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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.110 of 2018, 2243 of 2019
and C.M.P.No.9557 of 2019

C.M.A.No.110 of 2018:

1.Santhi

2.Arulchandran

3.Vignesh

4.Palanisamy

.. Appellants

Vs.

1.S.Vijaya

(Notice to R1 may be dispensed with
for she was set-exparte before the Tribunal)

2.United India Insurance Co., Ltd.,
146-N Kumar Complex,
Tiruchengode Town & Taluk,
Namakkal District.

.. Respondents

C.M.A.No.2243 of 2019:

The United India Insurance Company Limited,
146-N Kumar Complex,
Tiruchengode Town & Taluk,
Namakkal District.

.. Appellant

Vs.

1.Santhi

2.Arul Chandran

3.Vignesh

4.Palanisamy

5.S.Vijaya

.. Respondents



COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 24.08.2017 made in M.C.O.P.No.678 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

In C.M.A.No.110 of 2018

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.A.Dhiraviyanathan

In C.M.A.No.2243 of 2019

For Appellant : Mr.A.Dhiraviyanathan

For RR1 to 4 : Mr.T.S.Arthanareeswaran

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

C.M.A.No.110 of 2018 is filed by the claimants for enhancement of compensation and C.M.A.No.2243 of 2019 is filed by the 2nd respondent/Insurance Company to set aside the award dated 24.08.2017 made in M.C.O.P.No.678 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The appellants in C.M.A.No.110 of 2018 are claimants in M.C.O.P.No.678 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal. The claimants filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Subramani, who died in the accident that took place on 31.08.2012. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent/appellant in C.M.A.No.2243 of 2019 being insurer of the said bus to pay a sum of Rs.7,23,000/- as compensation to the claimants. Not being satisfied with the amounts granted by the Tribunal, the claimants have come out with C.M.A.No.110 of 2018 seeking enhancement of compensation. Against the said award dated 24.08.2017 made in M.C.O.P.No.678 of 2013, the 2nd respondent-Insurance Company has come out with C.M.A.No.2243 of 2019 challenging the liability fastened on them.

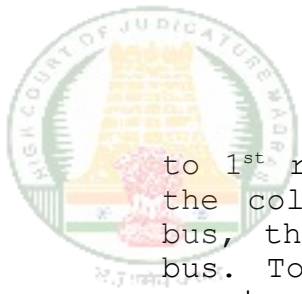


4. The learned counsel appearing for the 2nd respondent-Insurance Company contended that the vehicle belonging to the 1st respondent was not involved in the accident. At the time of the accident, the insured vehicle bearing Registration No. TN 34 L 2899 was at Erode, 35-40 km away from the place of occurrence. In the FIR, it has been stated that the deceased was hit by an unknown vehicle. The claimants, the owner and the driver of the vehicle colluded and implicated the bus belonging to the 1st respondent in the accident. The claimants did not examine the person who gave the compliant before the police. The driver of the vehicle was acquitted from the criminal case filed against him. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and prayed for dismissing the C.M.A.No.110 of 2018 filed by the claimants.

5. Per contra, the learned counsel appearing for the claimants contended that at the time of lodging the complaint, the claimants did not know the registration number of the vehicle which caused the accident. The police after investigation found out that the bus belonging to the 1st respondent is responsible for the accident and filed charge sheet against the driver of the bus belonging to the 1st respondent and initiated the criminal proceedings. The son of the 1st respondent who was examined as RW1 has admitted that the bus belonging to them was responsible for the accident. The Tribunal considering all the materials, has held that the driver of the bus belonging to the 1st respondent was responsible for the accident. The deceased was working in a lorry body builder workshop and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 37 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The amounts granted by the Tribunal towards loss of love & affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of consortium and loss of estate and prayed for dismissal of C.M.A.No.2243 of 2019 filed by the Insurance Company and allowing C.M.A.No.110 of 2018 filed for enhancement of compensation.

6. Heard the learned counsel appearing for the claimants as well as 2nd respondent-Insurance Company and perused the materials available on record.

