IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

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

C.M.A.Nos.2593 to 2598 of 2016
and
C.M.P.Nos.18591 to 18595 of 2016

CMA.NO.2593 OF 2016 :

UNITED INDIA INSURANCE CO. LTD.
NO.42, MUTT STREET,
KUMBAKONAM – 612 001. ... APPELLANT /2ND RESPONDENT

-VS-

1.MURALIDHARAN
2.MANOJKUMAR (MINOR)
(Declared as major on 23/07/2010)
3.SHANMUGAM
4.GOVINDARAJ
5.S.SELVAM ... RESPONDENTS/PETITIONERS /RESPONDENTS 1 AND 3

PRAYER in CMA.No.2593 of 2016: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 12.01.2016 made in MCOP.No.356 of 2006 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

C.M.A.Nos.2594 of 2016:

UNITED INDIA INSURANCE CO LTD
NO. 42 MUTT ST,
KUMBAKONAM 612 001. ... PETITIONER

Vs

1 MURALIDHARAN
2 MANOJ KUMAR
3 GOVINDARAJ
4 S.SELVAM ... RESPONDENTS

Civil Miscellaneous Appeal against the award and decree dated 12/01/2016 made in MCOP NO. 357/2006 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

CMA No.2595 of 2016:

UNITED INDIA INSURANCE
CO.LTD. NO.42 MUTT STREET,
KUMBAKONAM - 612 001. ... PETITIONER

Vs

1 SARAVANAN MINOR
2 POOJAVANI MINOR
3 GOVINDARAJ
4 S. SELVAM ... RESPONDENTS

Civil Miscellaneous Appeal against the award and decree dated 12/01/2016 made in MCOP.No.358/2006 on the file of the Motor Accidents Claims Tribunal II Court of Small Causes Court Chennai.

CMA No.2596 of 2016:

UNITED INDIA INSURANCE CO.LTD
NO.42 MUTT STREET,
KUMBAKONAM. ... PETITIONER

Vs

1 SARAVANAN (MINOR)
2 POOJAVANI (MINOR)
(Declared as Major dated 23/07/2010)

M.SHANMUGAM (SINCE DECEASED)

3 GOVINDARAJ
4 S. SELVAM ... RESPONDENTS

Civil Miscellaneous Appeal against the award and decree dated 12.01.2016 made in MCOP.No.359 of 2006 on the file of The Motor Accidents Claims Tribunal II Court of Small Causes Chennai.

CMA No.2597 of 2016:

UNITED INDIA INSURANCE CO LTD
NO. 42 MUTT ST,
KUMBAKONAM 612 001. ... PETITIONER

Vs

1 N.VIJAYA
2 N.KALA
3 GOVINDARAJ
4 S.SELVAM ... RESPONDENTS

Civil Miscellaneous Appeal against the award and decree dated 12/01/2016 made in MCOP NO. 360/2006 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

CMA No.2598 of 2016:

1 UNITED INDIA INSURANCE CO LTD
NO.42 MUTT ST,
KUMBAKONAM 612 001. ... PETITIONER

Vs

1 MANOJ KUMAR
2 GOVINDARAJ
3 S.SELVAM ... RESPONDENTS

Civil Miscellaneous Appeal against the award and decree dated 12/01/2016 made in MCOP No.361 of 2006 on the file of the Motor Accident Claims Tribunal, II Small Causes Court Chennai.

For Appellant : Mr.S.Arunkumar in all CMAs

For Respondents: Mr.Varadhakamaraj for
Mr.Amar D.Pandiya in all CMAs

J U D G M E N T

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

1. The challenge in these appeals is to the common award of the Tribunal dated 12.01.2016 made in MCOP.Nos.356 to 361 of 2006, in and by which, the Tribunal had awarded various amounts

for the death as well as injures caused to the occupants of the Qualis car bearing registration No.TN-49-T-1778.

