

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.882 and 883 of 2018

C.M.A.No.882 of 2018:-

- 1.Rani @ Selvarani
- 2.Rajeshkumar
- 3.Chinnusamy

..Appellants/
Petitioners

Vs.

- 1.Natarajan
- 2.The Divisional Manager
United India Insurance Company Ltd
No.2 Dr.Sankaran Road,
Namakkal-1.
- 3.Angammal

..Respondents/Respondents

C.M.A.No.883 of 2018:-

Rani @ Selvarani

..Appellant/Petitioner

Vs

- 1.Natarajan
- 2.The Divisional Manager
United India Insurance Company Ltd.,
No.2, Dr.Sankaran Road, Namakkal-1

..Respondents/Respondents

Prayer in both CMAs. Both Appeals filed against the judgment and decree passed in M.C.O.P.Nos.567 of 2013 and 838 of 2013 respectively on the file of Motor Accidents Claims Tribunal cum Principal District Judge, Namakkal, dated 04.10.2017.

For Appellants/claimants : : Mr.C.Kulanthaivel
for Respondent/Insurance Company : : Mr.T.Ravichandran for R2.
: : R1-Exparte.

COMMON JUDGMENT

The above CMAs are filed by the Claimants/Petitioners, challenging the judgment and decree dated 04.10.2017 passed in M.C.O.P.Nos.567 of 2015 and 838 of 2013 respectively on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. The parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that

on 19.12.2012 while the deceased Thangavel was riding two wheeler bearing Reg.No.TN-28-AK-0268 along with his wife Selvarani as pillion rider in Namakkal A.S.Pettai to Thummankurichi Road, while going near Postal Nagar road, the 1st respondent car bearing Reg.No.TN-28-AK-3696 insured with the 2nd respondent came at high speed, dashed against the two wheeler in which the deceased and his wife were proceeding and thereby caused fatal injuries to the deceased Thangavel, who died subsequently in the hospital. Further, in the said accident, Rani @ Selvarani sustained grievous injuries. At the time of the accident, the deceased was aged 56 years and was carrying on Tea Stall Business on his own, earning Rs.15,000/- per month. The Petitioners in M.C.O.P.567 of 2013 are the wife and children of the deceased Thangavel, while the above said 3rd respondent/Angammal is the mother of the deceased. All of them were dependants on the earnings of the deceased Thangavel. Due to the sudden death of Thangavel, the sole bread winner of the family, they are facing monetary loss. Hence the Petitioners seek Rs.20,00,000/- as compensation from the 1st and 2nd respondents who are the owner and insurer of the offending vehicle.

(ii) The wife of the deceased Thangavel is the Petitioner in MCOP.No.883 of 2018. She contends that in the above said accident, as she was travelling in the two wheeler driven by her husband as pillion rider, suffered multiple grievous injuries and also fracture in her hip. She took treatment as inpatient in a private hospital, Namakkal, for 20 days and incurred medical expenses of Rs.1,25,000/- . The Petitioner-Selvarani was aged 44 years and by doing agricultural work, was earning Rs.10,000/- per month. Due to the injuries suffered in her chest, she is finding difficulty in breathing and due to the injury suffered in the hip, she could not even sit properly. Due to the injuries suffered by the Petitioner, she is not in a position to attend to agricultural work resulting in loss of income to her. Thus the Petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3.1. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The deceased Thangavel was not having valid driving licence and the accident occurred only due to his negligence. The claim of the Petitioner about the age, avocation and income of the deceased is denied. The amount claimed as compensation for the deceased Thangavel is highly excessive. Thus, the 2nd respondent sought for dismissal of the Petition in MCOP.No.567 of 2013.

3.2. Likewise, opposing the claim of the Petitioner in MCOP.No.838/2013, by filing counter, the 2nd respondent-Insurance company contends that the accident occurred only due to negligence of the Petitioner's husband viz., deceased Thangavel and as such, the petitioner is not entitled to seek compensation. The claim of the Petitioner that she was earning Rs.10,000/- from agricultural work is not correct. The nature of injuries suffered in the accident and disability claimed by the Petitioner is not correct. The compensation sought for is exorbitant. Thus, the 2nd respondent sought for dismissal of the above said claim petition.

