

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No 2855 of 2015
and
C.M.A. No.1186 of 2016
and
CMP No.8977 of 2016

CMA No.2855 of 2015

1. P. Thenmozhi
2. N.P. Palani ... Appellants/Petitioners

versus

1. P. Sundaravaradhan
2. The Divisional Manager,
The New India Assurance Company Ltd.,
Motor Third Party Claims Office,
No.69, 70, Sheikpet Nadu Street,
Kanchipuram. ... Respondents/Respondents
(No relief sought against the 1st respondent
hence notice may be dispensed with)

C.M.A. No.1186 of 2016
The Divisional Manager,
The New India Assurance Co. Ltd.,
Motor Third Party Claim Office,
No.69, 70, Sheikpet Nadu Street,
Kancheepuram. ... Appellant/2nd Respondent

versus

1. P. Thenmozhi
2. N.P. Palani
3. P. Sundaravaradhan
...Respondents/Petitioners & 1st Respondent

Prayer in CMA No.2855 of 2015

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award passed in judgment and decree dated 20.08.2015 made in M.C.O.P. No.368 of 2011 on the file of the Motor Accident Claims Tribunal, District Court - II, Kanchipuram.

Prayer in CMA No.1186 of 2016

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed by the Tribunal in M.C.O.P. No.368 of 2011, dated 20.08.2015 on the file of the Motor Accident Claims Tribunal, (District Judge, District Court - II) at Kancheepuram.

C.M.A. No.2855 of 2015

For Appellants : Mr.C. Prabakaran
For Respondents : Mr.M. Krishnamoorthy for R2
R1 - Dispensed with

C.M.A No.1186 of 2016

For Appellant : Mr. M.Krishnamoorthy
For Respondents : Mr. C. Prabakaran

COMMON JUDGMENT

(The Judgment of the Court was delivered by Abdul Qudhose, J.)

CMA No.2855 of 2015 has been filed by the Appellants / claimants seeking enhancement of compensation under the impugned award dated 20.08.2015 passed by the Motor Accident Claims Tribunal, Poonamallee (District Judge, District Court - II, Kanchipuram) in M.C.O.P. No.368 of 2011. CMA No.1186 of 2016 has been filed by the Insurance Company challenging the same award questioning the quantum of compensation awarded by the Tribunal.

Brief facts leading to the filing of these appeals:

2.On 05.02.2011, a person by name OmKumar, aged 32 years was riding in his Motor Cycle viz., Hero Hondo Splendor bearing Registration No.TN21 - F - 2953 from Vellore to Kanchipuram. At that time, a bus which is insured with the Appellant belonging to one P.Sundaravaradhan who is the first respondent in CMA.No.2855 of 2015 and the third respondent in CMA.No.1186 of 2016 bearing Registration No.TN-21-AH-0199 came in the opposite direction and collided with the motor cycle. Due to the collision, the rider of the motor cycle fell down and sustained fatal injuries. Immediately, he was admitted in the Meenakshi Medical College Hospital for treatment and during the course of treatment, he died.

3.The claimants who are the parents of the deceased have filed the claim petition before the Motor Accidents Claims Tribunal, District Court-II, in M.C.O.P. No.368 of 2011, claiming a compensation of Rs.90,80,000/-, which was restricted by the claimants to Rs.75,00,000/-

4.By an award dated 20.08.2015, passed in M.C.O.P. No.368 of 2011, the Motor Accidents Claims Tribunal partly allowed the

claim petition by directing the insurance company to pay the claimants a sum of Rs.40,07,565/- together with interest at 7.5% per annum from the date of claim till the date of realization as detailed below:

Heads	Award Amount
Loss of Income	Rs.48,99,456/-
Loss of Love and Affection to each petitioner Rs.50,000/-	Rs.1,00,000/-
Transport Expenses	Rs.5,000/-
Funeral Expenses	Rs.5000/-
Total	Rs.50,09,456/-
Contributory negligence on the deceased - (20%)	Rs.10,01,891/-
Award amount	Rs.40,07,565/-

5.The Tribunal has given a finding that there is contributory negligence on the part of both the vehicles and assessed the contributory negligence of the driver of bus at 80% and the rider of the motor cycle (deceased) at 20%. Accordingly, the Tribunal directed the Insurance Company to pay a sum of Rs.40,07,565/- (80%) to the claimants and the remaining amount of Rs.10,01,891/- (20%) has to be borne by the said claimants towards the contributory negligence on the part of the deceased.