2. The case of the claimants is that on 15.08.2004, the deceased as well as the injured persons were travelling from Chennai to Pondicherry in the Qualis car bearing registration No.TN-49-T-1778. When they reached Arambakkam Village on East Coast Road, the Qualis car driven by its driver in a rash and negligent manner dashed against the van bearing registration No.TN-31-C-6214. Due to the accident, one Meerabai, mother of the claimants 1 and 2 and daughter of the 3rd claimant in MCOP.No.356 of 2006 died.

3. As a result of the accident, the following persons viz., Meera Bai, N.Shanmugam, N.K.Chandrasekar, C.Dhanalakshmi, Radhabai Ammal died and one Manojkumar, another occupant of the car, suffered injuries. The claimant in MCOP.No.356 of 2006 are the sons and father of the deceased Meerabai. The claimants in MCOP.No.357 of 2006 are the sons of the deceased Shanmugam. The claimants in MCOP.No.358 of 2006 are the sons and daughter of N.K.Chandrasekar. The claimants in MCOP.No.359 of 2006 are the sons, daughter and the husband of C.Dhanalakshmi. The husband M.Shanmugam who was the 3rd claimant died subsequently. The claimants in MCOP.No.360 of 2006 are the daughters of the deceased Radhabai Ammal. Manojkumar who was injured in the accident is claimant in MCOP.No.361 of 2006. The claimants sought for various amounts as compensation for the death as well as the injuries.

4. All the claim petitions were resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. According to the Insurance Company, the driver of the van bearing registration No.TN-31-C-6214 was solely responsible for the accident. The Insurance Company also denied the age, occupation and income of the deceased claimants apart from denying the quantum of disability, income and age of the injured claimant.

5. The Tribunal which heard the claim petitions concluded that the accident occurred due to the rash and negligent driving of the Qualis car bearing registration No.TN-49-T-1778. In coming to the said conclusion, the Tribunal relied upon the evidence of PW1 who was an occupant of the car and the evidence of PWs 8, 9 and 13 who were third parties who had witnessed the accident.

6. The driver of the van was also examined as RW1. His evidence was also taken into account by the Tribunal. The

Tribunal rejected the contention of the Insurance Company based on the FIR that was registered on a complaint said to have been made by one Vasudevan, in view of the fact that the said Vasudevan had deposed as PW7 disowning the complaint made by him.

7. The owner of the van was impleaded as 3rd respondent at the instance of the appellant Insurance Company. The Tribunal also took note of Ex.P30, rough sketch which showed that the Qualis car had came in the wrong side of the road and caused the accident.

8. On the quantum, the Tribunal awarded the following amounts:-

CMA No.2593/16

In MCOP.No.356 of 2006

Compensation for loss of dependency	:	Rs.26,74,560.00
Compensation for Loss of love and affection	:	Rs. 2,00,000.00
Funeral Expenses	:	Rs. 25,000.00
Loss of estate	:	Rs. 1,00,000.00
Total compensation is fixed at:		Rs.29,99,560.00

The same is rounded off to Rs.30,00,000/-

CMA No.2594/16

In MCOP.No.357 of 2006

Compensation for loss of dependency	:	Rs.18,69,120.00
Compensation for Loss of love and affection	:	Rs. 2,00,000.00
Funeral Expenses	:	Rs. 25,000.00
Loss of estate	:	Rs. 1,00,000.00
Total compensation is fixed at:		Rs.21,94,120.00

The same is rounded off to Rs.21,94,000/-

CMA 2595/16

In MCOP.No.358 of 2006

Compensation for loss of dependency	:	Rs.33,99,120.00
Compensation for Loss of love and affection	:	Rs. 2,00,000.00
Funeral Expenses	:	Rs. 25,000.00
Loss of estate	:	Rs. 1,00,000.00
Total compensation is fixed at:		Rs.37,24,120.00

CMA 2596/16

In MCOP.No.359 of 2006

Compensation for loss of dependency	:	Rs. 9,00,000.00
Compensation for Loss of love and affection	:	Rs. 2,00,000.00
Funeral Expenses	:	Rs. 25,000.00
Loss of estate	:	Rs. 1,00,000.00
Total compensation is fixed at:		Rs.12,25,000.00

CMA 2597/16

In MCOP.No.360 of 2006

Compensation for loss of dependency	:	Rs. 4,32,000.00
Compensation for Loss of love and affection	:	Rs. 2,00,000.00
Funeral Expenses	:	Rs. 25,000.00
Loss of estate	:	Rs. 1,00,000.00
Total compensation is fixed at	:	Rs. 7,57,000.00

CMA 2598/16

In MCOP.No.361 of 2006

A consolidated sum of Rs.1,00,000/- was awarded by the Tribunal.

