IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.Nos.2388 & 2389 of 2013
and
C.M.A.No.750 of 2018

C.M.A.No.2388/2013
1.M.Shanthi
2.Minor R.Roshni Priya
3.Saraswathi
(Minor 2nd appellant is rep by mother
1st appellant Shanthi) ... Appellant/Claimants

Vs.

1.S.Sekar

2.M.V.Shivaraj Karthikeyan

3.M/s.United India Insurance Co. Ltd.,
No.5. Big Bazaar Street,
Dharapuram,
Erode District. ... Respondents/Respondents

C.M.A.No.2389/2013
1.A.Saraswathi
2.G.Prema
3.M.Shanthi
4.Minor R.Roshni Priya ... Appellants/Claimants
(Minor 4th appellant is rep. by her mother
3rd appellant Shanthi)

Vs.

1.S.Sekar

2.M.V.Shivaraj Karthikeyan
3.M/s.United India Insurance Co. Ltd.,
No.5. Big Bazaar Street,
Dharapuram,
Erode District. ... Respondents/Respondents

C.M.A.No.750 of 2018

United India Insurance Co. Ltd.,
No.5. Big Bazaar Street,
Dharapuram. ... Appellant/3rd Respondents

Vs.

1.M.Shanthi
2.Minor R.Roshni Priya
3.Saraswathi ... Respondents 1 to 3/Claimants
4.S.Sekar
5.M.V.Sivaraj Karthikeyan .... Respondents 4 to 5/Respondents 1 & 2

(Minor 2nd respondent is rep by mother 1st respondent Shanthi)

Civil Miscellaneous Appeal Nos.2388 & 2389 of 2013 have been filed under Section 173 of Motor Vehicles Act 1988 against the common judgment and decree dated 30.10.2012 in M.C.O.P.Nos.162 & 163 of 2010 respectively passed by the Motor Accident Claims Tribunal (V Additional District & Sessions Judge) at Coimbatore.

Civil Miscellaneous Appeal No.750 of 2018 has been filed under Section 173 of Motor Vehicles Act 1988 against the common judgment and decree dated 30.10.2012 in M.C.O.P.Nos.162 passed by the Motor Accident Claims Tribunal (V Additional District & Sessions Judge) at Coimbatore.

Mr.N.E.A.Dinesh, for appellants in C.M.A.Nos.2388 & 2389 of 2013.

Mr.T.Ravichandran, for appellant in C.M.A.No.750 of 2018 and for 3rd respondent in C.M.A.Nos.2388 & 2389/2013
... R1 & R2-No appearance in CMA No.2388 & 2389/13

Mr.V.Nicholas, for respondents in C.M.A.No.750 of 2018 No.1 to 3
R4 & R5-No Appearance in CMA 750/18

COMMON JUDGMENT
(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Vth Additional District

Judge) at Coimbatore, in and by award dated 30.10.2012 in M.C.O.P.Nos.162 & 163 of 2010, the claimants have filed the appeals in C.M.A.Nos.2388 & 2389 of 2013 respectively, seeking enhancement of compensation.

2.Similarly, questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the appeal in C.M.A.No.750 of 2018 against the award made in M.C.O.P.No.162 of 2010, contending that the compensation amount awarded in respect of the deceased Rathna Rajan is on the higher side and the same needs proper reduction.

3.Since all the above three appeals interconnected and arise out of the common award, these appeals are disposed of by way of this common judgment.

4.It is the case of the claimants that the deceased persons in this case are father and son viz., on Gopalakrishnan and Rathna Rajan. On 22.06.2009 at 3.00 pm, the said Gopalakrishnan and his son Rathna Rajan were proceeding in an Indigo Car bearing Reg.No.TN-37-AZ-7414 to Karur on the Coimbatore-Trichy Main Road and the said car Indigo Car was being driven by the said Rathna Rajan. At that time, in front of the said car, a Tempo Traveller bearing Reg.No.TN-37-AV-9601 was proceeding in the same direction towards east and another Santro Car bearing Reg.No.TN-04-F-0668 was coming behind the Indigo Car. While all the said three vehicles were proceeding towards east, near Palladam, in front of G.T.N.Engineering Company, a lorry bearing Reg.No.TN-27-7009 came from the opposite direction from East to West at an hectic speed in a rash and negligent manner and hit the tempo traveller, which was proceeding in front of the indigo car and thereafter, the said lorry hit the indigo car and the Santro car. The said lorry dragged the Indigo Car to certain distance, thus, caused the accident. In the said accident, both the father Gopalakrishnan and son Rathna Rajan died on the spot.

5.Hence, the wife, minor daughter and mother of the deceased Rathna Rajan filed M.C.O.P.No.162 of 2010 claiming a sum of Rs.1 crore as compensation. In respect of the death of the father Gopalakrishnan, the claim was made by his wife, daughter, daughter-in-law and minor grand-daughter, claiming a sum of Rs.30 lakhs by filing M.C.O.P.No.163 of 2010.

