



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2608 of 2005 and 980 of 2006

C.M.A.No.2608 of 2005

Chairman and Managing Director,
United India Insurance Company Ltd.,
24, Whites Road, Chennai -14. ... Appellant/2nd respondent
..vs..

1.L.Jayanthamma
(R1 set exparte before the Tribunal).

2.L.Ramgopal Reddy ...1st &2nd respondent/Claimants1&2

3.V.M.Elumalai ...3rd respondent/1st respondent

4.The Managing Director,
Tamilnadu State Transport Corporation,
Kanchipuram. ...4th Respondent/3rd respondent

C.M.A.No.908 of 2006

1.L.Jayanthamma

2.L.Ramgopal Reddy ... Appellants/Claimants
..vs..

1.V.M.Elumalai

2.The United India Ins. Co.Ltd.,
Motor III Party Claims Office,
No.38, Anna Salai, Chennai - 2.

3.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kancheepuram.
... Respondents1 to 3/ Respondents1 to 3

Common Prayer: Appeals filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 31.03.2004 made in M.C.O.P.No.129 of 2002 on the file of the Motor Accidents



Claims Tribunal, Additional District Judge, Fast Track Court-III, Poonamallee.

For Appellant in CMA No.2608/2005 : Mrs.Revathi Muralidharan

For R1& 2 in CMA No.2608/2005
& For Appellants in CMA No.980/ 2006 : Mr.J.Mahalingam

For R4 in CMA No.2608/2005
& For R3 in CMA No.980/ 2006 : Mr.K.J.Sivakumar

For R2 in CMA No.980/2006 : Mrs.R.Sreevidhya

COMMON JUDGMENT

The Motor Accident Claims Tribunal /Additional District Judge, Fast Track Court III, Poonamallee has passed an award for a sum of Rs.12,12,800/- for the death of one Suresh Kumar, aged about 23, who was a first year MBA student, in respect of an accident which occurred on 02.11.1999.

2.The case of the claimants is that on 02.11.1999 at about 15.45 hours, in the Poonamallee Bye-Pass Road near TVS company, the bus belonging to the fourth respondent Transport Corporation in C.M.A.No.2608 of 2005 was hit by the lorry bearing Reg.No.TNU-8538 belonging to the third respondent and insured with the appellant Insurance Company in C.M.A.No.2608 of 2005, which was coming from the opposite direction. Due to the impact, the deceased-Suresh Kumar who was travelling in the bus sustained severe head injuries, since the rods kept in the lorry hit his head. He was taken to various hospitals and ultimately he succumbed to the injuries on 03.02.2001 i.e., one year and three months after the accident. The legal representatives of Suresh Kumar, who are the appellants in CMA No.980 of 2006 have filed a claim petition claiming a total compensation of Rs.20 lakhs. The Tribunal, based on the eye witness and the documents adduced, has fixed the negligence at 75% on the part of the lorry driver and 25% on the part of the bus driver and arrived at a total compensation of Rs.12,12,800/- with interest at the rate of 9% per annum from the date of petition, under the following breakup details:



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HEADS	AMOUNT
Loss of income (4000X12X13)	: Rs.6,24,000.00
Medical Expenses	: Rs.5,38,820.64
Pain and suffering	: Rs. 50,000.00

Total	:Rs.12,12,820.64

(Rounded off to Rs.12,12,800/-)	

3. Being dissatisfied with the quantum of compensation arrived at, the claimants/legal representatives of Suresh Kumar have filed CMA.No.980 of 2006. Branding the award as excessive and disproportionate to the income of the deceased, CMA No.2608 of 2005 is filed by the Insurance Company.

4. Since the parties and the issues involved in both the cases are interlinked and common, these two appeals are taken up together for final disposal.

5. The learned counsel for the claimants has submitted that after the accident, the deceased took treatment as in-patient for about 1 ½ years and thereafter succumbed to the injuries; that in fact he has been in coma for a period of more than one year; that the Tribunal has failed to consider those aspects into consideration and awarded the compensation which is not in consonance with the injuries suffered or the treatment undergone by the deceased and hence the compensation awarded by the Tribunal needs enhancement.

6. Per contra, the learned counsel appearing for the Insurance Company has submitted that the fixing of negligence at 75% on the part of the driver of the lorry by the Tribunal is not correct, since the Tribunal has not appreciated the evidence and documents in a proper perspective. It is submitted that the evidence on record clearly establishes that the deceased contributed to the accident by protruding his head out of the window. It is also submitted that the compensation awarded by the Tribunal is excessive.

7. The learned counsel for the Transport Corporation has submitted that the Tribunal has correctly considered the materials and evidence and has passed the impugned judgment and hence the same need not be interfered with by this Court.



8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

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9. A perusal of the award of the Tribunal would establish the fact that Suresh Kumar aged 23 was met with an accident on 02.11.1999, while he was travelling in a bus which was hit by the lorry from the opposite side. Due to the said accident, Suresh Kumar suffered head injuries and he took treatment in the Kilpauk Medical College Hospital, General Hospital, Chennai and private hospitals at Tirupathi and he was in coma for some period and died on 03.02.2001. The Tribunal has taken note of all the evidence, particularly PW1, father of Suresh Kumar and has narrated the manner in which the accident had happened; PW2 one Tmt. Babykulnas was examined before the Tribunal who was an eyewitness to the accident. She spoke about the manner in which the accident had happened and the first aid treatment given to Suresh Kumar. The Tribunal has further observed that the contents of the FIR and the evidence of Pws. 1 and 2 correlate with each other. The Tribunal has also taken note of the evidence of RW1, the driver of the bus and the FIR account and ultimately fastened the liability at 75% on the driver of the lorry and 25% on the driver of the bus.

10. The findings rendered by the Tribunal are based on the evidence account and materials produced by both sides. The factum of accident has been proved by the documents produced by both sides. Hence the findings on negligence aspect by the Tribunal are confirmed as such.

11. As far as the quantum of compensation arrived at by the Tribunal is concerned, the Tribunal has fixed the monthly income of the deceased at Rs.6,000/-, deducted 1/3rd of the amount towards personal expenses and arrived at the sum of Rs.4,000/-. Thereafter, the Tribunal has calculated the annual contribution of the deceased to the family at Rs.48,000/-, adopted multiplier of 13 and arrived at the loss of income at Rs.6,24,000/-. The Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, Death Report, Salary Certificate of the deceased, taken note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

12. In the result, the Civil Miscellaneous Appeals are dismissed. No costs. The Insurance company and the Transport Corporation are directed to deposit their share of the compensation amount, as ordered by the Claims Tribunal in the



proportion of 75% and 25% respectively, after deducting the respective amounts, if any already deposited by them, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposits being made, the respondents 1 and 2 in C.M.A.No.2608 of 2005 / appellants in C.M.A.No.980 of 2006 / claimants, are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk / vum / km

To

1.The Motor Accidents Claims Tribunal
/ Additional District Judge, FTC - 3
Poonamalee.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.R.Ravichandran , Advocate SR.No. 64750
+1cc to Mr.K.J.Sivakumar , Advocate SR.No. 63885
+2ccs to Mr.J.Mahalingam , Advocate SR.No. 63917
C.M.A.Nos.2608 of 2005 and 980 of 2006
A.SK(02/09/2020)