9. The claimants have accepted the awards. The Insurance Company is on appeal aggrieved by the quantum as well as the finding of the Tribunal relating to negligence.

10. We have heard Mr.S.Arunkumar, learned counsel appearing for the Insurance Company and Mr.Varadhakamaraj, learned counsel appearing for the claimants. The owner of the van has refused to receive the notice in the above appeals, hence, he is deemed to have been served.

11. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would strenuously contend that the FIR which was registered soon after the accident shows that the complaint has been lodged before the police blaming the driver of the van for the accident. A charge sheet has also been filed against the driver of the van. He would also invite our attention to Ex.P30, the sketch to contend that the conclusion of the Tribunal on the question of negligence cannot be sustained.

12. Per contra, Mr.Varadhakamaraj, learned counsel appearing for the respondents/ claimants would submit that the alleged complainant viz., PW7 had disowned the complaint. He would also draw our attention to the evidence of the driver of the Tata van who was examined as RW1 to contend that he had deposed that there was no negligence on his side. He would also point out that the Insurance Company has not chosen to examine the driver of the Qualis car to prove absence of negligence on his part.

13. We have considered the rival submissions. The FIR which has been filed as Ex.P1 shows that it is the negligence on the part of the driver of the van which had caused the accident. The charge sheet has also been filed against the driver of the Tata van. Ex.P30, sketch and Ex.P31, observation Magazar would demonstrate that the Qalis car was actually on the wrong side of the road at the time of the impact. PWs7, 8 and 9 who are independent witnesses had blamed the car driver for the accident. PW7 alleged complainant has disowned the complaint given by him. The Tribunal has taken into account, the conflicting evidence and has come to a conclusion that the accident occurred only due to the negligence of the driver of the Qualis car. Mr.Arunkumar would however contend that certain amount of negligence should be attributed to the driver of the van also.

14. We have considered the materials on record as well as the submissions of the learned counsel on either side on the question of negligence. No doubt, PW7 has disowned the complaint, but, the fact that FIR has been registered against the driver of the van and charge sheet has also been filed against him cannot be lightly brushed aside. We however have the

evidence of the driver of the van and the independent witnesses viz., PWs7, 8 and 9 who had deposed that the driver of the Qualis car bearing registration No.TN-49-T-1778 was negligent and it is such negligence on his part that resulted in the accident.

15. The sketch which has been marked as Ex.P30 and the observation mahazar would show that the Qualis car was on the wrong side of the road at the time of the accident. But the said fact alone cannot be a determining factor in deciding the question of negligence. Admittedly, the accident had occurred on the East Coast Road which is wide enough and unless the Qualis car has swerved to the right suddenly, the accident would not have happened in the manner suggested.

16. At the same time, if only the van driver had been a little cautious he would have avoided the accident. We are therefore of the view that both the drivers have contributed to the accident. From the evidence available on record, we find that the quantum of negligence on the part of the driver of the Qualis car bearing registration No.TN-49-T-1778 must have been more than the negligence that could be attributed to the driver of the Tata van. We therefore fix the quantum of negligence at 75% on the part of the driver of the car bearing registration No.TN-49-T-1778 and 25% on the part of the driver of the Tata van bearing registration No.TN-31-C-6214.

CMA.No.2593 of 2016:-

17. On the quantum, insofar as the CMA.No.2593 of 2016 is concerned, the Tribunal has awarded a sum of Rs.30,00,00/-. The Tribunal has fixed the monthly income of the deceased who was aged about 45 years at the time of the accident at Rs.13,930/- based on the documentary evidence available on record. The Tribunal has added 50% towards future prospects. After deducting 1/3rd towards personal expenses and applying the multiplier of '16', taking the age of the deceased as 33 years the Tribunal has arrived at the loss of dependency at Rs.26,74,560/-. The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate.

18. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would contend that the claimants themselves had in MCOP.No.356 of 2006 declared the age of the deceased as 45 years and therefore, the Tribunal was not justified in taking the age of the deceased at 33 years and applying the multiplier of '16'. He would also fault the Tribunal for adopting 50% towards future prospects.

19. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would also further contend that the Tribunal erred in awarding Rs.2,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate. He would submit that the amount awarded under these heads are on the higher side considering the guidelines issued by the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331.

20. Contending contra Mr.Varadhakamaraj, learned counsel would submit that though the amount awarded under the conventional heads is on the higher side, the over all compensation is just and reasonable.

21. As regard quantum, we find much force in the contention of the learned counsel for the Insurance Company. The Tribunal ought not to have adopted the multiplier of '16' while the claimants themselves have given the age of the deceased as 44 years in the claim petition. The Tribunal also erred in adding 50% towards future prospects. The same could only be 40% as laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others referred to supra. Therefore, the compensation awarded has to be reworked and the same is reworked as follows:-

The loss of income = Rs.13,930/- + 40% x 12 – Rs.41,486/- (towards Income Tax) - 1/3 (towards personal expenses) x 13
= Rs.19,56,960/-

Loss of love and affection = Rs. 50,000/-
Funeral expenses = Rs. 15,000/-
Loss of estate = Rs. 15,000/-

Total = Rs.20,36,960/-

The same is rounded off to Rs.20,37,000/- with interest at 7.5% per annum. The apportionment of compensation made by the Tribunal is sustained.

CMA.No.2594 of 2016:-

22. The Tribunal has taken the monthly income of the deceased at Rs.18,000/- adding 15% towards future prospects, deducted 1/3rd towards personal expenses, applying a multiplier of '11', arrived at the loss of dependency at Rs.18,69,120/-. The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate.

23. Mr.S.Arunkumar would submit that having taken the monthly income at Rs.18,000/- and having added 15% towards future prospects, the Tribunal erred in not deducting any amount towards Income tax. He would also submit that the the amount awarded towards loss of love and affection, funeral expenses and loss of estate are on the higher side.

24. Mr.Varadhakamaraj, learned counsel appearing for the claimants is unable to support the award of the Tribunal on the quantum. We therefore find that the award has to be reworked as follows:-

Loss of dependency (towards	= Rs.18,000/- + 15% x 12 - Rs.48,556/- income tax) - 1/3 x 11
	= Rs.14,66,399/-
Loss of love and affection	= Rs. 50,000/-
Funeral expenses	= Rs. 15,000/-
Loss of estate	= Rs. 15,000/-
Total	= Rs. 15,46,399/-

The apportionment made by the Tribunal is sustained.

CMA.No.2595 of 2016:-

25. The Tribunal has taken the monthly income of the deceased at Rs.18,884/-, adding 50% towards future prospects and deducting 1/3rd towards personal expenses and adopting the multiplier of '15' the Tribunal arrived at the total loss of dependency at Rs.33,99,120/-. The Tribunal awarded Rs.2,00,000/- towards loss of love and affection Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate.

26. Mr.S.Arunkumar would contend that the Tribunal erred in not deducting any amount towards Income Tax. He would also fault the Tribunal for awarding Rs.2,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of estate and Rs.25,000/- towards funeral expenses.

27. We see some force in the submissions of the learned counsel for the appellant Insurance Company with regard to the quantum of compensation. The deceased was aged about 40 years and therefore the future prospects could only be 30%, in view of the recent pronouncement of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others referred to supra. The Tribunal has also not deducted any amount towards Income Tax. Hence, we find that the award has to be reworked and the same is reworked as follows:-

Loss of income (towards Income Tax) = Rs.18,884/- + 30% x 12 - Rs.21,585/- - 1/3 x 15
= Rs.23,22,185/-

Loss of love and affection	= Rs. 50,000/-
Funeral expenses	= Rs. 15,000/-
Loss of estate	= Rs. 15,000/-
Total	= Rs. 24,02,185/-

The apportionment made by the Tribunal is sustained.

