IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2181 & 2182 of 2015
and
C.M.A.Nos.322 & 362 of 2018

C.M.A.No.2181/2015

1.E.Vajramma
2.E.Harish (minor)
3.Pushpa (minor)
4.Hemavathi (minor)
5.E.Kousalyamma
6.E.Govinda Naidu
(Minor appellants 2 to 4 are rep. By their mother and next friend, 1st appellant) ...Appellants/Petitioners

Vs.

1.M.Jayaraj
2.Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai -17. ... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.12.2014 made in M.C.O.P.No.2749 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Ms.A.Salomi

For R1 : Mr.Ramachandran

For R2 : Mr.S.Dhakshnamoorthy

C.M.A.No.2182/2015

C.Venkatesulu @ Venkatesh ...Appellant/Petitioner

Vs.

1.M.Jayaraj
2.Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai -17. ... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.12.2014 made in M.C.O.P.No.3340 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms.A.Salomi

For R1 : Mr.Ramachandran

For R2 : Mr.S.Dhakshnamoorthy

C.M.A.No.322/2018

Shriram General Insurance Co. Ltd.,
No.66, Thirumala Pillai Street,
T.Nagar, Chennai 17. ...Appellant/2nd Respondent

Vs.

1.C.Venkatesulu @ Venkatesh
2.M.Jeyaraj
... Respondents /Petitioner & 1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.12.2014 made in M.C.O.P.No.3340 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 : Ms.A.Salomi

For R2 : Mr.Ramachandran

C.M.A.No.362/2018

Shriram General Insurance Co. Ltd.,
No.66, Thirumala Pillai Street,
T.Nagar, Chennai 17. ...Appellant/2nd Respondent

Vs.

1.E.Vajramma
2.E.Harish (minor)
3.Pushpa (minor)
4.Hemavathi (minor)
5.E.Kousalyamma
6.E.Govinda Naidu

(Minor Respondents 2 to 4
rep. By their mother and next
friend, 1st Respondent)

7.M.Jeyaraj ... Respondents/Petitioner and 1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.12.2014 made in M.C.O.P.No.2749 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 : Ms.A.Salomi

For R2 : Mr.Ramachandran

COMMON JUDGMENT

C.M.A.Nos.2181/2015 and 362/2018 have been filed against the award and decree dated 18.12.2014 made in M.C.O.P.No.2749 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

C.M.A.Nos.2182/2015 and 322/2018 have been filed against the award and decree dated 18.12.2014 made in M.C.O.P.No.3340 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.All the four appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The claimants/appellants in C.M.A.No.2181 of 2015 filed M.C.O.P.No.2749 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.30,00,000/- as compensation for the death of E.Lakshimipathi, husband of the 1st appellant, father of the appellants 2 and 3 and son of the appellants 4 and 5, who died in the accident that took place on 28.02.2013.

5.The claimant/appellant in C.M.A.No.2182 of 2015 filed M.C.O.P.No.3340 of 2013 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.02.2013.

6.The learned counsel appearing for the claimants in M.C.O.P.No.2749/2013 [C.M.A.Nos.2181/2015 and 362/2018] contended that the deceased was working as a supervisor and was earning a sum of Rs.15,000/- per month. The claimants have examined the co-worker to prove that the deceased was earning a sum of Rs.15,000/-. The Tribunal without considering the evidence of P.W.4, fixed meagre amounts of Rs.7,500/- as monthly income of the deceased. The Tribunal ought to have awarded more compensation for loss of income and amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.The learned counsel appearing for the claimant in M.C.O.P.No.3340/2013 [C.M.A.Nos.2182/2015 and 322/2018] contended that the claimant was an Electrician and was earning a sum of Rs.15,000/- per month. The claimant examined himself as P.W.2 and marked Exs.P11 and P12 to show that he was working as an Electrician. The Tribunal without appreciating the materials on record, fixed a sum of Rs.7,500/- as the monthly income of the claimant. The claimant due to the injuries suffered, was taking treatment as inpatient for 46 days and underwent skin grafting surgery. P.W.3-Doctor deposed about the nature of injuries and certified that the claimant suffered 55% partial permanent disability. The Tribunal reduced the same to 15% and awarded meagre amounts as compensation and prayed for enhancement of the compensation.

8.The learned counsel appearing for the 2nd respondent-Insurance Company in both the claim petitions contended that the claimants in M.C.O.P.No.2749/2013 [C.M.A.Nos.2181/2015 and 362/2018] have not produced any documents to substantiate the income and avocation of the deceased. In the absence of documents, the Tribunal erroneously fixed a sum of Rs.7,500/- per month as notional income and granted 30% enhancement for future prospects, which are excessive. The amounts granted by the Tribunal for loss of consortium is excessive. The claimants are not entitled for any enhancement and prayed for reducing the compensation granted by the Tribunal.

9.The learned counsel appearing for the 2nd respondent-Insurance Company in M.C.O.P.No.3340 of 2013 [C.M.A.Nos.2182/2015 and 322/2018] contended that the Tribunal erred in applying the multiplier method, when there is no functional disability. The Tribunal ought to have awarded compensation only based on percentage basis. The claimant produced medical bills as Ex.P9 only for Rs.6160.45/-. The Tribunal erred in granting a sum of Rs.15,000/- for medical expenses. The amounts awarded by the Tribunal under all heads are excessive.