6.Before the Tribunal, common evidence was recorded in both the cases. On the side of the claimants, the claimant Shanthi examined herself as P.W.1, the claimant Saraswathi examined herself as P.W.2, besides examining three other witnesses and marked 36 documents as Ex.P.1 to Ex.P.36. On the side of the respondents, one witness was examined as R.W.1 and one document viz., letter issued by Bharath Petroleum Corporation Ltd was marked as Ex.R.1.

7.The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the Lorry bearing Reg.No.TN-27-7009 owned by the 2nd respondent and insured with the 3rd respondent-Insurance Company. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a sum of Rs.24,92,000/- as against the claim of Rs.1 crores for the death of the son Rathna Rajan (MCOP.No.162 of 2010) and a sum of Rs.3,42,000/- as against the claim of Rs.30 lakhs in respect of the death of father Gopalakrishnan (MCOP.NO.163/2010). Aggrieved over the same, the present three appeals have been filed as stated supra.

8.Since all the above three appeals have been filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

CMA.No.2388/2013 & C.M.A.No.750 of 2018 (M.C.O.P.No.162/2010 filed in respect of death of the son Rathna Rajan):-

9-1.With regard to the income earned by the deceased Rathna Rajan, it is the contention of the learned counsel for the claimants that at the time of accident, the deceased Rathna Rajan was running a petrol bunk under the name and style of M/s.Surya Traders and thus, he was earning a sum of Rs.35,000/- per month. In order to prove the income earned by the deceased Rathna Rajan, on the side of the claimants, the Income Tax Returns for the assessment year 2009-2010 was marked as Ex.P.12, which would show that after the death of the deceased Rathna Rajan, the income from the petrol bunk has been drastically reduced. The wife of the deceased Rathna Rajan was not in a position to run the petrol bunk, which would clearly show that there is a loss of income after the death of the deceased Rathna Rajan. But, the Tribunal without considering this aspect has just fixed a sum of Rs.20,000/- as monthly income of the deceased which has resulted in awarding an inadequate compensation. Thus, the learned counsel for the claimants prayed that by fixing higher sum as monthly income, the compensation amount awarded by the Tribunal could be enhanced.

9-2.Per contra, the learned counsel for the 3rd respondent/Insurance company submitted that even after the death of the deceased Rathna Rajan, the wife of the deceased is carrying on the business. Under such circumstance, there is no loss of income to the family. Further, it is contended by the learned counsel for the Insurance Company that the sum of

Rs.20,000/- fixed by the Tribunal as monthly income of the deceased is on the higher side. Hence, he prayed that by fixing a lessor amount as monthly income of the deceased, the compensation awarded by the Tribunal has to be reduced.

9-3.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record. We find that the deceased Rathna Rajan was running the petrol bunk under the name and style of M/s.Surya Traders and he commenced the said business only in the year 2008 as a dealer of the Bharath Petroleum Corporation Ltd. In order to prove the income earned by the deceased Rathna Rajan, on the side of the claimants, the income tax returns for the year 2009-2010 was produced as Ex.P.12. When his wife is continuing the business even after the death of the said Rathna Rajan, it cannot be said that there is total loss of income to the family. However, We are of the opinion that since she is a house wife, she cannot personally carry on the business and she has to engage a person to manage the business. In that way, she has to spend some amount towards salary to such person, since she will not be in a position to concentrate on the business personally after the death of her husband. Hence, We are of the opinion that the wife of the deceased would incur at least minimum sum of Rs.25,000/- to carry on the business by engaging a person. Hence, this Court is of the opinion that by fixing a sum of Rs.25,000/- as monthly income of the deceased, the calculation could be made to arrive at a just and proper compensation under the head of loss of income. Hence, the sum of Rs.20,000/- fixed by the Tribunal as monthly income of the deceased Rathna Rajan is hereby enhanced to Rs.25,000/-. If a sum of Rs.25,000/- is taken as monthly loss of income due to the death of the deceased Rathna Rajan, then the annual loss of income works out to Rs.3 lakhs. If 1/3rd amount is deducted towards personal expenses of the deceased, the annual contribution to the family works out to Rs.2 lakhs. The deceased Rathna Rajan was aged 36 years at the time of accident, hence, the correct multiplier that has to be applied in this case is 15. If the multiplier 15 is applied, then the total loss of contribution to the family works out to Rs.30 lakhs. Thus, the compensation amount of Rs.24 lakhs awarded by the Tribunal under the head of loss of income is hereby enhanced to Rs.30 lakhs. That apart, We find that the Tribunal has awarded only a meagre sum of Rs.25,000/- for loss of consortium to the wife of the deceased Rathna Rajan, which is on the lower side. Hence, the same is hereby enhanced to Rs.40,000/-/. Further, We feel that the sum of Rs.5,000/- awarded by the Tribunal for funeral expenses appears to be on the lower side, hence, the same is hereby enhanced to Rs.15,000/-. It is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. The sum of