CMA.No.2596 of 2016:-

28. Here again the Tribunal has taken the future prospects at 50% for a person who is employed as teacher in private school. Thus, the Tribunal had awarded a sum of Rs.9,00,000/- towards loss of dependency, Rs.2,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate.

29. The future prospects could only be taken at 40% and we find that the awards under the conventional heads are also on the higher side. Hence, the compensation awarded is reworked as follows:-

Loss of dependency	= Rs.5,000/- + 40% = 1/3 x 12 x 15
	= Rs. 8,95,872/-
Loss of love and affection	= Rs. 50,000/-
Funeral expenses	= Rs. 15,000/-
Loss of estate	= Rs. 15,000/-
Total	= Rs. 10,75,872/-

The apportionment made by the Tribunal is sustained.

CMA.No.2597 of 2016:-

30. The Tribunal has taken the monthly income of the deceased at Rs.6,000/-. Since the deceased was aged about 58 years, The Tribunal deducted 1/3rd towards personal expenses and applying the multiplier of '9', the Tribunal fixed the loss of dependency at Rs.4,32,000/-. The Tribunal had also awarded Rs.2,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of estate.

31. Mr.S.Arunkumar would submit that the Tribunal ought not to have applied the multiplier of '9' by taking the age of the deceased as 58 years, while the claimants themselves has admitted the age of the deceased as 70 years at the time of the accident. He would also contend that the quantum of conventional damages awarded is on the higher side.

32. Mr.Varadhakamaraj, learned counsel appearing for the claimants is unable to support the conclusion of the Tribunal on the age of the deceased as well as the quantum of the conventional damages. Hence, the award is liable to be reworked and the same is reworked as follows:-

Loss of income	= Rs.6,000/- - 1/3 x 12 x 5
	= Rs.2,40,500/-
Loss of love and affection	= Rs. 30,000/-
Funeral expenses	= Rs. 15,000/-
Loss of estate	= Rs. 15,000/-
Total	= Rs.3,00,000/-

The apportionment made by the Tribunal is sustained.

CMA.No.2598 of 2016:-

33. As regards CMA.No.2598 of 2016, it is a case of injury. The Tribunal has awarded a sum of Rs.1,00,000/- as compensation for the injuries suffered by the claimant.

34. Mr.S.Arunkumar would fairly submit that the quantum of compensation is just and reasonable and does not call for any interference at our hands.

35. We therefore confirm the quantum of compensation awarded by the Tribunal in MCOP.No.361 of 2006.

36. All the above awards will carry interest at 7.5% per annum from the date of petition till date of payment. It is seen from the records that the Insurance Company had deposited 50% of the compensation amount pursuant to the interim order of this Court dated 30.11.2016. Since we have fixed the negligence on the part of the driver of the Qualis car at 75% the Insurance Company would be liable to pay only 75% of the compensation awarded as above. The balance 25% shall be paid by the owner of the Tata van bearing registration No.TN-31-C-6214. The learned counsel for the claimants in all the appeals have filed a memo stating that they will not proceed against the Insurance Company for the balance 25% of the award amount on the ground of composite negligence. The said memo is recorded.

37. The Insurance Company is directed to deposit the balance amount if any within a period of 6 weeks from the date of receipt of a copy of the judgment. The 2nd respondent in CMA.No.2595 of 2016 is shown as a minor. Her age was given as 7 years in 2006. By now she would have also attained majority. On such deposit all the major claimants are permitted to withdraw their share of the compensation as per the apportionment made by the Tribunal.

38. In fine, all the appeals are partly allowed and the awards are modified as above, there shall be no order as to costs in these appeal. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

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

+6ccs to M/S.S.Ravikumar, Advocate SR.73571 to 73576
+1cc to M/S.S.Arunkumar, Advocate SR.73649

C.M.A.Nos.2593 to 2598 of 2016

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