

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. Nos. 179,184 & 187 of 2019

1. Amuthavalli
2. Elangovan

... Appellants/Petitioners
in CMA 179/19

Manikandan

... Appellant/Petitioner in
CMA 184/19

Poovarasan

... Appellant/Petitioner in
CMA 187/19

Vs.

1.Muthusamy

2.The Manager

United India Insurance Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal.

... Respondents/Respondents
in all CMAs

Appeals filed under Section 173 of the Motor Vehicles Act,1988 against the judgment and decree passed in M.C.O.P. Nos. 381,477 and 329 of 2016 dated 26.07.2018 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellant
(in all)

:

Mr.C.Thangaraju

For Respondents
(in all)

:

Mr.M.Mani Gopi for R1
Mr.T.Ravichandran for R2

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COMMON JUDGMENT

(Delivered by M.M.Sundresh,J.)

As all the issues arise from the single accident coupled with the fact that the Tribunal disposed of all the claim petitions under a common award, we are disposing all the appeals by way of passing common order.

2.Since the above appeals are preferred by the claimants, the question of liability and negligence is not gone into though the appellants can raise a plea that there is no contributory negligence. Therefore, we are not willing to go into the issue of negligence from the point of view of the respondents.

3.In C.M.A.No.179 of 2019, the claimants are the parents of the deceased. The deceased was a Diploma Holder aged about 21 years. He is stated to be a person academically very good. The income was taken as Rs.6,000/- per month. Contributory negligence was fixed on the part of the deceased, since he travelled along with two other claimants in a two wheeler. Accordingly, the total compensation was fixed at Rs.9,37,200/- and reduced to 50%. Considering the fact that the deceased and other claimants travelled in a two wheeler, the Tribunal held that as per the provisions of Motor Vehicles Act, only two persons are permitted to travel. Therefore, notwithstanding the evidence adduced to show that the person who was coming in opposite direction in two wheeler speaking over his cell phone at the time of accident, inasmuch as the deceased was also travelling along with two other claimants in two wheeler contrary to the permissible limit under the Motor Vehicles Act, the negligence will have to be shared. Accordingly, in C.M.A.No.179 of 2019, a sum of Rs.4,68,600/- has been awarded as compensation. For the claimant in C.M.A.No.184 of 2019, a sum of Rs.50,694/- has been awarded and in C.M.A.No.187 of 2019, a sum of Rs.78,243/- has been awarded by fixing the contributory negligence and reducing 50% of the compensation. Seeking enhancement, all these appeals are filed.

4.Learned counsel appearing for the appellants/claimants would submit that in view of the evidence of P.W.6, who is an independent witness, the contributory negligence ought not to have been fixed by the Tribunal. The evidence would show that the first respondent since set exparte was travelling in a two wheeler while speaking over cell phone. In any case, the income of the deceased has been fixed at Rs.6,000/- as against Rs.12,000/-, which was fixed in similar case, as held by this Court in Cholamandalam MS General Insurance Co. Ltd., Vs. Kaliammal (2018(1) TNMAC 452 (DB)). If that is taken into

consideration, the appellants in C.M.A.No.179 of 2019 are entitled to higher amount. Similarly, the evidence of P.W.5/doctor has not been taken into consideration correctly. The appellant in C.M.A.No.184 of 2019 was not able to take food properly since he was experiencing some discomfort. Though 18% disability has been fixed by doctor, the loss suffered has not been taken into consideration. Similarly, in C.M.A.No.187 of 2019, the appellant has suffered two permanent disabilities and therefore, the doctor has fixed 35% permanent disability. These factors have not been taken into consideration by the Tribunal.

5.Learned counsel appearing for the second respondent insurance company has submitted that as admittedly the deceased was taking two other claimants along with him in two wheeler, contributory negligence has been fixed correctly. Insofar as the negligence fixed is concerned, in the absence of material to substantiate the same, the award of the Tribunal cannot be questioned. Learned counsel appearing for the first respondent has further submitted that the first respondent was set exparte and therefore, the award of the Tribunal with respect to pay and recovery cannot be sustained since he is having valid licence. Therefore, the award, fixing the liability on the first respondent and thereafter pay and recovery cannot be sustained.

6.We are not inclined to interfere with the finding with respect to the contributory negligence, in view of the admitted fact that the deceased was travelling with two other persons viz., appellants in C.M.A.Nos.184 and 187 of 2019. Merely because the first respondent was speaking over cell phone will not fix the entire liability on him in view of the fact stated above. The Tribunal has taken into consideration the earlier decision rendered by this Court. Thus, we are not inclined to interfere with the rationale adopted by the Tribunal with respect to contributory negligence.