10.Heard the learned counsel appearing for the claimants/claimant as well as the 2nd respondent-Insurance Company and perused all the materials available on record.

11.The contention of the learned counsel appearing for the claimants/claimant that the Tribunal ought to have fixed the notional income of the deceased and injured at Rs.15,000/- instead of Rs.7,500/- per month, is not supported by any materials on record. In M.C.O.P.No.2749/2013 [C.M.A.Nos.2181/2015 and 362/2018], the claimants have examined P.W.2-co-worker who had deposed that the deceased was earning a sum of Rs.500/- per day. But in cross-examination, he admitted that no document was filed to prove that the deceased was earning a sum of Rs.500/- per day. The claimants have not substantiated their claim. The claimant in M.C.O.P.No.3340/2013 [C.M.A.Nos.2182/2015 and 322/2018] except producing Ex.P12 which shows that he completed electrician course, did not produce any documents with regard to income. In such circumstances, the contention of the learned counsel appearing for the claimant that the notional income of Rs.7,500/- fixed by the Tribunal is not meagre and also the contention of the learned counsel appearing for the 2nd respondent-Insurance Company that Rs.7,500/- is excessive is not correct. The Tribunal considering the age, avocation of the deceased and injured person, fixed the notional income at Rs.7,500/- per month, which is proper. There is no reason to enhance or reduce the notional income fixed by the Tribunal.

12.As far as the quantum of compensation in M.C.O.P.No.2749/2013 [C.M.A.Nos.2181/2015 and 362/2018] is concerned, the deceased was aged 43 years at the time of accident. The claimants are entitled to only 25% enhancement towards future prospects, but the Tribunal has awarded 30% for future prospects. Similarly, the Tribunal has awarded excessive amounts under the conventional head. The contention of the learned counsel appearing for the 2nd respondent-Insurance Company that the Tribunal has awarded excessive amounts as compensation has considerable force. The claimants are entitled to only 25% enhancement for future prospects. Hence, applying the multiplier of '14' and deducting 1/4th towards the personal expenses of the deceased, the pecuniary loss granted by the Tribunal is modified to Rs.11,81,250/- {[Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-)] x 12 x 14 x ¾}. The amounts granted towards loss of consortium and funeral expenses are excessive. The claimants are only entitled to a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. The Tribunal has not granted any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted under this head. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	12,28,500/-	11,81,250/-	reduced

2.	Loss of consortium	1,00,000/-	40,000/-	reduced
3.	Funeral expenses	25,000/-	15,000/-	reduced
4.	Loss of love and affection	2,00,000/-	2,00,000/-	confirmed
5.	Loss of estate	-	15,000/-	granted
	Total	15,53,500/-	14,51,250/-	Reduced by Rs.1,02,250/-

13.As far as the quantum of compensation in M.C.O.P.No.3340/2013 [C.M.A.Nos.2182/2015 and 322/2018] is concerned, the Doctor has certified that the claimant suffered 50% permanent partial disability, but the Doctor has stated that the appellant can do work of electrician with difficulty. In view of the same, the Tribunal has reduced the percentage of disability to 15% and applied the multiplier method. The reason for reducing 15% is erroneous and is without any basis. The claimant is entitled to compensation for 25% and hence, the amount granted by the Tribunal towards loss of income is modified to Rs.3,60,000/- [Rs.7,500/- x 12 x 16 x 25%]. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	30,000/-	30,000/-	confirmed
2.	Transportation	15,000/-	15,000/-	confirmed
3.	Damages to clothes	1,000/-	1,000/-	confirmed
4.	Extra nourishment	15,000/-	30,000/-	enhanced
5.	Attender charges	10,000/-	25,000/-	enhanced
6.	Medical expenses	15,000/-	15,000/-	confirmed
7.	Loss of amenities	25,000/-	25,000/-	confirmed

8.	Pain and suffering	40,000/-	50,000/-	enhanced
9.	Disability and loss of earning power	2,16,000/-	3,60,000/-	enhanced
	Total	3,67,000/-	5,51,000/-	enhanced by Rs.1,84,000/-

14.In the result, C.M.A.Nos.2181 of 2015 and 322 of 2018 are dismissed and C.M.A.Nos.2182 of 2015 and 362 of 2018 are partly allowed. The award granted by the Tribunal in M.C.O.P.No.2749 of 2013 at Rs.15,53,500/- is reduced to Rs.14,51,250/-. The 2nd respondent-Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2749 of 2013. On such deposit, the claimants 1, 5 and 6 are permitted to withdraw their share of the award amount on the basis of the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. The shares of the minor claimants 2 to 4 are directed to be deposited in any of the Nationalized Bank, till the minor claimants 2 to 4 attain majority. The 1st claimant/mother of the minor claimants 2 to 4 is permitted to withdraw the interest, once in three months for the welfare of the minor claimants 2 to 4. The award granted by the Tribunal in M.C.O.P.No.3340 of 2013 at Rs.3,67,000/- is enhanced to Rs.5,51,000/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3340 of 2013. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Judge,
II Court of Small Causes,
(Motor Accident Claims Tribunal), Chennai.

2. The Section Officer,
V.R.Section,
High Court of Madras.
Chennai-600 104.

3.Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai -17.

+2cc to Mr.V.Venkatesan, Advocate, S.R.No.6856 & 6855

C.M.A.Nos.2181 & 2182 of 2015
and C.M.A.Nos.322 & 362 of 2018

SPD(CO)
GN(29/08/2019)