

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

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

CMA.No.3239 of 2017
and
CMA.No.743 of 2016

CMA No.3239 of 2017

1. The Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Motor Third Party Claim Office, "Sorrento Building",
No.6, Lattiv Bridge Road, 1st Floor,
Adayar, Chennai - 20. ... Appellant/ 2nd Respondent

-vs-

1.E. Kusma
2.Minor E.Poorneswaran,
Minor rep. By his mother E.Kusma,
3.P.Pathureddy
4.D.Dhanesh (R4 remained exparte)
5.T.Dhatchayani ... Respondents 1 to 3/ Petitioner
4th Respondent / 1st Respondent
5th Respondent / 3rd Respondent

Appeal in CMA No.3239 of 2017 filed under Section 173 of Motor Vehicles Act, 1988 prays to prefer the Memorandum of Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.424 of 2015 on the file of the Motor Accidents Claims Tribunal (District Judge, District Court - II) at Kancheepuram dated 24.07.2017.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.C.Prabakaran

Mr.M.Sivakumar for R1 to R3

R4-Ex-parte

No appearance for R5

CMA No.743 of 2016

The Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Motor Third Party Claims Office, Sorrento Buildings,
No.6, Lattiv Bridge Road, 1st Floor,
Adyar, Chennai - 20. ...Appellant/ 2nd Respondent

Vs.

1. S.Paranthaman, 1st Respondent / Petitioner
2. D.Dhanesh (R2&R3 Remained exparte)
3. D.Dhatchyani ...Respondents 2 &3/ Respondent 1&3

Appeal in CMA No.743 of 2016 filed under Section 173 of Motor Vehicles Act, 1988 prays to prefer the Memorandum of Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.741 of 2008 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Kancheepuram dated 31.07.2015.

For Appellant : Mr.M.Krishnamoorthy
For Respondents: Mr.C.Prabakaran
Mr.M.Sivakumar for R1
R2 & R3 Ex-parte

J U D G M E N T

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

The Insurance company which suffered an award for payment of a sum of Rs.13,36,000/- for the death of one P.Eswara Reddy in a motor accident that occurred on 15.04.2008 at about 07:30PM is the appellant in CMA No.3239 of 2017. CMA No.743 of 2016 has been filed by the Insurance company which suffered an award for payment of Rs.96,000/- as compensation for the injuries suffered by one Paranthanam, in the same accident that took place on 15.04.2008.

2. It is the case of the claimants in both the original petitions namely MCOP.No.741 of 2008 and MCOP.No.424 of 2015 that Paranthaman namely, the claimant in MCOP NO.741 of 2008 was travelling as a pillion rider in a motor cycle along with P.Eswara Reddy. He was proceeding from Kancheepuram towards Tiruthani at a normal speed and by following traffic rules. The lorry bearing registration No.TN-21-M-1717 was parked in the center of the road without any parking light or warning signal and on seeing this, the deceased tried to avoid the accident but he hit behind the lorry and died on the spot. The pillion rider Paranthaman suffered grievous injuries. Contending that the death of Eswara Reddy resulted in financial loss to the family, the legal representative of Eswara Reddy filed MCOP No.424 of 2015 seeking a compensation of Rs.15,00,000/-. While, Paranthaman, the injured claimant filed MCOP No.741 of 2008 seeking a sum of Rs.5,25,000/- as compensation.

3. These original petitions were resisted by the Insurance company contending that there was no negligence on the part of the lorry and it was the two wheeler which was driven in a rash and negligent manner by Eswara Reddy which cause the accident. Terming Eswara Reddy as a tort-feasor, the Insurance company contended that it is not liable to pay the compensation as claimed in MCOP No.424 of 2015. The Insurance company would also deny the particulars of income, age and qualification of the deceased, as well as the injured claimant.