4. Before the Tribunal, as both claims arose out of same accident, two MCOPs viz., 567 and 838 of 2013 were taken up for joint trial. The Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.17 in support of their claim. But on the side of the 2nd respondent, neither oral nor documentary evidence was let in.

5. The Tribunal, on the basis of available evidence on record, found negligence of the 1st respondent car driver alone caused the accident, passed an award for a sum of Rs.5,52,000/- payable to the Petitioners in MCOP.No.567 of 2013 and award for a sum of Rs.1,02,303/- payable to the Petitioner in MCOP.No.838 of 2013 by the respondents.

6. Being not satisfied with the quantum of the award, the Petitioners in both the claim petitions have come forward with the present appeals.

7. By consent, both the appeals are taken up together.

8. The learned counsel for the Petitioners/claimants contends that the Tribunal failed to consider the evidence on record properly and wrongly fixed the monthly income of the deceased Thangavel at Rs.6000/- instead of fixing the sum of Rs.10,000/- per month. The Tribunal also failed to consider the evidence of P.W.1 and Ex.P.15, which clearly establishes the avocation and source of income of the deceased. The Tribunal also failed to provide for future prospects. Even though there are four dependants, the Tribunal wrongly deducted 1/3rd of the income towards personal expenses of the deceased instead of deducting 1/4th income. The tribunal failed to provide reasonable amount under different heads. Thus, the Petitioners/claimants in MCOP.No.567 of 2013[CMA.No.882/2018] seeks enhancement of the award amount by entertaining the appeal.

9. Likewise, the Petitioner/claimant contends that the Tribunal failed to consider the medical evidence let in by the Petitioner in MCOP.No.838/2013[CMA.No.883/2018] about the nature

of injury and the disability suffered by her. Due to the permanent disability suffered, the Petitioner Selvarani is unable to attend to her agricultural work and suffered functional disability. As such, the Tribunal ought to have adopted multiplier method for compensating loss of income but failed to do so. The notional monthly income of the injured petitioner was also not properly fixed. The amount provided under different heads is also very meager. Thus, the petitioner/appellant sought for enhancement of the award amount by entertaining the appeal in CMA.No.883/2018.

10.1. Per contra, the learned counsel for the Insurance company contends that the accident occurred only due to negligence of the deceased Thangavel and as such, the Petitioners in MCOP.567 of 2013 are not entitled to seek compensation. Further the tribunal has already fixed the notional income on higher side and awarded compensation which is exorbitant.

10.2. Likewise, in MCOP.No.833/2018 also, it is pointed out that even though there was no acceptable evidence to prove 20% permanent disability, the Tribunal provided amounts under different heads, which is highly excessive and there is no need to enhance the award amount as sought for by the Petitioners. Thus the 2nd respondent sought for dismissal of both the appeals.

11. In both the appeals, the only issue to be considered is quantum of award. Neither side contested the conclusion of Tribunal on the issue of negligence/liability.

12. Before the Tribunal, the Petitioners examined P.W.1 Selvarani, wife of the deceased Thangavel, an eyewitness to the occurrence as she travelled in the vehicle involved in the accident as pillion rider. According to her, the accident occurred only due to rash and negligent driving of the 1st respondent car bearing Reg.No.TN-28-AK-3696. The Police also registered Ex.P.1-FIR against the driver of the 1st respondent car only.

13. On the other hand, the 2nd respondent has not let in any evidence either oral or documentary to contradict the version of accident given by P.W.1. As such, the Tribunal, on the basis of P.W.1 oral evidence which is corroborated by contents of Ex.P.1-FIR correctly concluded that the accident occurred due to negligent driving by the 1st respondent vehicle driver only.

