

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM:

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

CMA.Nos.2274, 2275, 2276 of 2016
and CMP Nos.16023, 16025, 16027 of 2016

Bharti AXA General Insurance Co. Ltd.,
1st Floor, Ferns Icon, Survey No.28,
Doddanakundi Village, K.R.Puram,
Hobli, Bangalore 560 037.

C/o. The Branch Manager,
Bharti AXA General Insurance Company Ltd.,
Divya Trade Centre, 1st floor,
No.11, Brindavan Road, Fair Lands,
Salem 636 016.

... Appellant

(in all the Appeals)/2nd Respondent

-vs-

1. Ammayya ... 1st Respondent in CMA 2274/16 /Petitioner

2. K.Venkatesh ... 2nd Respondent
(in all the Appeals)/1st Respondent

K. Ramakka ... 1st Respondent in CMA 2275/16/Petitioner

T. Kumaresh ... 1st Respondent in CMA 2276/16/Petitioner

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.09.2015 made in MCOP Nos.115, 116 and 117 of 2013 respectively, on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Hosur.

For Appellant : Mr. S.Srinivasan Ramalingam
(in all the Appeals)

For 1st Respondent : Mr.Mukund R. Pandiyan
(in all the Appeals) for Mr. M.Sriram

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

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

The challenge in these appeals by the insurance company is to the awards made in MCOP Nos: 115, 116 and 117 of 2013 on the file of the Motor Accident Claims Tribunal (Sub- Court) Hosur in and by which the tribunal awarded a sum of 20,69,000/-for the death of one Anil Kumar in MCOP 115 of 2013, a sum of 2,26,000/-for the injuries suffered by the claimant Ramakal and a sum of 277,000/-for the injuries suffered by one Kumaresh in a motor accident that occurred on 25-11-2012.

2. The claimant in MCOP 115 of 2013 is the mother of the deceased Anil Kumar. According to the claimants the deceased Anil Kumar was riding his two wheeler bearing registration No: TN-24-Z-7885 with one Ramakal as a pillion rider one Naveenkumar who was riding the two wheeler bearing registration No: TN 70-F-1230 belonging to the second respondent drove the said vehicle in a rash and negligent manner at a high speed and dashed against the two wheeler driven by the deceased Anil Kumar. As a result of the said accident both the rider and the pillion rider of the two wheeler bearing registration No: TN 24-Z-7885 were thrown off the vehicle and suffered grievous injuries. They were removed to the Hosur government hospital where Anil Kumar was declared dead. The pillion rider of the two wheeler driven by Naveen Kumar namely, Kumaresh also suffered grievous injuries.

3. Claiming that the accident occurred due to the rash and negligent driving of the two wheeler bearing registration No: TN-70-F-1230 all the claimants sought for compensation from the appellant insurance company being the insurer of the said two wheeler. In MCOP115 of 2013 the claimant is the mother of the deceased Anil Kumar. She would contend that her son was working as a painter and earning more than 12,000 per month and seek a compensation of 20lakhs. The claimant in MCOP 116 of 2013 would claim that she was doing milk vending business apart from working as agricultural coolie and earning 10,000 per month and because of the injuries caused in the accident she had suffered a permanent disability. Therefore she sought for a compensation of 5 lakhs. The claimant in MCOP 117 of 2013 who was a pillion rider in the offending motorcycle bearing registration No: TN-70-F-1230 sought for a compensation of 10 lakhs claiming that he was working as a painter and earning Rs.12,000 per month and the injuries sustained by him in the accident had resulted in permanent disability preventing him from doing his job as a painter.

4. The insurance company resisted the claim petitions contending that the accident did not happen in the manner suggested by the claimants. It would further contend that the deceased Anil Kumar who was riding the two wheeler also contributed to the accident by his rash and negligent driving. The particulars relating to age and income of the deceased as well as the injured claimants were denied by the Insurance Company.

5. Since all the three claim petitions arose out of the same accident the claims Tribunal tried them together and passed a common award which is being questioned by the insurance company, as excessive, in these appeals.

