

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA Nos.2097 and 1881 of 2015,
M.P.Nos.1 and 2 of 2015 in CMA No.2097 of 2015

The Oriental Insurance Co. Ltd.,
Motor Third Party Hub,
'Oriental House'
New No.216, Prakasam Salai,
Broadway, Chennai -108. Appellant/2nd Respondent
in CMA No.2097/2015

1.B.Kanchana
2.B.Akalya
3.B.Ajith KumarAppellants/Claimants in
CMA No.1881/2015

-vs-

1.B.Kanchana
2.B.Akalya
3.B.Ajith Kumar
4.S.Raj Respondents/Claimants 1 to 3/1st Respondent in
CMA No.2097/2015

1.S.Raj
(Remained ex-parte before Trial Court)

2.The Oriental Insurance Co. Ltd.,
Motor Third Party Hub
'Oriental House',
New No.216, Prakasam Salai,
Broadway, Chennai - 108. ...Respondents /Respondents in
CMA No.1881/2015

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.04.2015 made in M.C.O.P.No.17 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Chennai.

Mr.R.Mohan Babu
for Mr.N.Vijayaraghavan: For Appellant in CMA No.2097/2015
& For R2 in CMA No.1881/2015

Mr.R.Kalaiarasan
for M/s.N.M.Muthurajan

: For R1 to R3 in CMA No.2097/2015 &
For Appellants in CMA No.1881/2015

R4 in C.M.A.No.2097/2015 & R1 in
C.M.A.No.1881/2015 remained exparte

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

[Judgment of the Court was made by
R.SUBRAMANIAN, J.]

These appeals are filed challenging the Award dated 07.04.2015 in M.C.O.P.No.17 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Chennai, granting a sum of Rs.22,60,000/- for the death of one S.Balamurugan in a motor accident that occurred on 15.10.2010. While the appellant - Insurance Company in CMA No.2097 of 2015 challenges the Award on the ground of quantum, the appellants in CMA No.1881 of 2015 has come up with this appeal seeking enhancement.

2. The case of the claimants is that while the said Balamurugan was riding a motor cycle bearing Registration No.TN-20-A-5673 from Eachankadu to Thoraipakkam, a van bearing Registration No.TN-09-U-9082 belonging to the first respondent, insured with the second respondent in C.M.A.No.1881 of 2015 driven in a rash and negligent manner came from behind and hit against the motor cycle. As a result of the impact, the said Balamurugan, who was thrown out of the vehicle suffered severe head injuries and died on the spot. Claiming that the deceased was employed as a Driver of a College bus in M/s.Kings Engineering College and was drawing a salary of Rs.18,600/- per month, the claimants sought compensation of Rs.35 lakhs. The Salary Certificate was produced as Ex.P6. One R.Athisayaraj, Assistant Accountant of the College was also examined to prove the said fact.

3. The claim was resisted by the Insurance Company by contending that there was no negligence on the part of the Van driver and the deceased was responsible for the accident. The Insurance Company also denied the income claimed and categorised the total claim for compensation as highly excessive.

4. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the van. For the said purpose, the Tribunal relied upon FIR marked as Ex.P1. On the quantum, the Tribunal took the monthly income of the deceased at Rs.18,600/- as evidenced by the Salary Certificate. Applying the multiplier as "13", since the age of the deceased was about 48 years at the time of the accident, the Tribunal arrived the pecuniary loss at Rs.19,34,400/-. The Tribunal granted a sum of Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- each towards loss of love and affection to appellants 2 and 3, Rs.25,600/- towards Funeral Expenses. Thus, the Tribunal awarded a sum of Rs.22,60,000/- as compensation.

5. Aggrieved by the Award, the Insurance Company as well as the Claimants are on appeal.

6. We have heard Mr.R.Mohan Babu, learned counsel for the appellant - Insurance Company in CMA No.2097 of 2015 and for the second respondent in CMA No.1881 of 2015 and Mr.R.Kalaiarasan, learned counsel for the appellants in CMA No.1881 of 2015 and for respondents 1 to 3 in CMA No.2097 of 2015.

7. While Mr.R.Kalaiarasan, learned counsel appearing for the appellants in CMA No.1881 of 2015 would contend that the Tribunal ought to have granted 25% towards future prospects. Thus, worked according to him, the compensation should be more than what has been awarded by the Tribunal.

8. Per contra, Mr.R.Mohan Babu, learned counsel appearing for the Insurance Company would contend that the Tribunal erred in adopting a sum of Rs.18,600/- as salary. He would also point out that the amounts awarded under the conventional heads viz., Loss of consortium and Loss of love and affection are on the higher side.

