IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1847 of 2017 and 2251 of 2017
and
CMP.No.10034 and 16300 of 2017

C.M.A.No.1847 of 2017

New India Assurance Company Ltd.,
Claims Hub, II Floor,
Sethu Krishnati Road Center,
No. 133/31-1, Trichy Main Road,
Near Raja Shabari Theatre,
Kugai, Salem District - 636 006.
... Appellant/Respondent II

-vs-

1.Amudhavalli ...Respondent I/Petitioner I
2.Ramasamy ...Respondent II/Petitioner II
3.Senthamaraikannan ... Respondent III/Respondent I

C.M.A.No.2251 of 2017

1.Amuthavalli
2.Ramasamy ... Appellants/Petitioners

-vs-

1.Senthamarai Kannan ...Respondent I/Respondent I

2.New India Assurance Company Ltd.,
Claims Hub, II Floor,
Sethu Krishnati Road Center,
No. 133/31-1, Trichy Main Road,
Near Raja Shabari Theatre,
Kugai, Salem District - 636 006. ..Respondent II/Respondent II

PRAYER in CMA.No.1847 of 2017 filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P No.1315 of 2015 MACTOP (Additional District Judge) at Namakkal District dated on 06.01.2017.

PRAYER in CMA.No.2251 of 2017 filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P No.1315 of 2015 MACTOP (Additional District Judge) at Namakkal District dated on 06.01.2017.

For Appellant : Mr.J.Chandran Appellant in CMA.No.1847/17 & R2 in CMA.2251/17

For Respondents: Mr.MA.P.Thangavel for R1 & R2 in CMA.1847/17 & Appellant in CMA.2251/17
R3 Exparte in CMA.1847/17
R1 Exparte in CMA.2251/17

J U D G M E N T
[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, Additional District Court, Namakkal dated 06.01.2017 made in M.C.O.P No.1315 of 2015.

2. The Tribunal granted a sum of Rs.67,78,400/- as compensation for the death of one Venkatachalam aged about 29 years who died in the motor accident that occurred on 09.07.2015. While the Appeal in CMA No.1847 of 2017 is by the New India Assurance Company challenging the negligence as well as the quantum, the appeal in CMA No.2251 of 2017 is by the claimants viz., the mother and father for the deceased seeking enhancement.

3. According to the claimants, the deceased was travelling in a TATA Sumo Car bearing registration No.TN-28-AP-0628. The driver of the car one Senthamaraikannan, who was arrayed as the 3rd respondent in the claim petition, drove the car in a rash and negligent manner and hit against a lorry bearing registration No: TN-28-AB-9763. The deceased who was a passenger in the car had suffered head injuries and injuries all over his body. He has been initially admitted in Amaravathi Hospital, Karur and, thereafter, he was shifted to K.G.Hospital, Coimbatore where he died on 30.09.2015, despite treatment. Contending that the deceased was Mechanical Engineering graduate, the claimants sought for a compensation of Rs.90,00,000/-.

4. The claim was resisted by the Insurance Company contending that the owner and the insurer of the lorry bearing registration No.TN-28-AB-9763 are also necessary parties since it is a case of contributory negligence. The Insurance Company also denied the income, qualification and age of the deceased.

5. The Tribunal on an analysis of the evidence and the fact that the First Information Report was registered against the driver of the car concluded that the accident occurred due to the negligence of the driver of the car. The Tribunal determined the age of the deceased at 29 years and taking into account that he was the Engineering graduate arrived at his monthly income notionally at Rs.30,000/- adding (50%) Rs.15,000/- towards future prospects and deducting one half of

the amount towards his personal expenses arrived at the pecuniary loss at Rs.45,90,000/-. The Tribunal also granted a sum of Rs.18,93,390/- towards medical expenses based on Mechanical bills. The Tribunal granted a sum of Rs.2,30,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards transportation, Rs.30,000/- towards attender charges. Thus, the total compensation granted by the Tribunal worked out to Rs.67,78,390/- which was rounded of to Rs.67,78,400/-.

6. Questioning the finding of the Tribunal on negligence, Mr.J.Chandran learned counsel appearing for the Insurance Company would vehemently contend that there are certain materials in the evidence of PW1 regarding the fact as to who was driving the vehicle at the time of the accident. Pointing out that the claimants have not given the name of the driver in the claim petition in M.CO.P No.1315 of 2015 and the fact that PW1 has deposed that one Santhanam has driven the vehicle, Mr.J.Chandran would contend that the said Santhanam has not been made a party to the claim petition, hence the claimants are not entitled to compensation.

7. On the quantum, Mr.J.Chandran would contend that the Tribunal was not right in taking the monthly income at Rs.30,000/-. He would point out that a Division Bench of this Court in S.Saraswathy and another Vs. A.Elumalai and others reported in 2016 (2) TN MAC 424 (DB) had fixed the monthly income of an Engineering graduate at Rs.20,000/- only.