14. Admittedly, the offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent. It is evident from Ex.P.2-MVI report that there was no mechanical defect in the vehicles. As such, the respondents 1 and 2 who are the owner and insurer of the car bearing Reg.No.TN-28-AK-3696 are liable to pay compensation.

15. CMA.No.882 of 2018 (MCOP.No.567 of 2013):-

The Petitioners stated that the deceased Thangavel was 56 years old and by carrying on Tea Stall business was earning Rs.15,000/- per month. In the absence of any document to prove the age of the deceased, the Tribunal on the basis of Post Mortem Certificate produced as Ex.P.5 and death certificate of the deceased produced as Ex.P.6, concluded that the deceased was aged 56 years at the time of the accident. The same is just and proper. Even though the 1st petitioner/P.W.1 stated that the deceased was earning Rs.10,000/- per month from the Tea stall business, there is no proof for the same. Considering the fact that the accident occurred in December 2012, it will be appropriate to fix the notional monthly income of the deceased at Rs.6500/- instead of Rs.6000/- fixed by the Tribunal. As the number of dependants are three in number, only 1/3rd of the income is to be deducted towards personal expenses. Further, considering the age of the deceased that is 56 years, it will be appropriate to add 10% of the amount towards future prospects. Thus, the loss of dependency is calculated as follows:-

Monthly salary -6500/-

10% added towards future prospects (650)

6500 + 650 = 7150

Deduction 1/3rd towards personal expenses 2383

7150 - 2383 = 4767

4767 x 12 x 9 = 5,14,836/-

Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; under the head "Funeral expenses" Rs.15,000/- and under the head "loss of estate", Rs.15,000/- is awarded by this court. The appellants relying upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010], and the Ruling of this court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others] and contended that children of the deceased viz., the Petitioners 2 and 3 are entitled for some amount towards loss of love and affection. Thus, both the 2nd and 3rd Petitioners are entitled to get Rs.15,000/- and the 3rd Respondent/mother of the deceased is entitled to get Rs.15,000/- (Totally Rs.45,000/-). Under the heads "Transportation", the sum of Rs.5,000/- and "Medical Bills" the sum of Rs.1,06,000/- granted by the Tribunal is confirmed. In view of the foregoing discussion, the modified award amount in CMA.No.882 of 2018 [MCOP.No.567 of 2013] is as

follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	4,32,000/-	5,14,836/-
2.	Loss of Estate	2,000/-	15,000/-
3.	Funeral expenses	5,000/-	15,000/-
4.	Love and affection	2,000/-	45,000/-
5.	Transportation	5,000/-	5,000/-
6.	Medical bills	1,06,000	1,06,000/-
7.	Loss of consortium	---	40,000/-
	Total	5,52,000/-	7,40,836/-

Accordingly, CMA.No.882 of 2018 is Partly Allowed. The award amount is enhanced to Rs.7,40,836/- from Rs.5,52,000/- The apportionment of the award amount is as under:-
Claimants 1 to 3 -30% each
3rd respondent/mother - 10%

16. CMA.No.883 of 2018 [M.C.O.P.No.838/2013] / Injury case
The Petitioner in MCOP.No.838/2013 has examined P.W.2/doctor and he stated that the Petitioner/Selvarani sustained bone fracture on her right chest and neck in the accident which took place on 19.12.2012 and she has taken treatment in Maruthi Hospital at Namakkal as in-patient where she has undergone operation. In order to assess her disability, P.W.2 has taken X-ray/Ex.P.11. P.W.2 doctor further stated that due to malunited multiple ribs fracture; right side malunited fracture in sacrum and injuries to RTA, her shoulder and spinal movements are affected. The Petitioner underwent Orthopaedic line of treatment at Maruthi Hospital, Namakkal. P.W.2/doctor has given the disability certificate Ex.P.17 assessing 20% permanent disability. P.W.2 further stated that Petitioner Selvarani will not be able to do heavy work and it will be highly strainful to do the Agricultural work. From the evidence of P.W.2/doctor, it is clear that the Petitioner has sustained the following grievous injuries (i) contusion in left chest (ii) contusion in multiple ribs (iii) fracture right side (iv) contusion in pelvis (v) fracture in sacrum. Thus, the Tribunal accepting the evidence of P.W.2 fixed the disability at 20% and provided compensation at the rate of Rs.3000/- per percentage of disability. The Petitioner contends that the same is not proper and the Tribunal ought to have applied multiplier method as the Petitioner is unable to carry on her agricultural work.

