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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3470 and 3471 of 2008

1. S.Nagammal
2. S.Anbarasu
3. E.Gomathi
4. D.Usha ...Appellants in CMA.3470 of 2008

1. D.Vasanthi
2. D.Bagya Lakshmi
3. Minor D.Gubendra Gunabalan
4. Minor D.Hariharan
5. S.Kanagammal
6. C.Sadaiyappa Naikar ... Appellants in CMA.3471 of 2008

Vs

1. R.Raja
2. The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 001. ...Respondents in both CMAs

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the common Award passed by the Hon'ble Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai in MACTOP.No.4125 and 4126 of 2006 dated 25.06.2008.

For Appellant in both CMAs : Mr.N.M.Muthurajan

For Respondents in both CMAs : R1 - Exparte
Mr.K.Padmanabhan for R2

COMMON JUDGMENT

The instant appeals have been filed challenging the Award dated 25.06.2008 passed by the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai in MACTOP.Nos.4125 and 4126 of 2006.



2.The brief facts leading to the filing of the instant appeals are as follows:

(i) In both the Appeals, the claimants are the appellants herein. On 03.09.2006 at about 16.00 hrs, one V.Selvaraj was travelling as a Pillion Rider in motor cycle bearing Registration No.TN-09-AD-8241, which was driven by one Dakshinamurthy from Adyar to Sholinganallur along old Mahapalipuram road, north to south direction. A lorry bearing Registration No.TN-33-W-0988 which was coming from the opposite direction hit the motor cycle and the rider as well the pillion rider, due to which, they sustained fatal injuries. As a result of the accident, the said V.Selvaraj and Dakshinamurthy succumbed to injuries.

(ii) The legal representatives of V.Selvaraj and Dakshinamurthy respectively preferred a compensation claim before the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai in MACTOP .No.4125 of 2006 and MACTOP No.4126 of 2006 seeking compensation of Rs.12,00,000/- and Rs.14,00,000/- respectively.

(iii) In MACTOP.No.4125 OF 2006, by an Award dated 25.06.2008, the Motor Accidents Claims Tribunal directed the second respondent to pay Rs.3,75,000/- to the claimants together with interest at the rate of 7.5%, Per Annum from the date of the claim till the date of realisation and out of the total compensation amount, the first respondent and the respondents 2 to 4 each are entitled to get Rs.3,00,000/- and Rs.25,000/- each respectively.

(iv) In MACTOP.No.4126 of 2006, by an Award dated 25.06.2008, the Motor Accidents Claims Tribunal directed the second respondent to pay the claimants a sum of Rs. 4,17,000/- together with interest at 7.5%, per annum from the date of the claim till the date of realisation and out of the total compensation amount, the claimants 1, 5 and 6 and claimants 2 to 4 each are entitled to get Rs.3,10,000/-, Rs.20,000/-, Rs.15,000/- and Rs.25,000/- each respectively.

(v) Aggrieved by the quantum of compensation awarded by the tribunal to the claimants in its Common Award dated 25.06.2008 passed by the Motor Accident Claims Tribunal, to the claimants in MACTOP.Nos.4125 and 4126 of 2006, the instant appeals have been filed by the respective claimants.

3.Heard, Mr.N.M.Muthurajan, learned Counsel for the Appellants and Mr.K.Padmanabhan, learned Counsel for the Second respondent.

4.The grounds raised by the Appellants/claimants in both the appeals are that the deceased persons who travelled in the motor



cycle as driver and pillion rider were both doing real estate business and Tribunal has erroneously fixed the monthly income of both of them at a reduced sum of Rs.4,000/- per month.

5. The learned Counsel for the Appellants would further contend that the Tribunal has erroneously applied 11 multiplier instead of 13 multiplier considering the age of the deceased who were 49 years and 46 years respectively on the date of the accident.

6. The learned Counsel for the Appellants would further contend that the compensation awarded under the headings loss of consortium, loss of companionship, funeral expenses and loss of estate of the deceased is very low and not in commensurate with the settled principles of law.

7. Per Contra, learned Counsel for the second respondent insurance company in both the appeals would submit that no age proof was filed before the Tribunal to prove that the deceased were 49 years and 46 years respectively. Further he would contend that no proof was filed by the Appellants to establish that the respective deceased were earning a monthly salary of Rs.15,000/- per annum and that they were carrying on real estate business. Therefore, according to the learned Counsel for the second respondent, the Tribunal has fixed the notional income of the deceased at Rs.4,000/- and has awarded a just and reasonable compensation to the Appellants.

8. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels observes the following:

(a) It is an undisputed fact, that the vehicle insured with the second respondent caused the accident which resulted in the death of the deceased for which claim was made by the legal representatives of the respective deceased in MACTOP.Nos.4125 & 4126 of 2006.

(b) The age of the respective deceased was not disputed by the second respondent insurance company before the Tribunal. It is also not the case of the second respondent insurance company, that the Appellants have admitted during the course of the cross examination that they have given a false declaration as to the age of the respective deceased.

(c) The deceased being 46 years and 49 years at the time of accident respectively, the Tribunal ought to have applied 13 multiplier as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma and others Vs Delhi Transport Corporation



and another reported in 2009 ACJ 1298, but the Tribunal erroneously applied 10 and 11 multiplier.

(d) The Tribunal has also awarded only a sum of Rs.5,000/- towards funeral expenses and only Rs.20,000/- towards loss of consortium.

9. In view of the above observations, this Court is of the considered view, that the award passed by the Tribunal in favour of the respective Appellants has to be enhanced in the following manner as the findings of the tribunal are not in accordance with law.

CMA.No.3470 of 2008 arising out of MCOP.No.4125 of 2006

Heads	Amount awarded by this Court
Funeral Expenses	Rs. 15,000/-
Loss of consortium to 1 st appellant	Rs. 40,000/-
Loss of companionship to the appellants	Rs. 30,000/-
Loss of pecuniary benefits and loss of estate of the deceased Rs.4000/- per month + Rs.1000/- for future prospects 25% = Rs.5000 x $\frac{1}{4}$ =3750 3750 x 12 = Rs.45,000/- p.a. Rs.45,000 x 13 = Rs.5,85,000/-	Rs. 5,85,000/-
Total	Rs. 6,70,000/-

CMA.No.3471 of 2008 arising out of MCOP.No.4126 of 2006

Heads	Amount awarded by this Court
Funeral Expenses	Rs.15,000/-
Loss of Consortium to the 1 st appellant	Rs.40,000/-
Loss of companionship to the appellants	Rs.40,000/-



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Heads	Amount awarded by this Court
Loss of Pecuniary benefits and loss of estate of the deceased Rs.4000/- per month + Rs.1000/- for future prospects 25% = Rs.5000 x $\frac{1}{4}$ =3750 3750 x 12 = Rs.45,000/- p.a. Rs.45,000 x 13 = Rs.5,85,000/-	Rs.5,85,000/-
Total	Rs.6,80,000/-

10. In the result,

i) CMA.No.3470 is partly allowed by enhancing the Award passed in M.C.O.P.No.4125 of 2006 to Rs.6,70,000/- instead of Rs.3,75,000/-. No costs.

ii) CMA.No.3471 of 2008 is partly allowed by enhancing the Award passed in M.C.O.P.No.4126 of 2006 to Rs.6,80,000/- instead of Rs.4,17,000/-. No costs.

iii) In both the CMAs, the enhanced amount shall carry interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

iv) The appellants in CMA.No.3470 of 2008 are entitled for their respective shares as apportioned by the tribunal.

v) The appellants in CMA.No.3471 of 2008 are entitled for their respective shares as apportioned by the tribunal.

vi) In both CMAs, the second respondent Insurance Company is directed to deposit the respective compensation amount awarded by this Court to the credit of MCOP.Nos.4125 and 4126 of 2006 respectively, after adjusting the amount, if any, already deposited, along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation .

Vii) On such deposit being made, the appellants in both the CMAs are permitted to receive their respective shares lying to the credit of respective MCOPs as per the ratio apportioned by the tribunal on filing an appropriate application.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

arb/msr



To

1. Motor Accidents Claims Tribunal,
Chief Judge,
Small Causes Court,
Chennai.

2. The Record Keeper,
VR Section,
High Court, Madras. (2 Copies)

+1cc to Mr. N. M. Muthurajan, Advocate, S.R.No. 59536

C.M.A.Nos.3470 and
3471 of 2008

PP (CO)
GN (28/01/2019)