4. The Motor Accident Claims Tribunal namely the District Judge, District Court II, Kancheepuram which heard the MCOP No.424 of 2015 filed by the legal representatives of the deceased Eswara Reddy concluded that the accident occurred due to the negligence of the lorry driver in parking the lorry in the middle of the road. In coming to the said conclusion, the Tribunal relied upon the First Information Report lodged by PW2 which shows that the accident occurred due to the negligent act of the lorry driver in parking the lorry in the middle of the road. The Tribunal also found fault with the Insurance company for not examining the driver and the owner of the lorry.

5. On the quantum, the Tribunal fixed the monthly income of the deceased at Rs.6,000/- per month, considering the fact that there is no documentary evidence to show the income of the deceased. The Tribunal added 50% towards future prospects. Considering the number of members in the family. The Tribunal deducted 1/3rd of the amount towards personal expenses and the pecuniary loss was arrived at Rs.12,96,000/- $(6,000 + 3000 - 3000 \times 12 \times 18)$. The Tribunal awarded Rs.50,000/- towards loss of consortium, Rs.75,000/- towards loss of love and affection, to the parents and the son. The tribunal awarded a sum of Rs.15,000/- towards funeral and transport expenses. In all, the award worked out to Rs.14,36,000/-. However, there was a mistake in addition of the amounts awarded under various heads and the total award was only shown as Rs.13,36,000/- by the Tribunal.

6. Though, Mr.M.Krishnamoorthy learned counsel appearing for the Insurance company would contend that the appeal having been filed by the Insurance company, in the event we arrive at an award which is higher than Rs.13,36,000/-, we should dismiss the appeal instead of granting any higher amount. We are unable to countenance the said submission of the learned counsel because of the fact that the total award works out to Rs.14,36,000/- and

not Rs.13,36,000/- as shown in the decree of the Tribunal, which is very clear from the records. The Tribunal has awarded the following amounts under the following heads:

Pecuniary loss at Rs.12,96,000/-, loss of consortium at Rs.50,000/-, loss of love and affection at Rs.75,000/-, funeral and transport at Rs.15,000/- if all these are added, the total amount works out to

Rs.14,36,000/-. We, therefore, reject the submission of Mr.M.Krishnamoorthy regarding the quantum of compensation awarded by the Tribunal. We conclude that the Tribunal had in fact awarded Rs.14,36,000/- for the death of Eswara Reddy in MCOP No.424 of 2015.

7. Now, advertng to the contentions of the learned counsel on the other aspects, Mr.krishnamoorthy would contend that the fixation of income at Rs,6,000/- and addition of future prospects at 50% is on the higher side. Mr.Krishnamoorthy would submit that the Tribunal should have added only 40% towards future prospects in view of the Judgment of the Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 271. We see some force in the argument of the learned counsel. The adoption of 50% as future prospects cannot be justified. Therefore, the compensation awarded by the Tribunal is modified as follows:

Monthly income	Rs.6,000/-
Add 40% towards future prospects	Rs.2,400/-

Total monthly income with future prospects	Rs.8,400/-
Deduct 1/3 rd towards personal expenses	Rs.2,800/-

Monthly loss of dependency	Rs.5,600/-

The multiplier to be applied is 18. Thus, the total loss of dependency would be

5,600 x 12 x 18 = Rs.12,09,600/-. The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium, the same is reduced to Rs.40,000/-. The award of Rs.75,000/- towards loss of love and affection to the parents as well as the son is confirmed. The Tribunal has awarded Rs.15,000/- towards funeral and transport expenses and the same is enhanced to Rs.25,000/-. The Tribunal has not awarded any amount towards loss of estate and we award a sum of Rs.15,000/- towards loss of estate.

Loss of dependency	-	Rs.12,09,600/-
Loss of consortium	-	Rs.40,000/-
Loss of love and affection	-	Rs.75,000/-
Funeral and Transport expenses-		Rs.25,000/-
Loss of estate	-	Rs.15,000/-
Damage to clothing	-	Rs.5,000/-

Total Rs.13,69,600/-

Thus, the total works out to Rs.13,69,600/- and the same is rounded off to Rs.13,70,000/-.

8. Hence, CMA No.3239 of 2017 is partly allowed. The compensation awarded by the Tribunal is modified and reduced to Rs.13,70,000/- with interest at 7.5% per annum from the date of petition till date of payment with proportionate cost.