8. Per contra, Mr.MA.P.Thangavel, learned counsel appearing for the respondents 1 and 2/claimants would contend that the First Information Report was registered almost immediately after the accident, wherein, it is clearly stated that it was Senthamaraikannan who drove the vehicle at the time of the accident and he has been impleaded as the 1st respondent in the claim petition. Therefore, the contention of the learned counsel appearing for the Insurance Company that some other person drove the vehicle cannot be countenanced. On the quantum, Mr.MA.P.Thangavelu would contend that the deceased was Mechanical Engineering graduate and therefore, the Tribunal was right in fixing his monthly salary at Rs.30,000/-, considering the fact that the accident occurred during the year 2015.

9. We have considered the rival submissions. We are unable to countenance the contentions of Mr.Chandran learned counsel appearing for the Insurance Company questioning the negligence. The accident had occurred on 09.07.2015 and the First Information Report was registered almost on the same day. It clearly states that it was Senthamaraikannan, the 3rd respondent in this appeal who was at the wheels when the accident occurred. This being a case of composite negligence

and the deceased was only a passenger in one of the vehicles, the claimants have the choice of suing anyone of the Insurance companies seeking compensation. As early as in 1982 (ACJ) (Supp) 85 (Madras) in Southern Motors, Madurai vs C.Sivajothiammal a Division Bench of this Court consisting of Ramanujam and Sethuraman.JJ had held that it is the choice of the claimants to sue anyone of the Insurance companies in cases of composite negligence. We are, therefore of the considered opinion that the contention of the Insurance company in the absence of the owner and insurer of the lorry bearing registration No.TN-28-AB-9763 in the claim petition cannot be proceeded. We find that the Tribunal was correct in concluding that the Insurer of the Sumo car viz., the Appellant can be made liable to pay the entire compensation. The discrepency in the name of the Driver in the evidence of PW1 cannot out weigh the statement made in the First Information Report. Hence we reject the said contention.

10. On the quantum, we find some force in the submission of Mr.Chandran appearing for the Insurance company. As rightly pointed out by him, though the deceased had bachelor degree in Mechanical Engineering, admittedly he was not employed. He was aged about 29 years at the time of the accident. We are, therefore of the opinion that the income taken at Rs.30,000/- per month is on the higher side. In S.Saraswathy and another Vs. A.Elumalai and others reported in 2016 (20 TN MAC 424 (DB), the Division Bench of this court had taken income of the Engineering students at Rs.20,000/-, we are in agreement with the said fixation. Therefore, the income of the deceased has to be taken at Rs.20,000/-. The deceased being a bachelor, 50% of the said amount should be deducted towards his personal expenses leaving a balance of Rs.14,000/-. Thus, worked the loss of dependency is Rs.14,000 x 12 x 17 = 28,56,000/-.

11. The Tribunal has granted a sum of Rs.1,15,000/- each to the respondents 1 and 2 towards loss of love and affection. In view of the decision of the larger bench of the Honourable Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331 the compensation for loss of love and affectin can only be at Rs.40,000/- per head. Therefore, the compensation for loss of love and affection is reduced to Rs.80,000/- from Rs.2,30,000/-.

12. The Tribunal has granted a sum of Rs.18,93,390/- towards medical expenses, Rs.25,000/- towards funeral expenses, Rs.10,000/- transportation, Rs.30,000/- towards attender charges, and the said awards are sustained. The Tribunal has not granted any amount towards loss of estate, considering the age and educational qualification, we deem it fit to award a sum of Rs.15,000/- towards loss of estate. Thus, the total compensation worked out to Rs.49,44,390/-.

Loss of dependency	- Rs.28,56,000/-
Medical Expenses	- Rs.18,93,390/-
Loss of Love & Affection	- Rs.80,000/-
Funeral Expenses	- Rs.25,000/-
Transport Expenses	- Rs.10,000/-
Attender Charges	- Rs.30,000/-
Loss of Estate	- Rs.50,000/-
Total	Rs.49,44,390/-

Thus, the same is rounded off to Rs.49,50,000/-

13. In fine, the appeal in CMA.No.1847 of 2017 is partly allowed granting a sum of Rs.49,50,000/- with 7.5% interest and proportionate costs. In view of the findings, the appeal in CMA.No.2251 of 2017 filed by the claimants seeking enhancement will stand dismissed. There will be no order as to costs in both the appeals. The compensation is apportioned between the respondents 1 and 2 as follows:

14. The mother, the first respondent will be entitled to a sum of Rs.29,45,000/- and the father, the second respondent would be entitled to Rs.20,00,000/- with proportionate interest. The Insurance Company is directed to deposit the compensation amount less the amount already deposited within a period of 6 weeks from the date of receipt of the copy of the order. On such deposit, the claimants are allowed to withdraw their respective shares.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkn

To

The Motor Accident Claims Tribunal,
Additional District Court, Namakkal

Copy to:The Section Officer
VR Section, High Court, Madras

+1cc to Mr.J.Chandran, Advocate SR.NO.59690
+1cc to M/s.Ma.P.Thangavel, Advocate SR.NO.60265

BS(CO)
sm:17.10.2018