9. We have considered the rival submissions.

10. Taking into account the fact that the deceased was working as a Driver in an Engineering College, we are of the opinion that the income can be safely taken as Rs.15,000/- since the salary certificate issued by the College is not supported by any other document like Form 16-A. Adding 25% towards future prospects and deducting 1/3 towards personal expenses and adopting "13" as multiplier, the loss of dependency works out at Rs.19,50,000/-. The Tribunal has awarded Rs.1 lakh to the wife of the deceased towards loss of consortium and Rs.1 lakh each to the children of the deceased towards loss of love and affection, which are not in consonance with the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v.

Pranay Sethi and others [2018 (1) L.W. 331]. Hence, the award towards Loss of consortium is reduced to Rs.40,000/- and the award for Loss of love and affection is reduced to Rs.80,000/-. The Tribunal has awarded Rs.25,000/- towards Funeral Expenses and the same is sustained. The Tribunal has not awarded any amount towards loss of Estate. Hence, we grant a sum of Rs.15,000/- towards Loss of Estate.

11. Thus, the total compensation thus works out to:-

Loss of Dependency	: Rs.19,50,000/-
Loss of Consortium	: Rs. 40,000/-
Loss of Love and Affection:	Rs. 80,000/-
Loss of Funeral Expenses	: Rs. 25,000/-
Loss of Estate	: Rs. 15,000/-
Total	: Rs.21,10,000/-
Rounded off to Rs.21,00,000/-	

12. In the result, C.M.A.No.2097 of 2015 is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.22,60,000/- to Rs.21,00,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the claimants are permitted to withdraw the entire amount with proportionate interest and costs by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on filing of such application.

The appeal in C.M.A.No.1881 of 2015 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Subordinate Court No.II, Chennai.

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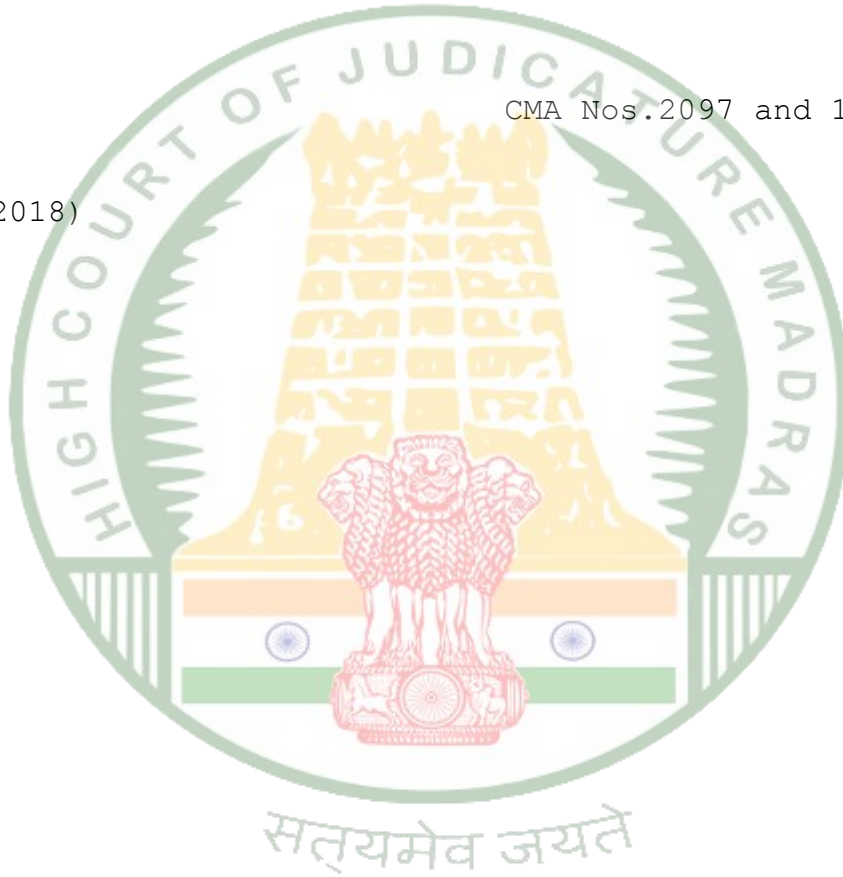
The Section officer
VR Section, High Court, Madras 104

+2 Ccs to Mr.N. Vijayaraghavan, Advocate sr 61456,61457.

+2 Ccs to Mr.N.M. Muthurajan, Advocate sr 61388.

CMA Nos.2097 and 1881 of 2015

SSI (CO)
SP(09/10/2018)



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