9. In so far as MCOP No.741 of 2008 is concerned, the Tribunal taking note of the injuries had awarded a sum of Rs.96,000/- to the injured Paranthaman. The injured has not sought for enhancement. Mr.Krishnamoorthy learned counsel for the appellant would submit that once the question of negligence is decided against the Insurance company in the other appeal he is not canvassing the quantum of compensation awarded in MCOP No.741 of 2008. Hence, the appeal in CMA No.743 of 2016 is dismissed, no costs.

10. In fine, CMA No.3239 of 2017 is allowed in part and the award is modified and reduced to Rs.13,70,000/- with proportionate costs. The award amount is apportioned as follows:

The 1st petitioner wife will take a sum of Rs.7,70,000/- with proportionate costs. The 2nd petitioner son will take Rs.4,00,000/- and the 3rd petitioner who is mother of the deceased will take Rs.2,00,000/- with proportionate cost. There is no order as to costs in the appeal.

Sd/-

Assistant Registrar(Co)

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Sub Assistant Registrar

kkn/tar

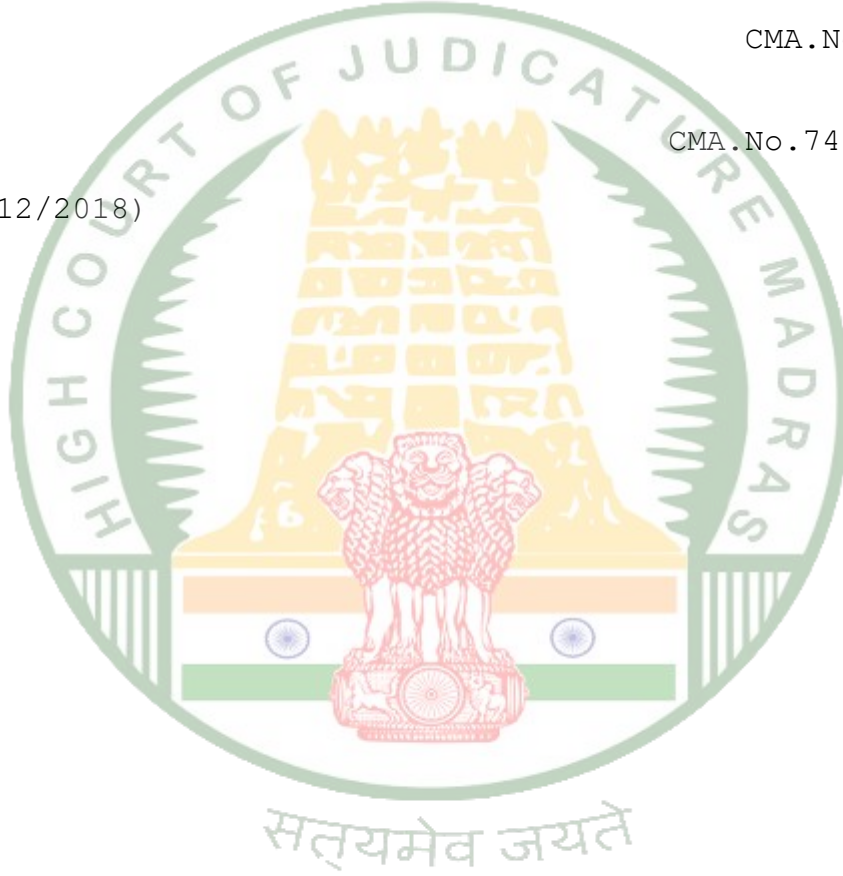
To
The Motor Accidents Claims Tribunal,
(Subordinate Judge), Kancheepuram

copy to
The section officer,
VR Section,
High court
Madras

+2cc to Mr.M.Krishnamoorthy , Advocate SR.No. 61987,61988
+2cc to Mr.C.Prabakaran , Advocate SR.No. 62022,62021

CMA.No.3239 of
2017
and
CMA.No.743 of 2016

ASK(07/12/2018)



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