counsel for the appellant and the judgment of this Court dated 29.11.2016 made in C.M.A. (MD).No.758 of 2015 relied on by the appellant, the age of the deceased is fixed at 60 years based on the documents filed by the respondents 1 to 5 and hence, the multiplier is modified to 9 from 11. Except modifying the age and percentage towards future prospects as per judgment of the Hon'ble Apex Court reported in 2017 16 SCC 680 and the order of this Court dated 29.11.2016 made in C.M.A. (MD).No.758 of 2015, the award of the Tribunal is confirmed in all other aspects. Thus, the amount awarded by the Tribunal at Rs.11,54,650/- along with interest at the rate of 7.5% p.a. is modified to Rs.9,31,900/- along with interest at the rate of 7.5% p.a, break-up as follows -

Srl.No	Particulars	Amt. Awarded by the Tribunal - Rs.	Amt. modified by this Court - Rs.
	Income fixed	9,000/-	9,000/-
	Future Prospects	1,350/-	900/-
1	Pecuniary loss-Dependency-less $\frac{1}{4}$ x multiplier	$10,350 \times 12 \times \frac{3}{4} \times 11$ =10,24,650/-	$9,900 \times 12 \times \frac{3}{4} \times 9$ = 8,01,900/-

Srl.No .	Particulars	Amt. Awarded by the Tribunal - Rs.	Amt. modified by this Court - Rs.
2	Loss of consortium	50,000/-	50,000/-
3	Loss of love and affection	50,000/-	50,000/-
4	Funeral expenses	25,000/-	25,000/-
5	Transport	5,000/-	5,000/-
	Total	11,54,650/-	9,31,900/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned counsel for the respondents 1 to 5/claimants submitted that the name of the second respondent is given as Karpagam in the claim petition, M.C.O.P.No.924 of 2014, while her original name is Karpagavalli and therefore, he may be permitted to file amendment petition before the Tribunal. It is open to the learned counsel for the appellant to file necessary petition before the Tribunal.

14. The learned counsel for the appellant is directed to deposit the modified award amount along with interest, if not already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 5 are permitted to withdraw their share along with interest, on the basis of apportionment fixed by the Tribunal, after adjusting the amount already withdrawn, if any.

Sd/-

Assistant Registrar (CS VI)

//True copy//

gsa

Sub Assistant Registrar

To

The Chief Judge, Causes of Small Causes,
The Motor Accidents Claims Tribunal,
Chennai.

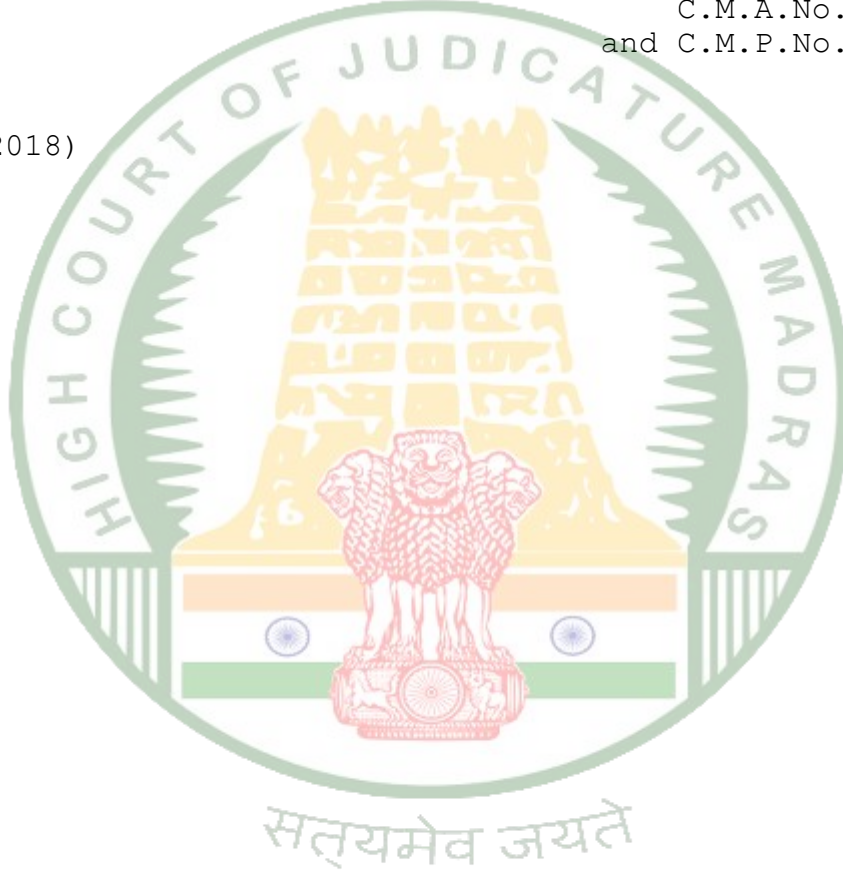
Copy TO

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

+1cc to Mr.M.Selvan, Advocate SR.No.40730
+1cc to Mr.N.Vijaya Raghavan, Advocate SR.No.41574

C.M.A.No.126 of 2017
and C.M.P.No.900 of 2017

SV(CO)
GN(23/08/2018)



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