17. Admittedly, the Petitioner has suffered fracture in her

ribs. It is clear from P.W.2/doctor evidence that the Petitioner is not able to carry on her agricultural work. It is also clear that the Petitioner has some discomfort in carrying out her agricultural work which requires hard labour. It is apparent that the Petitioner has suffered functional disability. On the basis of available evidence, the same is fixed at 10%. Since, the Petitioner has suffered functional disability, multiplier method is to be adopted to compensate her. In the absence of any proof regarding her avocation, based on Ex.P.15-Patta filed in proof of her agricultural holding. Hence, it will be appropriate to fix her monthly earnings at Rs.4000/-. Taking into account the averments of the Petitioner that she is aged 44 years, the correct multiplier to be applied here is 14. Thus, the calculation for disability compensation is as under:-
 $4000 \times 12 \times 14 \times 10/100 = \text{Rs.}67,200/-$.
The Petitioner states that she underwent surgery and took treatment for a long time. Hence, for the Pain and Suffering undergone by her, it will be appropriate to provide a sum of Rs.25,000/- instead of Rs.5000/- provided by the Tribunal. Considering the period of treatment undergone, it is clear that she could not have attended to any work atleast for 5 months. Thus, towards loss of income during the period of treatment and recovery, it will be appropriate to provide Rs.20,000/- [$\text{Rs.}4000/- \times 5 \text{ months}$]. Keeping in mind the nature of injury, she would have needed an attender to assist her in daily routine. Hence, a sum of Rs.10,000/- is provided under the head "Attender Charges" and further sum of Rs.10,000/- is awarded towards "Loss of amenities". Likewise, towards Nutrition expenses, the Tribunal provided Rs.5000/- and the same is enhanced to Rs.15,000/-. Further, it will be appropriate to provide Rs.5,000/- towards Transportation. Thus, the modified compensation amount provided to the Petitioner in MCOP.No.838/2013 is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Disability	60,000/-	67,200/-
2.	Pain and suffering	5,000/-	25,000/-
3.	Loss of income during treatment period	---	20,000/-
4.	Attender charges	---	10,000/-
5.	Transport	---	5,000/-
6.	Medical expenses	32,303/-	32,303/-
7.	Nutrition	5,000/-	15,000/-
8.	Loss of amenities	---	10,000/-
	Total	1,02,303/-	1,84,503/-

Thus, the Petitioner/Appellant in CMA.No.883 of 2018 is entitled for enhanced compensation of Rs.1,84,503/- from Rs.1,02,303/-.

18. In the result,

(i) the Civil Miscellaneous Appeals are Partly Allowed.

(ii) The award amount enhanced by this court in both appeals is as under:-

CMA.Nos/MCOP.Nos.	Amount awarded by the Tribunal	Amount Awarded by this Court
CMA.No.882 of 2018 (MCOP.No.567/2013)	Rs.5,52,000/-	Rs.7,40,836/-
CMA.No.883 of 2018 (MCOP.No.838/2013)	Rs.1,02,303/-	Rs.1,84,503/-

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 2nd respondent/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

v) The Claimants in each CMA/MCOP are entitled to withdraw the award amount along with accrued interest in the apportionment as stated above. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge, Namakkal.

2.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.39671

+2cc to Mr.T.Ravichandran, Advocate SR.No.39410,39411

C.M.A.Nos.882 and 883 of 2018

GMV (26/09/2018)