6.Aggrrieved by the award dated 20.08.2015 passed by the Motor Accidents Claims Tribunal in MCOP.No.368 of 2011, the claimants have filed C.M.A. No.2855 of 2015 seeking for i) payment of the disallowed portion under the impugned award on account of contributory negligence of the deceased and ii) for enhancement of compensation. On the other hand, the Insurance Company has filed C.M.A. No.1186 of 2016 on the ground that the compensation awarded by the Tribunal is excessive.

7.Heard Mr. M.Krishnamoorthy, learned counsel appearing for the insurance company in C.M.A. No.1186 of 2016 and Mr.C.Prabakaran, learned counsel appearing for the claimants in C.M.A. No.2855 of 2015.

Discussion:

8.It is the case of the claimants that the deceased was aged 32 years at the time of the accident and an Engineering graduate and also a Diploma holder in Computer Application and he was their only son. It is also their case that they were solely dependent on the income of the deceased, who was employed as a Project Engineer with National Elevators at United Arab Emirates. It is also their case that without any evidence whatsoever, the Tribunal has fixed contributory negligence of 20% on the part of the deceased and has erroneously disallowed

20% of the total compensation assessed by the Tribunal in their favour. It is also their case that the compensation amount awarded under various heads by the Tribunal is inadequate.

9. However, the Insurance Company has challenged the award on the ground that the assessment of the monthly income of the deceased at the time of the accident by the Tribunal is incorrect, since according to them, the deceased was employed at United Arab Emirates only on contractual basis. It is also their case that the Tribunal has erroneously applied the multiplier of 16 while assessing the compensation.

10. We have perused and examined the impugned award as well as the evidence and materials available on record. On the side of the claimants, 27 documents were filed before the Tribunal which were marked as Exs.P1 to P27 and two witnesses were examined namely, Mr. Palani, the father of the deceased (PW1) and Venkatesan an eyewitness (PW2). On the side of the Insurance Company, neither any witness was examined nor any document filed before the Tribunal.

11. The educational qualification, monthly income as well as the job description of the deceased is proved through Ex.P8 - B.E. (EEE) course completion certificate, Ex.P9 - Appointment Order issued by the employer of the deceased and Ex.P10 - salary certificate showing the gross salary of the deceased during the period of the accident.

12. Being a skilled worker, it cannot be said that the deceased will not be getting the same salary in the future as he was getting at the time of the accident. Considering his educational qualification and work experience, it is always probable that he will be in a position to get a better salary in future. The deceased was earning a monthly income of 4800 UAE Dirhams which included the conveyance allowance, medical allowance, air ticket allowance, food allowance and accommodation allowance and excluding those allowances, he was receiving a net monthly income of 3375 UAE Dirhams.

13. The Tribunal has rightly fixed his net salary of 3375 UAE Dirhams as the monthly income of the deceased at the time of the accident for the purpose of computation of loss of income to the claimants.

14. The Tribunal has awarded 50% out of the monthly income as compensation to the claimants towards future prospects which in our considered view is high and not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680 which has fixed the loss of Future Prospects at 40%, if the employment of the deceased was not proved to be a permanent one through evidence. Since no evidence was let in by the claimants before the Tribunal to establish that the deceased was a permanent employee in United

Arab Emirates, we reduce the assessment of loss of future prospects by the Tribunal from 50 % to 40%.

15.The Tribunal has deducted 10% towards income tax from and out of the gross income earned by the deceased at the time of the employment which in our considered view is not in accordance with the deduction applicable under Income Tax Act. In the normal course, for any individual income tax assessee, the income tax deduction is 20%. In view of the same, the deduction made by the Tribunal towards income tax is enhanced from 10% to 20%.

16.The age of the deceased at the time of the accident is proved through Ex.P19 secondary leaving certificate and Transfer Certificate of the deceased. The currency conversion rate of UAE Dirhams into Indian Rupees at the time of the accident has also proved by the claimants through Ex.P20.