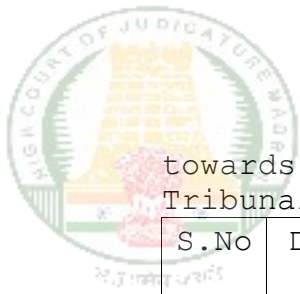
7. From the materials available on record, it is seen that it is the contention of the claimants that the bus belonging to the 1st respondent caused the accident and due to the injuries suffered in the accident, the deceased died. According to the claimants, the police after investigation filed charge sheet against the driver of the bus for having caused the accident. On the other hand, it is the contention of the 2nd respondent-Insurance Company that the bus belonging



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to 1st respondent was not involved in the accident and due to the collusion between the 1st respondent and driver of the bus, the claimants have falsely implicated the driver of the bus. To substantiate the said contention, the 2nd respondent examined the son of the 1st respondent as RW1. RW1 in his chief examination itself has stated that it is not correct to state that due to the pressure from the village people, the police compromised and registered the case against the driver of the bus. In the cross examination, he admitted that the bus belonging to the 1st respondent was involved in the accident and the police registered the case. Due to the traffic, the driver of the bus cannot keep up timing. The claimants examined PW2/eyewitness to prove their contention. The Tribunal considering the above materials and evidence of RW1, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as quantum of compensation is concerned, the claimants have contended that the deceased was working in a lorry body builder workshop and was earning a sum of Rs.10,000/- per month. They have failed to prove their contention with regard to avocation and income of the deceased. In the absence of any material with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2012 and the notional income fixed by the Tribunal is meagre. A sum of Rs.7,500/- per month is fixed as notional income of the deceased. The deceased was aged 37 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects on the ground that the claimants have failed to prove the avocation of the deceased. The said reason is not correct. The claimants have contended that the deceased was working in a lorry body builder workshop and was earning a sum of Rs.10,000/- per month. The respondents have not disputed the said contention and have not let in any evidence to show that the deceased was not working in a lorry body builder workshop and was unemployed. Considering the age of the deceased, the claimants are entitled to 40% enhancement towards future prospects. The Tribunal has rightly applied the multiplier '15' and deducted 1/3rd towards the personal expenses of the deceased. The amount granted by the Tribunal towards loss of dependency is modified to Rs.14,17,500/- [(Rs.7,500/- + 3,000 (Rs.7,500/- X 40%) X 12 X 15 X 3/4)]. The Tribunal has granted only a sum of Rs.1,000/- towards funeral expenses and Rs.2,000/- towards loss of love & affection. The same are meagre and hence, this Court awards a sum of Rs.15,000/- towards funeral expenses and Rs.25,000/- each to the claimants 2 to 4 towards loss of love & affection. The Tribunal has not awarded any amount towards loss of consortium and hence, this Court awards a sum of Rs.40,000/- towards loss of consortium to 1st claimant. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted



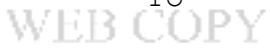
towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,20,000	14,17,500	Enhanced
2.	Funeral expenses	1,000	15,000	Enhanced
3.	Loss of love and affection to the claimants 2 to 4	2,000	75,000	Enhanced
4.	Loss of consortium to the 1 st claimant	-	40,000	Granted
5.	Loss of estate	-	15,000	Granted
	Total	Rs.7,23,000/-	Rs.15,62,500/-	Enhanced by Rs.8,39,500/-

9. In the result, C.M.A.No.2243 of 2019 filed by the Insurance Company is dismissed and C.M.A.No.110 of 2018 filed by the claimants is partly allowed and the compensation of Rs.7,23,000/- awarded by the Tribunal is hereby enhanced to Rs.15,62,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

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To

Copy To

+2cc to Mr.C.Paraneedharan, Advocate SR.No.38955

+1cc to Mr.A.Dhiravyanathan, Advocate SR.No.38928

+1cc to Mr.G.Udaya Sankar, Advocate SR.No.39228

C.M.A.Nos.110 of 2018, 2243 of 2019
and C.M.P.No.9557 of 2019

RGN (CO)
 GMY (26/08/2021)