



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

The Hon'ble Mr. Justice M.M. Sundresh
and
The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A. Nos. 2287 of 2016 & 3032 of 2011

CMA No. 2287/2016

The Manager,
Unitar India Insurance Co. Ltd.,
3rd Party Claims Cell,
No. 38, Anna Salai,
Chennai - 2.

... Appellant / 2nd Respondent

Vs.

1. V. Selva Nithya
2. P. Kannan
3. Valli
4. Amaravelu

... 1st Respondent / Claimant

... 2nd Respondent / 1st Respondent

... Respondents 3 & 4 / Respondents 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 24.08.2012 made in M.C.O.P.No.165 of 2006 on the file of The Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

For Appellant : Mr. S. Arunkumar
For Respondents: Mr. K. Vardha Kamaraj-R1
No appearance for RR2 to 4

CMA No. 3032/2011

M/s. United India Insurance Company Ltd.,
Rep. by its Divisional Manager,
Divisional Office - I,
104-A, Peramanur Main Road,
Salem - 636 007.

... Appellant / 2nd Respondent

Vs.

1. Amaravel
2. A. Valli
3. A. Kumaravel

... Respondents 1 to 3 / Petitioners



4.P.Kannan

5.N.Selva Nithya

(R4 & R5 exparte before the Tribunal)

...4th Respondent/1st Respondent

...5th Respondent/3rd Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 10.07.2009 made in M.C.O.P.No.1406 of 2005 on the file of The Motor Accidents Claims Tribunal (Principal District Judge) at Salem.

For Appellant : M/s.S.Srividhya

For Respondents: Mr.K.Vardha Kamaraj, for R5
No appearance for 1, 2, 3, 4

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

Judgement of the Court was delivered by Krishnan Ramasamy,J.

The appellant/Insurance Company has preferred the present CMA No.2287/2016 against the order passed by the tribunal in MCOP No.165/2006, challenging both liability as well as quantum of compensation awarded by the tribunal.

2. MCOP No.165/2006 was filed by the wife of the deceased by impleading the father and mother of the deceased as third and fourth respondents. The tribunal after hearing both the parties awarded a compensation for a sum of Rs.69,20,000/-. The date of accident was on 06.07.2004 at about 07.30 am. The MCOP was filed by the claimants before the Motor Accident Claim tribunal, Tiruvallur under Section 166 of Motor Vehicle Act, vide claim petition during the year 2006. The father, mother and the brother of the deceased has filed MCOP No.1406/2005 for the same accident occurred on 06.07.2004 at about 07.30 AM near Irumballar Over Bridge. In MCOP No.1406/2005, the wife of the deceased was impleaded as third respondent. The said MCOP was filed before the Motor Accident Claims Tribunal, Salem. The tribunal after hearing both the parties awarded a compensation for a sum of Rs.15,09,000/-. Challenging the said award, the appellant/Insurance Company has preferred the CMA No.3032/2011.

3. Though both the learned counsel filed a joint calculation memo, this Court would like to decide the correctness of the liability as well as the quantum of award fixed by the tribunal as challenged by the appellant/Insurance Company.



4. Liability :- The appellant/Insurance Company would contend that the negligence fixed by the tribunal on the part of the driver of the lorry is not correct due to the reason that lorry bearing Registration No.TN K 6240 was proceeding in front of the motorcycle bearing Registration No.TN 22 P 7827-Hero Honda. It is only the deceased who was following the lorry in a high speed and failed to keep safe distance between the two wheeler and lorry and therefore, the rider of the two wheeler was the reason for causing such accident. The learned counsel further would contend that the rider of the two wheeler has failed to maintain the safe distance and has drove his vehicle at great speed and due to the such act, he was unable to stop his two wheeler and impacted himself on the road. Therefore, without considering all these aspects, the tribunal wrongly fixed the entire negligence on the part of the driver of the lorry.