17.The Tribunal has rightly deducted 50% towards personal expenses of the deceased as he was a bachelor and has rightly applied 16 multiplier considering the age of the deceased was 32 years at the time of the accident.

18.The deceased was riding his motor cycle on 05.12.2011 at about 1.25 p.m. North-South connect road leading from Bangalore - Chennai National Highway leading to Kancheepuram and he was proceeding from North to South in a moderate speed observing the traffic rules, the driver of the bus bearing Registration No.TN-21-AH-0199 owned by one P.Sundaravaradhan and insured with the Insurance company drove the passenger bus in a rash and negligent manner in the opposite direction and dashed against the two wheeler as a result of which, the deceased Omkumar sustained fatal injuries and he succumbed in the hospital.

19.FIR (Ex.P1) was also registered by Kancheepuram Taluk Police only against the driver of the bus and thereafter charge sheet has also been filed only against the driver of the bus. The oral evidence let in by the claimants also lead to the conclusion that only due to the rash and negligent driving by the driver of the bus, the accident had happened which resulted in the death of Omkumar.

20.This being the case, without any evidence whatsoever, the Tribunal on its own has come to the conclusion that there is contributory negligence on the part of the deceased also thereby fixing the contributory negligence of the deceased at 20%. This in our considered view is an erroneous finding and has to be set aside.

21.The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to each of the claimants. However, as per the Pranay Sethi case, the claimants are entitled to receive a consolidated sum of Rs.40,000/- only towards loss of love and affection. Therefore, we are reducing the compensation awarded under the head loss of love and affection from Rs.1,00,000/- to Rs.40,000/-.

22.The assessment granted by the Tribunal towards funeral expenses at Rs.5,000/- is a meagre sum. As per Pranay Sethi judgment, the Hon'ble Supreme Court has fixed the compensation towards funeral expenses at Rs.15,000/-. Accordingly, we enhance the compensation towards funeral expenses awarded by the Tribunal from Rs.5,000/- to Rs.15,000/-.

23.The Tribunal has also failed to award any compensation towards loss of estate which the claimants are entitled to as per the settled principles of law. Accordingly, a sum of Rs.15,000/- is awarded to the claimants towards loss of estate.

24.The Tribunal has rightly awarded a sum of Rs.5,000/- towards Transportation charges to the claimants and the same is confirmed.

25.For the foregoing reasons, the award of the tribunal is hereby modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency * (3375+50% = 4063 - 50% = 2032 x 13.953 = 28353-10% = 25518 x 12 x 16) # (3375+40% = 4725 x 13.953 = 65928 x 12 = 791136-20%= 632909-50% = 316454 x 16)	48,99,456/- *	50,63,264 #
Loss of love and affection	1,00,000/- सत्यमेव जयते	40,000/-
Funeral Expenses	5,000/-	15,000/-
Loss of estate	--	15,000/-
Transportation	5,000/-	5,000/-
Total	50,09,456/-	51, 38,264/-
Contributory negligence (-20%)	10,01,891/-	Nil
Award amount	40,07,565/-	51,38,264/-

26.In the result, C.M.A. No.2855 of 2015 filed by the claimants stands allowed as per the aforesaid enhancement and C.M.A. No.1186 of 2016 filed by the Insurance Company stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.The Insurance company who is the appellant in C.M.A. No.1186 of 2016 and the second respondent in CMA.No.2855 of 2015 Company is directed to deposit the entire award amount i.e.,Rs.51,38,264/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation together with costs, less the amount, if any, already deposited, to the credit of MCOP No.368 of 2011 on the file of the Motor Accident Claims Tribunal (District Court - II), Kancheepuram, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. The Appellants in C.M.A. No.2855 of 2015 are directed to pay the required Court fee for the enhanced amount.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vsi2

To :

- 1) The Motor Accident Claims Tribunal,
(District Judge, District Court - II) at Kancheepuram.
- 2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.C. Prabakaran, Advocate SR.No.77620

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.77685

C.M.A. No 2855 of 2015
and
C.M.A. No.1186 of 2016

SAI (CO)
GMY (15/06/2020)

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