IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2281 of 2016 and 1517 of 2019

C.M.A.No.2281 of 2016:

Royal Sundaram Allianz General Insurance Co. Ltd.,
No.45 & 46, Whites Road,
Chennai - 600 014. .. Appellant/2nd Respondent

Vs.

1.Madaka Venkata Naidu
2.S.Kumari
3.Jayavani
4.K.Chinnaiah .. Respondents/Petitioner and I respondent

C.M.A.No.1517 of 2019:

1.Madaka Venkata Naidu
2.S.Kumari
3.Jayavani .. Appellants/Petitioners

Vs.

1.K.Chinnaiah
2.Royal Sundaram Allianz General Insurance Co. Ltd.,
No.45 & 46, Whites Road,
Chennai - 600 014. .. Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.02.2016 made in M.C.O.P.No.5066 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

C.M.A.No.2281 of 2016:

For Appellant	:	Mr.M.Krishnamoorthy
For RR1 to 3	:	Mr.R.Nalliyappan

C.M.A.No.1517 of 2019:

For Appellants	:	Mr.R.Nalliyappan
For R2	:	Mr.M.Krishnamoorthy

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 29.02.2016 made in M.C.O.P.No.5066 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.Both the appeals are arising out of the same award and hence they are disposed of by this common judgment. The parties are referred to as per the rank in claim petition, for the sake of convenience.

3.The appellants in C.M.A.No.1517 of 2019 are the claimants in M.C.O.P.No.5066 of 2013. The appellant in C.M.A.No.2281 of 2016 is the second respondent in M.C.O.P.No.5066 of 2013. The claimants filed the above said claim petition claiming a sum of Rs.16,00,000/- as compensation for the death of one Gowramma, who died in the accident that took place on 04.08.2013.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent riding by the rider of the motorcycle belonging to the first respondent and the second respondent as insurer of the offending vehicle is liable to indemnify the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.10,03,600/- as compensation to the claimants.

5.Not being satisfied with the amount awarded by the Tribunal, the claimants have come out with an appeal in C.M.A.No.1715 of 2019, for enhancement of compensation. Against the said award dated 29.02.2016 made in M.C.O.P.No.5066 of 2013 granting compensation to the claimants, the second respondent-Insurance Company has come out with an appeal of C.M.A.No.2281 of 2016.

6.The learned counsel appearing for the second respondent-Insurance Company contended that the rider of the motorcycle was under the influence of alcohol at the time of accident. The first respondent, owner of the vehicle committed breach of policy condition and statute by permitting a person who was under the influence of alcohol to ride the motorcycle and caused the accident. The Tribunal ought to have exonerated the second respondent-Insurance Company and fastened liability only on the part of the first respondent, owner of the vehicle. The rider of the motorcycle was prosecuted under Section 185 of Motor Vehicles Act, 1988, stating that he was under the influence of alcohol which proves that rider of the insured motorcycle rode the same under the influence of alcohol and caused the accident. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that the Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent riding by the rider of the motorcycle. The second respondent did not prove before the Tribunal that the rider of the motorcycle was under the influence of alcohol at the time of accident. In view of the same, the Tribunal rightly directed the second respondent-Insurance Company to pay the compensation and there is no error warranting interference by this Court. The learned counsel further contended that at the time of accident the deceased was aged 42 years and was working as an assistant to mason and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the materials on record filed by the claimants, erroneously fixed meager sum of Rs.6,000/- as monthly income and granted meager sum of Rs.8,73,600/- towards pecuniary loss. The amount awarded by the Tribunal towards funeral expenses is meager. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

8.I have heard the learned counsel appearing for the second respondent-Insurance Company as well as the claimants and perused entire materials on record.

9.From the materials available on record, it is seen that the Tribunal held that the accident occurred only due to rash and negligent riding by rider of the motorcycle. The second respondent-Insurance Company contended that rider of the motorcycle was charged under Section 185 of Motor Vehicles Act, 1988. The second respondent has not filed any supportive evidence to prove that the rider of the offending vehicle was under the influence of alcohol. The Tribunal held that the second respondent-Insurance Company has not filed the charge sheet to prove the consumption of alcohol by the rider of the motorcycle. From the materials on record, it is seen that no blood test was conducted to prove that the rider of the motorcycle was under the influence of alcohol. In view of the same, the Tribunal rightly directed the second respondent-Insurance Company, being the insurer of the offending vehicle to indemnify the first respondent. There is no error in the above finding of the Tribunal warranting interference by this Court.

10.As far as quantum of compensation is concerned, the claimants contended that the deceased was working as an assistant to mason and was earning a sum of Rs.10,000/- per month. They failed to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the deceased and granted 30% enhancement towards future prospects. The accident occurred in the year 2013 and the monthly income fixed by the Tribunal is meager. Therefore, a sum of Rs.7,500/- is fixed as monthly income of the deceased. The learned counsel for the claimants contended that the deceased was aged 42 years at the time of accident. As per Ex.P3/postmortem certificate, the age of deceased was 45. Hence, the appellants are entitled only 25% enhancement towards future prospects. The Tribunal has granted 30% enhancement towards future prospects and the same is reduced to 25%. Thus, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.10,50,000/- [Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-) X 12 X 14 X 2/3]. The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the first claimant, which is excessive and the same is hereby reduced to Rs.40,000/-. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. A sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is liable to be set aside and hereby set aside. The Tribunal has not granted any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal towards transportation is 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	8,73,600/-	10,50,000/-	enhanced
2.	Loss of consortium	50,000/-	40,000/-	reduced
3.	Love and affection	50,000/-	-	set aside
4.	Funeral expenses	25,000/-	15,000/-	reduced

5.	Transportation	5,000/-	5,000/-	confirmed
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.10,03,600/-	Rs.11,25,000/-	Enhanced by Rs.1,21,400/-

11.In the result, both the appeals are partly allowed. The compensation awarded by the Tribunal at Rs.10,03,600/- is hereby enhanced to Rs.11,25,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced 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.5066 of 2013. On such deposit, the claimants are permitted to withdraw their respective share of the enhanced award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

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To
1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.
+2 cc to Mr.M.Krishnamoorthy Advocate sr24021 &24022

C.M.A.Nos.2281 of 2016 and 1517 of 2019

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