6. We have heard Mr. Srinivasan Ramalingam, learned counsel, appearing for the appellant Insurance Company and Mr. Mukund R Pandian for Mr.M.Sriram appearing for the respondents/claimants in all the appeals.. The owner of the offending two wheeler who figured as the first respondent in all the original petitions before the tribunal remained *exparte* before the tribunal and hence notice to him, in these appeals, is dispensed with.

7. Mr.Srinivasan Ramalingam learned counsel appearing for the appellant would strenuously contend that the tribunal erred in adopting 50% increase in the monthly income towards future prospects. He would also fault the tribunal for fixing the monthly income at Rs.12,000 inasmuch as there was no evidence to prove the income of the deceased Anil Kumar. As regards the injury cases the learned counsel for the insurance company would submit that the tribunal erred in granting a sum of 39,000/- in MCOP No: 116 of 2013 and a sum of 36,000/- in MCOP117 of 2013. In order to buttress his submission regarding the award on the head of loss of income the learned counsel for the appellant would point out that all the injuries suffered by the claimants are lacerated injuries which could not have had any effect on the loss of earning power of the injured persons.

8. Per contra Mr.Mukund R Pandian and counsel appearing for the respondents/claimants would contend that the accident had occurred during the year 2012 and therefore the tribunal was justified in adopting 12,000/- as the monthly income of the deceased who was admittedly a skilled labouror. He is however unable to justify the adoption of 50% towards future prospects made by the tribunal. Insofar as the injury cases are concerned Mr. Mukund R Pandian would contend that the tribunal was

justified in awarding a certain amount towards loss of income during treatment period.

9. We have considered the rival submissions.

10. Though Mr.Srinivasan Ramalingam would attempt to argue the question of negligence, when confronted with a total absence of evidence on the side of the insurance company he would submit that he would restrict his arguments only to the quantum of compensation. On the quantum, as already pointed out the tribunal had taken the monthly notional income of the deceased at Rs.12000/- adding 50% towards future prospects and deducting 50% towards personal expenses the tribunal arrived at the annual loss of dependency at Rs.1,08,000/-. The tribunal applying the multiplier of 18 arrived at the total loss of dependency at Rs.19,44,000/-. The tribunal awarded a sum of Rs.50,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Thus the total award worked out to Rs.20,69,000.

11. As rightly contended by the learned counsel for the insurance company the tribunal was not right in adopting 50% towards future prospects. As laid down by the larger bench judgment of the Honourable Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331, we adopt 40% towards future prospects. The learned counsel for the appellant insurance company would contend that the monthly income fixed by the Tribunal at Rs.12,000/- is on the higher side. The claimant in MCOP No: 115 of 2013, the mother of the deceased, had specifically deposed that her son was a painter and was earning about Rs.12,000 per month. There is no evidence, contra, let in by the Insurance Company in order to enable us to disbelieve the version of PW-1. Even otherwise considering the cost of living and the fact that the accident has taken place in 2012 we are of the considered opinion that the adoption of Rs.12,000/- by the tribunal as monthly income of the deceased is just and reasonable. We sustain the reduction of 50% made by the tribunal for the personal expenses of the deceased. Thus worked the loss of dependency would be Rs.18,14,000/-. As already adverted to, the tribunal has awarded a sum of Rs.50,000/- each towards loss of consortium and loss of love and affection. Admittedly the claimant is the mother of the deceased and hence the award on the ground of loss of consortium cannot be justified. The award towards loss of love and affection is reduced to Rs. 40,000 in view of the pronouncement of the larger bench of the Honourable Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi, cited supra. The award of Rs. 25,000/- towards funeral expenses is sustained. The tribunal has

not awarded any amount towards loss of a estate. We therefore award Rs.15,000/- towards loss of estate. Thus worked the total award in MCOP No: 115 of 2013 works out to Rs.18,94,000/-.

