IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 2668 of 2015 & 1846 of 2016
and
C.M.P. Nos. 13556 of 2016

C.M.A.No.2668 of 2015

1.R.Sudha Kumar

2.Minor R.Saranya

3.Minor R.Sowmya

4.Radha Bai

5.A.Chakaravarthi .. Appellants/Petitioners
(minors 2 and 3 rep. By their mother
and next friend, 1st appellant herein)

Vs.

1.Thirumala Cabs rep. By
M.Sunil Kumar,
Plot Nos. 148 & 149, Green Park Avenue,
Quthubullapur Medchal,
Ranga Reddy District, A.P.

2.United India Insurance Co. Ltd.,
Motor T.P. Cell,
No.48, 1st Floor, Saligramam,
Arcot Road, Chennai 600 093. .. Respondents/Respondents

C.M.A.No.1846 of 2016

United India Insurance Co. Ltd.,
Motor T.P. Cell,
No.48, 1st Floor, Saligramam,
Arcot Road, Chennai 600 093. .. Appellant/2nd Respondent

Vs.

1.R.Sudha Kumar

2.Minor R.Saranya

3.Minor R.Sowmya

4.Radha Bai

5.A.Chakaravarthi

6.Thirumala Cabs rep. By
M.Sunil Kumar,
Plot Nos. 148 & 149, Green Park Avenue,
Quthubullapur Medchal,
Ranga Reddy District, A.P.

(minors 2 and 3 rep. By their mother
and next friend, 1st appellant herein)

.. Respondents/Petitioners & 1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 04.06.2015, made in M.C.O.P.No.138 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

(In C.M.A.No.2668/2015)

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : No appearance (for R1)

Mr.D.Bhaskaran (For R2)

(In C.M.A.No.1846/2016)

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.K.Varadha Kamaraj (For R1 to R5)

No appearance (For R6)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 04.06.2015, made in M.C.O.P.No.138 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition for the sake of convenience.

4.The claimants filed the above said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of one C.Rajkumar who died in the accident that took place on 05.11.2012.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the private bus belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.41,41,000/- as compensation to the claimants.

6.Against the said award dated 04.06.2015, made in M.C.O.P.No.138 of 2013, the 2nd respondent-Insurance Company has filed C.M.A.No.1846 of 2016 for setting aside the award of the Tribunal and claimants have filed C.M.A.No.2668 of 2015 for enhancement of the compensation.

7.Learned counsel appearing for the claimants contended that the deceased was working as a Senior Marketing Executive in 'VIP Housing and Properties' and Super Distributor in 'Uniworld Enterprises' and was earning a sum of Rs.34,231/- per month. The Tribunal ought to have considered the oral evidence of P.W.3 and documentary evidences marked as Exs.P14 to P16, P22, P26, P29 to P31 and fixed the monthly income of the deceased at Rs.34,231/-. The deceased was aged 43 years at the time of accident. The Tribunal ought to have awarded 30% enhancement towards future prospects, while awarding compensation towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation and allowing C.M.A. No. 2668 of 2015.

8.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company though raised various grounds with regard to negligence fixed on the part of the driver of the private bus belonging to the 1st respondent in C.M.A.No.1846 of 2016, at the time of arguments, he restricted his claim only with regard to quantum of compensation. Learned counsel for the 2nd respondent further contended that the Tribunal, in the absence of any material evidence to prove the avocation of the deceased and the income tax returns, has erroneously fixed a sum of Rs.30,000/- per month as income of the deceased, on mere presumption. The deceased was not an income tax assessee. The sum of Rs.40,50,000/- awarded towards pecuniary benefits is exorbitant. In any event, the total compensation awarded by the Tribunal is excessive and prayed for allowing C.M.A. No.1846 of 2016.

9.Heard the learned counsel appearing for the claimants as well as the 2nd respondent and perused the materials available on record. Though notice has been served on the 1st respondent and its name is printed in the cause-list, there is no representation for them either in person or through counsel.

10.From the materials on record, it is seen that the claimants contend that the deceased was working as a Senior Marketing Executive as well as Commission Agent and was earning a sum of Rs.34,231/- per month. The Tribunal merely relying on Ex.P24-bank statement, erroneously fixed the income of the deceased at Rs.30,000/- per month. The claimants have not filed any Income Tax Returns for having paid the Income Tax. In the absence of any proof to show that the entire income of the deceased is out of the said Commission work, the sum of Rs.30,000/- cannot be fixed as monthly income on mere presumption. Considering the qualification and bank statement of the deceased, the notional income fixed by the Tribunal is excessive and hence, the same is reduced to Rs.24,000/- per month. The deceased was aged 43 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 25% enhancement towards future prospects. The Tribunal erroneously adopted the multiplier '15', as against '14'. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.37,80,000/- {[Rs.24,000/- + Rs.6,000/- (25% of Rs.24,000/-)] x 12 x 14 x 3/4}. The Tribunal has awarded meagre amount towards funeral expenses, loss of consortium to the 1st claimant and loss of love and affection to the claimants 4 and 5. Hence, a sum of Rs.15,000/- is awarded towards funeral expenses, a sum of Rs.40,000/- towards loss of consortium to the 1st claimant and a sum of Rs.20,000/- each towards loss of love and affection to the 4th and 5th claimants. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are 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	40,50,000/-	37,80,000/-	Reduced
2.	Funeral expenses	10,000/-	15,000/-	Enhanced
3.	Transportation	5,000/-	5,000/-	Confirmed

4.	Loss of consortium	25,000/-	40,000/-	Enhanced
5.	Loss of love and affection to 2nd & 3rd claimant	40,000/-	40,000/-	Confirmed
6.	Loss of love and affection to 4th and 5th claimant	10,000/-	40,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	41,41,000/-	39,21,000/-	Reduced by Rs.2,20,000/-

11.In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.41,41,000/- is reduced to Rs.39,21,000/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the modified award amount now determined by this Court, 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.138 of 2013. On such deposit, the claimants 1, 4 & 5 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filling necessary applications before the Tribunal. The shares of the minor claimants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st claimant/mother of the minor claimants 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor claimants 2 and 3. The 2nd respondent-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P.No.138 of 2013, if the entire award amount has already been deposited. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

1.The II Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.

2.The Section Officer,
V.R Section,
High Court, Madras.

+2cc to Mr.K.Varadha Kamaraj, Advocate SR.No.102174

+1cc to Mr.D.Bhaskaran, Advocate SR.No.102060

C.M.A.Nos. 2668 of 2015 & 1846 of 2016

SR(CO)
GMY(28/08/2020)