7.Coming to the contention raised by the learned counsel appearing for the first respondent that the first respondent was unable to appear, the same is also liable to be rejected. There is no material to hold that he was prevented by sufficient cause to appear before the Tribunal. He has also not challenged the award of the Tribunal. Therefore, we are of the view that it is only an afterthought by way of submission sought to be raised before this Court. Had the appellants not filed these appeals, the first respondent would not have raised this contention. Therefore, the contention raised by the learned counsel for the first respondent stands rejected.

8.Thus, we are left with the quantum of the claims sought to be enhanced by the appellants before this Court. We find some force in the submission made by the learned counsel appearing

for the appellants in this regard. In C.M.A.No.179 of 2019, the Tribunal has fixed Rs.6,000/- per month as income, which, in our considered view, is too low. The deceased was 21 years at the time of accident and he was a Diploma Holder with distinction, is not in dispute. Considering the very same fact, this Court in Cholamandalam MS General Insurance Co. Ltd., Vs. Kaliammal (2018 (1) TNMAC 452 (DB)) has fixed the income at Rs.12,000/- per month, which cannot be stated as excessive. Therefore, we are inclined to accept the contention that the income of Rs.12,000/- will have to be taken into consideration. On the other hand, we are not inclined to interfere with the compensation awarded for the conventional damages. Accordingly, Rs.12,000/- is taken as monthly income. We are of the view that the multiplier '18' adopted is reasonable and the loss of dependency would come to $\text{Rs.12,000/-} \times 12 \times 18 = \text{Rs.25,92,000/-}$. Adding future prospects at 40% i.e., $(\text{Rs.25,92,000/-} \times 40\% = \text{Rs.10,36,800/-})$ and after deducting $1/2$ amount towards personal expenses of the deceased, the loss of dependency would come to Rs.18,14,400/- $(\text{Rs.36,28,800/-} \times 1/2 = \text{Rs.18,14,400/-})$. The amounts awarded by the Tribunal under the heads 'loss of estate' and 'funeral expenses' at Rs.15,000/- each are confirmed. The Tribunal has not granted any amount towards loss of love and affection. Considering the fact that the claimants are the aged parents of the deceased, we are inclined to grant a sum of Rs.40,000/- each towards loss of love and affection. Thus, the total compensation payable is arrived at Rs.19,24,400/-, which, we round off to Rs.20 lakhs. After deducting the amount towards 50% contributory negligence, the total compensation payable to the claimants would come to Rs.10 lakhs. Accordingly, the appeal in C.M.A.No.179 of 2019 is allowed as indicated above.

9.C.M.A.No.184 of 2019 has been filed by the claimant who suffered minimum injuries. The evidence of doctor is also to the extent of stating that the appellant is having some difficulty in taking food. In such view of the matter, the Tribunal had the pleasure of seeing the appellant in person. We are not inclined to interfere with the same. Accordingly, the same stands confirmed and the appeal in C.M.A.No.184 of 2019 stands dismissed.

10.In C.M.A.No.187 of 2019, the appellant has suffered two permanent injuries and they have been taken into consideration by the Tribunal. The doctor has also deposed that the appellant would not be in a position to carry out the work which he was doing hitherto due to the permanent injuries. In such view of the matter, the fixation of compensation at Rs.78,243/- is enhanced to Rs.1,50,000/-. Accordingly, the appeal in C.M.A.No.187 of 2019 stands allowed.

11.In the result, the appeals in C.M.A.Nos.179 and 187 of

2019 are allowed and the appeal in C.M.A.No.184 of 2019 is dismissed. No costs.

12.The second respondent insurance company is directed to deposit the enhanced amount in C.M.A.Nos.179 and 187 of 2019 to the credit of M.C.O.P.Nos.381 and 329 of 2016 along with proportionate interest and the amount awarded by the Tribunal in M.C.O.P.No.477 of 2016 along with proportionate interest to the credit of M.C.O.P.No.477 of 2016 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Namakkal, less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants are permitted to withdraw their respective shares along with accrued interest.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+6 cc's to Mr.C.Thangaraju, Advocate, Sr.No. 12786 to 12788
+1 cc to M/s.T.Ravichandran, Advocate, Sr.No. 12970

C.M.A. Nos. 179,184 and
187 of 2019

SKV

CSL/08.05.2019

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