5. The learned counsel appearing for the respondents would contend that the FIR was filed as Ex.P1, final report as Ex.P2, Postmortem report as Ex.P3 and MV report was filed as Ex.P4.

6. The learned counsel contended that on perusal of Exs.P.1 to P.4, it clearly reveals that the accident had occurred due to the rash and negligence driving on the part of the driver of the lorry. Further, eyewitnesses also deposed on the same line. P.W.2 was examined as eyewitness and in his deposition, he has clearly deposed that the accident was occurred due to the rash and negligence on the part of the driver of the lorry. Therefore, based on the deposition of P.W.1 and Exs.P1 to P4, the Court below came to the conclusion that the accident had occurred due to the rash and negligence driving of the driver of the lorry. Therefore, liability was fixed jointly and severally on the part of the owner of the lorry as well as the appellant/Insurance Company. Hence, there is no need for interfering with the award passed by the tribunal.

7. Heard both sides and perused the materials available on record.

8. On perusal of Exs.P1 to P4, it is clear that the accident had occurred due to the rash and negligence driving of the driver of the lorry. Further, P.W.2 also deposed that the accident was occurred due to the rash and negligence on the part of the driver of the lorry. Though the appellant raised the issue of maintaining safe distance between the vehicles, to prove the same, no one was examined before the Court below. Further they have not produced any document to substantiate their case. In the absence of any documentary and oral evidences, the Court below has come to the conclusion that the



accident was occurred due to the rash and negligence of the driver of the lorry, based on the deposition of P.W.2 eyewitness and Exs.P1 to P4. Therefore, this Court do not find any infirmity in the order passed by the Court below and accordingly there is no need for this Court to interfere with the fixation of the liability. Hence, this Court is inclined to confirm the order of the tribunal with regard to the fixation of the liability is concerned.

9. Quantum:- The tribunal awarded a sum of Rs.69,20,000/- in MCOP No.165/2006 in the manner stated below:-

Loss of Income	Rs.60,00,000/-
Mental Agony, Pain & Sufferings and Loss of Happiness	Rs. 5,00,000/-
Love and Affection	Rs. 4,00,000/-
Funeral Expenses	Rs. 10,000/-
Transportation	Rs. 10,000/-

Total	Rs. 69,20,000/-

10. When the matter is taken up for hearing, the learned counsel appearing for the appellant as well as learned counsel appearing for the claimants in MCOP No.165/2006 filed a calculation memo as follows:-

Annual Income = Rs.25,600x40%x12 = Rs.4,30,080/-
2003-2004 year - Rs.50,000/- No Tax
Rs.50,001 to 60,000/- Tax 10%
Rs.60,001 to 1,50,000/- Tax 20%
Rs.1,50,000 above Tax 30%
Rs.4,30,080-Rs.1,12,024 (Tax) Rs.3,18,056/-
Loss of Income
Rs.3,18,056x1/3x17 Rs.36,04,632/-
Loss of Consortium Rs. 40,000/-
Loss of love and affectionRs. 50,000/-
Loss of estate Rs. 15,000/-
Funeral Expenses Rs. 15,000/-

Rs.37,24,632/-

Rounded off to: Rs.37,25,000/-
Interest 7.5% from 06/04/2011 to date of deposit,
after adjusting the amount already deposited in CMA
No.2287 of 2016 against MCOP No.165 of 2006.

11. Apart from the agreement among the parties, this Court also perused the quantum of award passed by the tribunal to the tune of Rs.69,20,000/- taking the gross salary of Rs.42,000/-.