12. As regards the cases of injury in MCOP No: 116 and 117 of 2013 are concerned the only contention of the learned counsel for the appellant Insurance Company is that the tribunal erred in granting a sum of Rs.39,000/- and Rs.36,000/- towards loss of income for a period of six months and three months. We see some force in the contention of the learned counsel for the insurance company. From the description of the injuries sustained by both the claimants it is seen that they are not very serious injuries which would result in loss of income for such a long period of three months. Most of the injuries are lacerated injuries and hence the award of loss of income for a period of six months and three months, in our considered opinion, cannot be sustained. The award under the other heads is not seriously challenged by the learned counsel for the Insurance Company. Hence the awards under the head of loss of income of Rs.39,000 in MCOP 116 of 2013 and Rs.36,000/- in MCOP 117 of 2013 are set aside. The awards of the tribunal are modified and reduced to Rs.1,87,000/- in MCOP 116 of 2013 and to Rs.2,41,000/-in MCOP 117 of 2013. All the awards will carry interest at 7.5% per annum from the date of petition till date of deposit. Consequently, the connected miscellaneous petitions are closed.

13. In fine all the three appeals are allowed in part the awards of the tribunal are modified to the extent stated above. There shall however be no order as to costs in these appeals. Consequently, the connected miscellaneous petitions are closed.

14. The Insurance Company is directed to deposit the award amount as per the modified awards less the amount, if any, already deposited within a period of four weeks from the date of receipt of the copy of this judgment. On such deposit the claimants are permitted to withdraw the entire compensation.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge,
Hosur.

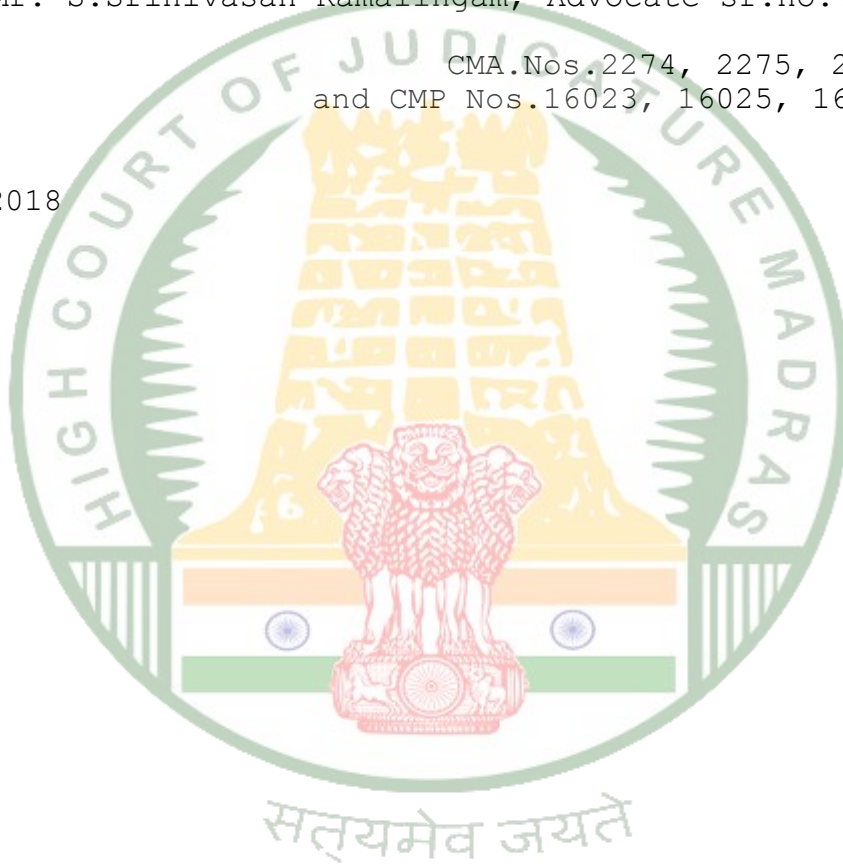
2.The Section Officer,
VR Section,
High Court, Chennai-104.

+1cc to Mr.Mukund R. Pandiyan, Advocate sr.no.70277

+3ccs to Mr. S.Srinivasan Ramalingam, Advocate sr.no.70641

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