IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.Nos.3529, 3530 & 3531 of 2013

C.M.A.No.3529 of 2013:

1.B.Venkatesh

2.Smt.Maya Venkatesh ..Appellants

vs.

1.S.Arumugasamy
2.ICICI Lombard General Insurance Co. Ltd.,
Ist Floor, Arihant Plaza,
No.84/85, Walltax Road,
Chennai - 600 003.

3.J.Kannan

4.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road, Chennai - 600 014.
..Respondents

C.M.A.No.3530 of 2013:

1.Y.Ravishankar

2.Smt.Y.Krishnakumari
..Appellants

vs.

1.S.Arumugasamy
2.ICICI Lombard General Insurance Co. Ltd.,
Ist Floor, Arihant Plaza,
No.84/85, Walltax Road,
Chennai - 600 003.

3.J.Kannan

4.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road, Chennai - 600 014.
..Respondents

C.M.A.No.3531 of 2013:

Smt.K.Pushpamala

..Appellants

vs.

1.S.Arumugasamy
2.ICICI Lombard General Insurance Co. Ltd.,
Ist Floor, Arihant Plaza,
No.84/85, Walltax Road,
Chennai - 600 003.

3.J.Kannan

4.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road, Chennai - 600 014.

..Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.03.2013 passed in MACTOP.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judge, Court of Small Causes, Chennai.

For Appellants (in all CMAs) : Mr.T.Raja Mohan

For Respondents (in all CMAs) : Mrs.R.Sreevidhya for R2
Mr.M.B.Raghavan for R4
Exparte - R1 and R3

COMMON JUDGMENT

The appellants are the claimants in MCOP.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judge, Court of Small Causes, Chennai. They filed the said claim petitions under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules seeking compensation of Rs.15,00,000/- each as compensation for the death of their children Pavithra, Y.R.Venkat Sudharshan and Sakthi Srinivasan respectively, who died in an accident that took place on 18.07.2009.

2. The case of the claimants is that on 18.07.2009, the deceased Pavithra, Y.R.Venkat Sudharshan and Sakthi Srinivasan were travelling as passengers along with some other persons in a Maruthi Car bearing Registration No.TN 09 AZ 5108 belonging to the third respondent and insured with the fourth respondent, Royal Sundaram Alliance Insurance Company Limited from Chennai to Thiruporur. At about 01.30 p.m, a speeding Lorry bearing Registration No.TN 22 BB 5353 belonging to the first respondent and insured with the second respondent, ICICI Lombard General Insurance Company Limited, hit the rear side of the Maruthi Car, as a result of which, Pavithra, Y.R.Venkat Sudharshan and Sakthi Srinivasan died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the Lorry bearing Registration No.TN 22 BB 5353 was the cause of the accident and that since, the owner of the said lorry had insured the vehicle with the second respondent, ICICI Lombard General Insurance Company Limited, both are jointly and severally liable to pay compensation to the claimants.

4. The first and third respondents remained absent before the Tribunal and therefore, they were set exparte. The second and fourth respondents, contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / Chief Judge, Court of Small Causes, Chennai after analysing the evidence on record, concluded that since this a case of head on collusion between the vehicles on the middle of the road the negligence should be apportioned in the ratio 40:60 between second and fourth respondents. The compensation awarded by the Tribunal is extracted hereunder:

M.C.O.P.No.3237 of 2009 - Rs.9,37,200/-
M.C.O.P.No.3238 of 2009 - Rs.8,72,400/-
M.C.O.P.No.4625 of 2009 - Rs.9,27,200/-

The Tribunal while concluding the loss of dependency had fixed multiplier according to the age of the dependents. Aggrieved over the orders passed by the Tribunal, the claimants have filed these appeals.

5. Mr.T.Raja Mohan, learned counsel appearing for the appellants / claimants contended that though as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), the age of the deceased should be taken while adopting the proper multiplier and in the instant case the

Tribunal had wrongly adopted multiplier based on the age of the mother. He also contended that very meagre amounts were awarded under other heads and therefore sought for enhancement of compensation.

6. Per contra, Mr.M.S.Raghavan, learned counsel appearing for the fourth respondent contended that though it is head on collusion the Tribunal was wrong in fixing the negligence in the ratio of 40:60.

7. Mrs.R.Sreevidhya, learned counsel appearing for the second respondent contended that in the appeals in C.M.A.Nos.2277, 2279 and 2292 of 2019 filed by the second respondent, ICICI Lombard General Insurance Company Limited, questioning their liability to pay compensation to the claimants, a single bench of this Court after considering various aspects of this case had concluded that there is no error in the finding of the Tribunal fixing negligence on the part of the second respondent and directed the second and fourth respondents to pay compensation in the ratio 40:60.

8.Considering the contention of the learned counsel for the second respondent and the orders in the CMA.Nos.2277/2019, 2279/2019 and 2292/2019, I hold that both the drivers of the vehicles are responsible for the accident and the compensation should be apportioned in the ratio 40:60 as held by the Tribunal.

9.As far as the quantum of compensation is concerned, as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 5 lw 561 since all the deceased were bachelors their age must be taken up for fixing the multiplier. This decision was followed by the constitution bench of the Hon'ble Supreme Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). All the claimants were aged 18 years on the date of accident. It is also pertinent to point out to that the deceased were all students studying in Anna University, Guindy, Chennai. In the circumstances, the notional monthly income is fixed as Rs.15,000/- as per decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC) 40% should be added towards future prospects of the deceased. The proper multiplier rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 (cited supra) is '18'. Since they were all bachelors on the date of accident 50% has to be deducted towards their personal expenses.

Loss of dependency:
[(Rs.15,000/- + Rs.6,000 (Rs.15,000/- of 40%) x 12 x 18 x 50/100 = Rs.22,68,000/-)]

10. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of dependency	Rs.22,68,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.23,38,000/-

11.Thus, the compensation awarded by the Tribunal is enhanced is to Rs.23,38,000/- each in all CMAs which would carry interest at the rate of 7.5% per annum.

12. In the result,
(i) The Civil Miscellaneous Appeals are partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced to Rs.23,38,000/- each in all CMAs.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent, ICICI Lombard General Insurance Company Limited is directed to deposit 40% of the total award amount and fourth respondent, Royal Sundaram Alliance Insurance Company Limited is directed to deposit 60% of the total award amount (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

mtl

To

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

copy to
The Section Officer
VR Section
High Court, Madras-104

+6 cc to Mr.T.Rajmohan Advocate sr83789,83790,83791
+3 cc to Mr.N.Vijayaraghavan Advocate sr 84119,84120,84118

CMA.Nos.3529, 3530 & 3531 of 2013

aa04/12/2019