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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.544 of 2011 and 3739 of 2012

The United India Insurance Company Ltd.,
139, Kumaran Road,
Tirupur - 641 601.

... Appellant in C.M.A.No.544 of
2011/2nd Respondent

1. R.Lalitha
2. B.Vikram Raaj
(R2-recorded as Lr of the
deceased first appellant
vide order dated 18/02/2019)

... Appellants in C.M.A.No.3739
of 2012/Petitioners

.. Vs ..

1. R.Lalitha(died)
2. B.Vikram Raaj
3. M/s.Shanthi Matcheries Limited,
93A/13, Trichy Road,
Palladam - 641 664,
Coimbatore.

...3rd Respondent in
C.M.A.No.544 of 2011/1st respondent

1. M/s.Shanthi Matcheries Limited,
No.93A/13, Trichy Road,
Palladam - 641 664,
Coimbatore.
[was set ex-parte in the Trial Court]
2. The United India Insurance Co. Ltd.,
139, Kumaran Road,
Tirupur - 641 601.

...Respondents/Respondents
(CMA.No.3739 of 2012)

Prayer in both C.M.As.: Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the award and Decree dated 30.08.2010 made in M.C.O.P.No.881 of 2007 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.



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In C.M.A.No.544/2011

For Appellant : Mr.D.Bhaskaran
For 2n respondent : Mr.V.Mohan Choudry
For R-3 : Exparte

In C.M.A.No.3739/2012

For 2nd Appellant : Mr.V.Mohan Choudry
For R-1 : Ex-parte
For R-2 : Mr.D.Bhaskaran

- - - - -

COMMON JUDGMENT

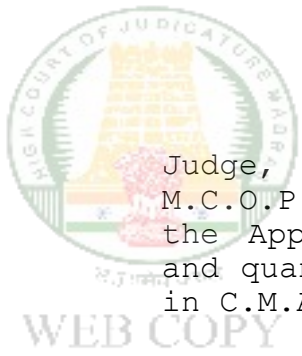
C.M.A.No.544 of 2011 is preferred by the insurance company challenging the liability and the quantum whereas C.M.A.No.3739 of 2012 is preferred by the claimants for enhancement of compensation.

2. Since both the appeals arise out of the same accident and as against the award passed by the Tribunal, both the appeals are taken up together and disposed of by way of this common judgment.

3. On 23.01.2007 at about 15.00 hours, while the deceased was crossing the Anna Nagar Third Avenue road from East to West, the Eicher van bearing registration No.TN-39-7367 belonging to M/s.Shanthi Matcheries Limited came in a rash and negligent manner from North to South and knocked down the deceased. As a result of which, the deceased sustained multiple injuries and succumbed to the same on 24.01.2007 at the hospital and the accident was occurred only due to the rash and negligent driving of the driver of the Eicher van. Hence, the first claimant, who is the mother of the deceased and the second claimant, who is the only son of the deceased, have filed a claim petition claiming a sum of Rs.17,00,000/- as compensation.

4. Before the Tribunal, on behalf of the claimants, three witnesses were examined as P.Ws.1 to 3 and documents Exs.P.1 to P.12 were marked. On behalf of the respondents before the Tribunal, no witness was examined and no document was marked.

5. The Tribunal, after considering both oral and documentary evidence adduced on behalf of the claimants, awarded a sum of Rs.13,55,000/- together with interest at 7.5% per annum from the date of claim petition till the date of payment. As against the said award passed by the Motor Accidents Claims Tribunal, [Chief

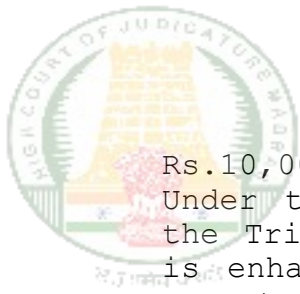


Judge, Court of Small Causes], Chennai, dated 30.08.2010 in M.C.O.P.No.881 of 2007, the insurance company has preferred the Appeal in C.M.A.No.544 of 2011, challenging the liability and quantum and whereas the Claimants have preferred the Appeal in C.M.A.No.3739 of 2012 seeking enhancement of compensation.