Rs.60,000/- for loss of love and affection and a sum of Rs.2,000/- for transportation awarded by the Tribunal appear to be reasonable and the same are confirmed. Consequently, the total compensation amount of Rs.24,92,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,22,000/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of income	=Rs.30,00,000/-
Loss of consortium	=Rs. 40,000/-
Loss of love and affection	=Rs. 60,000/-
Transportation	=Rs. 2,000/-
Funeral expenses	=Rs. 15,000/-
Loss of estate	=Rs. 15,000/-
Total	=Rs.31,32,000/-

C.M.A.No.2389 of 2013 (MCOP.No.163 of 2010 filed in respect of the death of Mr.Gopalakrishnan):-

10-1.With regard to the quantum of compensation, in respect of the death of the father Gopalakrishnan, it is the contention of the learned counsel for the claimants that at the time of accident, the deceased Gopalakrishnan was aged 65 years and he was a retired government employee and he was receiving pension. Had he been alive, he would have been receiving a sum of Rs.17,331/- as pension in the light of the revised pension. Under such circumstance, according to the claimants, the Tribunal ought to have taken a sum of Rs.10,000/- as loss of income to the family and made the calculation on that basis. But, instead of doing so, the Tribunal has taken only a sum of Rs.5,000/- as loss of monthly income and made the calculation by applying multiplier 7, which has resulted in awarding an inadequate compensation amount of Rs.2,80,000/- under the head of loss of income. Thus, the learned counsel for the claimants prayed for enhancement of the compensation by way of recalculation.

10-2.Per contra, the learned counsel appearing for the Insurance Company made his submissions supporting the award passed by the Tribunal.

10-3.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record. We find that had the said deceased Gopalakrishnan been alive, he would have received a sum of Rs.17,331/-. After his demise, his wife is receiving a sum of Rs.10,340/- per month as pension. The Tribunal, by taking the mount of Rs.5,000/-, which is difference amount between the pension received by the deceased and the pension now being received by his wife, has made the calculation and arrived at a sum of Rs.2,80,000/- as loss of income. Absolutely, We do not find any infirmity in the said calculation made by the Tribunal in arriving at a sum of Rs.2,80,000/-, hence, the same is confirmed. However, We find that the Tribunal has awarded only a meagre sum of Rs.15,000/- for loss of consortium. Hence, the same is hereby enhanced to Rs.40,000/-. Similarly, the Tribunal has awarded only a sum of Rs.5,000/- for funeral expenses, which appears to be on the lower side. Hence, the same is hereby enhanced to Rs.15,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. Further, as the sum of Rs.40,000/- awarded by the Tribunal for the loss of love and affection is on the lower side, the same is hereby enhanced to Rs.50,000/-. The sum of Rs.2,000/- awarded by the Tribunal for transportation is hereby confirmed as the same appears to be reasonable. Consequently, the total compensation amount of Rs.3,42,000/- awarded by the Tribunal is hereby modified/enhanced to Rs.4,02,000/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of income	=Rs.2,80,000/-
Loss of consortium	=Rs. 40,000/-
Loss of love and affection	=Rs. 50,000/-
Loss of estate	=Rs. 15,000/-
Funeral expenses	=Rs. 15,000/-
Transportation	=Rs. 2,000/-
Total	=Rs.4,02,000/-

11.In the result,

(i)C.M.A.No.2388/2013 is partly allowed and the total compensation amount of Rs.24,92,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,22,000/-, out of which the claimants 1 & 2 are entitled to Rs.13,00,000/- each and the 3rd claimant is entitled to the balance amount of Rs.5,22,000/-. The Insurance Company is directed to deposit the entire modified/enhanced compensation amount of Rs.31,22,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1 & 3 are entitled to withdraw their share amounts with accrued interest thereon by making necessary application. So far as the share of the minor claimant (2nd claimant) is concerned, the same shall be deposited in a fixed deposit in any one of the nationalised banks and her mother 1st claimant is entitled to withdraw the interest accrued thereon once in every three months. No costs.

(ii)Consequently, the appeal in C.M.A.No.750 of 2018 preferred by the Insurance Company is dismissed.

(iii)C.M.A.No.2389/2013 is partly allowed and the total compensation amount of Rs.3,42,000/- awarded by the Tribunal is hereby modified/enhanced to Rs.4,02,000/-, out of which the 1st claimant is Rs.2,52,000/- and the claimants 2 to 4 are entitled to Rs.50,000/- each. The Insurance Company is directed to deposit the entire modified/enhanced compensation amount of Rs.4,02,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks. On such deposit being made, the claimants 1 to 3 are entitled to withdraw their share amounts with accrued interest thereon by making necessary application. So far as the share of the minor claimant (4nd claimant) is concerned, the same shall be deposited in a fixed deposit in any one of the nationalised banks and her mother 3rd claimant is entitled to withdraw the interest accrued thereon once in every three months. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To,

The V Additional District & Sessions Judge,
The Motor Accident Claims Tribunal,
Coimbatore.

+3cc to Mr.V.Nicholas, Advocate Sr.28406, 28407&28750
+1cc to Mr.T.Ravichandran, Advocate Sr.28026

C.M.A.Nos.2388 & 2389 of 2013
and
C.M.A.No.750 of 2018

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