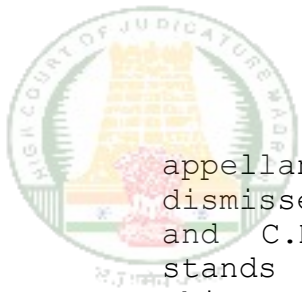


At the time of accident, the deceased was 29 years, he was working as Deputy Manager, MQA in Intimate Fashions (India Private Ltd., Guduvancherry, Kancheepuram District). In the present case, calculation was filed by the appellant/Insurance Company. Taking the monthly income of the deceased as Rs.25,600/- and adding 40% towards the future prospects. A sum of Rs.1,12,024/- was deducted towards the income tax, after deducting the income tax, a further 1/3rd deduction was made towards the personal expenses of the deceased and by applying the multiplier of 17, the loss of income shown as Rs.36,04,632/- and it appears to be reasonable and therefore, this Court is inclined to accept the memo filed by the appellant, as far as loss of income. The appellant filed a memo agreeing to pay a sum of Rs.40,000/- towards loss of consortium, Rs.50,000/- towards love and affection, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and the same are in accordance with the settled proposition of law laid down by the Hon'ble Supreme Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Therefore, the amount awarded by the Tribunal viz., Rs.4 lakhs towards love and affection to the 3rd and 4th respondents and Rs.5 lakhs towards the loss of consortium, mental agony and pain and sufferings etc., stand modified and this Court is inclined to award a sum of Rs.40,000/- towards loss of consortium to the wife of the deceased and Rs.50,000/- towards loss of love and affection to the respondents/claimants 1, 3 and 4 in the present appeal. Accordingly, this Court modified the award amount to a sum of Rs.37,24,632/- in the manner stated below instead of Rs.69,20,000/- as awarded by the tribunal. Consequently, the award of the tribunal stands modified in the manner stated below.

Heads	Amount modified by this Court (Rs.)
Loss of Income	36,04,632/-
Loss of Consortium	40,000/-
Loss of Love and Affection for 3 rd and 4 th claimants	50,000/-
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Total	37,24,632/-

Rounded off to Rs.37,25,000/-

12. Further, both the learned counsel appearing for the appellant/Insurance Company and the claimants would submit that in view of the above order, the C.M.A.No.3032/2011 filed by the



appellant/Insurance Company in MCOP No.1406/2005 is liable to be dismissed. Therefore, the C.M.A.No.2287/2016 is partly allowed and C.M.A.No.3032/2011 filed against the MCOP No.1406/2005 stands dismissed. While dismissing the C.M.A.No.3032 of 2011, this Court direct the Insurance Company to deposit the entire award amount along with 7.5% interest from 06.04.2011 as agreed by both the parties till the date of deposit after adjusting the amount already deposited in CMA No.3032/2011 against MCOP No.1406/2005 within a period of eight weeks from the date of receipt of a copy of this order. We further direct the Court below to transfer the award amount as ordered by this Court to the claimant as well as the respondent nos. 3 and 4 in CMA.No.2287/2016 and to the claimants in MCOP.No.1406/2005 as ordered by the Tribunal, to their respective bank account by way of RTGS within three weeks from the date of deposit the award by the appellant/insurance company along with interest as ordered by this Court. In case, if the award amount has already been deposited, the same shall be transferred to the claimants as well as third and fourth respondents in the manner stated above within a period of three weeks from the date of receipt of a copy of this order. The tribunal shall transfer 60% of the award amount to the wife of the deceased along with 7.5% interest, 20% to the third respondent along with interest and 20% to the fourth respondent along with interest as ordered by this Court.

13. Accordingly, the C.M.A.No.2287/2016 is partly allowed and C.M.A.No.3032/2011 filed against the MCOP No.1406/2005 stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Thiruvallur.

2.The Motor Accidents Claims Tribunal
(Principal District Judge) Salem.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras-104.



+1cc to Mr.S.Arunkumar, Advocate, S.R.No.104172
+1cc to Mr.A.Murughan, Advocate, S.R.No.104155
+1cc to Mr.K.Vardha Kamaraj, Advocate, S.R.No.103874

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C.M.A.Nos.2287 of 2016 & 3032 of 2011

NRL (CO)
CB (20/09/2021)