6. Heard both sides. Perused the materials on record.

7. It is represented by the learned counsel for the Claimants that the first appellant in C.M.A.No.3739 of 2012 namely, Mrs.R.Lalitha died, pending the appeal and the second appellant in C.M.A.No.3739 of 2012 who is the sole heir representing the estate of the first appellant may be permitted to continue the proceedings. A Memo dated 16.02.2019, has also been filed to that effect. The Memo dated 16.02.2019 is taken on record and the Second Appellant in C.M.A.No.3739 of 2012, permitted to continue the proceedings.

8. After hearing both the parties and also taking note of the evidence of P.Ws.1 to 3, the finding rendered by the Tribunal fixing the negligence on the part of the driver of the offending vehicle is hereby confirmed and therefore the Insurance Company is liable to pay the compensation to the claimants. On the question of quantum, after taking into consideration the nature of the employment of the deceased as Professor and H.O.D of Bio Chemistry Department in Valliammal College, Chennai, the annual income of the deceased, as per the documentary evidence, i.e., salary certificate is fixed at Rs.1,23,600/-. However, the amount of Rs.20,000/- fixed by the Tribunal as annual income of the deceased towards University paper correction and private tuitions is reduced to Rs.10,000/- and accordingly, the total annual income of the deceased is fixed at Rs.1,33,600/- [Rs.1,23,600 + Rs.10,000/-]. The Tribunal has not awarded any amount towards future prospects and hence, as per the Judgment of the Honourable Supreme Court in the case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, considering the age of the deceased, future prospects is fixed at 30% and accordingly, the annual income has been arrived at Rs.1,73,680/- [Rs.1,33,000 + Rs.40,080] and after deducting 10% i.e., Rs.17,368/- [Rs.1,73,680 x 10 / 100 = Rs.17,368/- towards income tax, the annual income comes to Rs.1,56,312/- and after deducting 1/3 amount i.e., Rs.52,104/- towards personal expenses, the amount comes to Rs.1,04,208/-. Considering the age of the deceased at the time of the accident being 40 years, multiplier of '14' is adopted and hence, the amount has been arrived to Rs.1,04,208/- x 14 = Rs.14,58,912/- and hence, the loss of income is fixed at Rs.14,58,912/-. Under the head of loss of love and affection, the Tribunal has awarded a sum of



Rs.10,000/- only and the said amount is enhanced to Rs.40,000/-. Under the head of funeral expenses and transportation charges, the Tribunal has awarded only a sum of Rs.4,752/- and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence, this Court is of the view that it is just and proper to award a sum of Rs.15,000/- under the said head. Accordingly, the compensation amount awarded by the Tribunal is re-fixed as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of Income	Rs.13,40,248/-	Rs.14,58,912/-
2.	Loss of love and affection	Rs. 10,000/-	Rs. 40,000/-
3.	Funeral expenses and Transportation charges	Rs. 4,752/-	Rs. 15,000/-
4.	Loss of Estate	Nil	Rs. 15,000/-
	Total	Rs.13,55,000/-	Rs.15,28,912/-

9. In the result:

I. The C.M.A.No.544 of 2011 preferred by the insurance company is dismissed and C.M.A.No.3739 of 2012 preferred by the claimants is partly allowed and the award amount passed by the Tribunal is enhanced to Rs.15,28,912/- from Rs.13,55,000/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant in C.M.A.No.544 of 2011/Insurance Company is directed to deposit the modified award amount within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting a sum of Rs.12,00,000/- which was already deposited.

IV. On such deposit being made, the second appellant in C.M.A.No.3739 of 2012/second claimant is permitted to withdraw the enhanced award amount with proportionate interest, less the amount already withdrawn, if any.

V. The second appellant in C.M.A.No.3739 of



2012/second claimant shall pay necessary Court fee, if any, on the enhanced compensation amount.

WEB COPY VI.No order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Jr1

To

1. The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

Copy to
The Section Officer,
V.R. Section, High Court,
Madras.

+2 ccs to M/s.V.Mohan Choudary Advocate sr14462
+1 cc to Mr.D.Bhaskaran Advocate sr14502

C.M.A.Nos.544 of 2011
and 3739 of 2012

gjII(co)
aa09/10/2019