

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2624 & 1401 of 2019

&

CMP.No.3935 of 2019

C.M.A.No.2624 of 2019

1.K.Gunalan
2.G.Vijayalakshmi
3.G.Reena
4.G.Nandhini

... Appellants 1 to 4 /Petitioners 1 to 4 in CMA
1401 of 2019

vs.

1.D.Narayana ...1st Respondent/1st Respondent
in CMA 2624 of 2019

2.The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach,
Moore Street, Chennai - 600 001. ...Respondents

C.M.A.No.1401 of 2019

The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach,
Moore Street, Chennai - 600 001. ... Appellant/2nd Respondent
in CMA 1401 of 2019

vs.

1.K.Gunalan
2.G.Vijayalakshmi
3.G.Reena
4.G.Nandhini
5.D.Narayanan

... Respondents 1 to 4 / Claimants
... 5 Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section
173 of the Motor Vehicles Act, 1988, against the judgment and

decree dated 12.06.2018 in M.C.O.P.No.2724 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Mr.M.Krishnamoorthy

For Respondents
2 & 4 : Ramya V.Rao for
M/s.A.N.Viswanatha Rao

R5 : Exparte

COMMON JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

CMA.No.2624 of 2019 has been filed by the claimants and CMA.No.1401 of 2019 has been filed by the insurance company, aggrieved by the same award dated 12.06.2018 passed by the IInd of Small Causes (Motor Accident Claims Tribunal), Chennai in MCOP.No.2724 of 2013. The claimants being unsatisfied with the quantum of compensation awarded by the Tribunal has filed the appeal CMA.No.2624 of 2019 and the insurance company has challenged the award by questioning (a) the adverse findings of negligence against the driver of the insured vehicle and (b) quantum of compensation.

Brief facts leading to the filing of the instant appeals:

2. A person named G.Shankar Sharma died on 22.10.2012 as a result of an accident caused by a Delivery van bearing registration No.TN19 E 2481 which was owned by one D.Narayanan who is the first respondent in CMA.No.2624 of 2019 and the fifth respondent in CMA.No.1401 of 2019 and insured with the second respondent in CMA.No.2624 of 2019 who is the Appellant in CMA.No.1401 of 2019. G.Shankar sharma was driving a motor cycle bearing registration No.TN21 AW 0727 at Karugathamman temple arch, Mamallapuram, Kanchipuram District, when the delivery van bearing registration No.TN 19 E 2481 which was coming from the opposite direction hit the motor cycle driven by G.Shankar Sharma which resulted in his death. The claimants are the father, mother and two sisters respectively of the deceased. They preferred a claim before the Motor Accident Claims Tribunal (2nd Judge of Small Causes), Chennai against the owner of the delivery van as well the insurance company seeking a compensation of Rs.60,00,000/- for the death of G.Shankar Sharma.

3. By an Award dated 12.06.2018, the Motor Accident Claims Tribunal partly allowed the claim by directing the insurance company to pay the claimants a sum of Rs.17,35,000/- together

with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 04.06.2013 till the date of realisation and also awarded costs. The award amount has been apportioned by the Tribunal in the manner that the first claimant being the father of the deceased was entitled to get Rs.5,00,000/-, the second claimant being the mother of the deceased was entitled to get Rs.10,35,000/- and the third and fourth claimants being the sisters of the deceased are entitled to get Rs.1,00,000/- each.

4. Aggrieved by the award dated 12.06.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.2724 of 2013, both the claimants as well as the insurance company have filed separate appeals viz., CMA.no.2624 of 2019 has been filed by the claimants and CMA.No.1401 of 2019 has been filed by the insurance company.

5. Since both the appeals arise out of the very same accident and the very same award, these appeals have been disposed of by a common judgment.

6. Heard Ms.Ramya V.Rao, learned counsel for the claimants and Mr.M.Krishnamoorthy, learned counsel for the insurance company.

Discussion:

7. According to the claimants, the accident happened only due to the rash and negligent driving by the driver of the delivery van which resulted in the death of G.Shankar Sharma. Further it is their case that the notional monthly income of the deceased assessed by the Tribunal at Rs.10,000/- is meager and the Tribunal also did not consider the fact that the deceased was the only son of the first and second claimants. According to the claimants, the deceased would have contributed sufficient amount for the marriage expenses of his sisters who are the third and fourth claimants, if he was alive.

8. However, the insurance company has challenged the award on the ground that the deceased is also equally responsible for the accident in view of the head on collision between his motor cycle and the delivery van which is the insured vehicle. The insurance company has also challenged the quantum of compensation awarded by the Tribunal. According to them, the notional monthly income of the deceased assessed by the Tribunal at Rs.10,000/- is excessive, as no document has been filed by the claimants to prove the educational qualification of the deceased. The other ground raised by the insurance company is that Tribunal has awarded excessive compensation under the conventional heads and ought to have rejected the claims of the third and fourth claimants who are the sisters of the deceased,

as according to the insurance company, they are neither the dependents nor the legal heirs of the deceased.

9. This court has perused and examined the impugned award as well as the evidence and the materials available on record.

10. Before the Tribunal, two witnesses were examined on the side of the claimants viz., PW1-Gunalan, father of the deceased as well as PW2 - Jeevanandham, an eye-witness. The claimants had also filed nine documents which were marked as Ex.P1 to Ex.P9, before the Tribunal. However, on the side of the insurance company, neither any witness was examined nor any document was marked as exhibit.

11. As seen from the materials available on record, it is seen that the FIR was registered only against the driver of the delivery van bearing registration No.TN19 E 2481 which is the insured vehicle. The fact that the deceased was a Polytechnic (Electronics and Electrical Engineering, Final year) student has not been disputed by the insurance company by adducing any contra evidence. The transfer certificate Ex.P4 marked before the Tribunal proves the educational qualification as well as the age of the deceased at the time of the accident. The FIR copy, death certificate and Postmortem report which were marked as Ex.P1 to Ex.P3 clearly establishes the fact that the accident had happened only due to the rash and negligent driving by the driver of the insured van bearing registration No.TN19 E 2481. No contra evidence has been produced by the insurance company to disprove the contents of the FIR. In fact, no oral and documentary evidence has been let in by the insurance company before the Tribunal to disprove the contention of the claimants in the claim petition. We are of the considered view that the Tribunal has rightly given a finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened which resulted in the death of G.Shankar Sharma.

12. With regard to the quantum of compensation, the Tribunal has erroneously added 50% towards future prospects to the income of the deceased instead of 40% as determined by the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. Therefore, we are of the considered view that the claimants are entitled to get only 40% towards loss of future prospects.

13. Before the Tribunal, no evidence was placed by the claimants to prove that the sisters of the deceased viz., the third and fourth claimants are his dependents and therefore,

they cannot be considered as dependents of the deceased without any evidence to that effect. Therefore, we are of the considered view that the first and second claimants who are the parents of the deceased alone are dependents and entitled to get the compensation and the third and fourth claimants are not entitled to get any compensation. Since the third and fourth claimants who are the sisters of the deceased are not entitled for any compensation, the apportionment out of the total compensation amount in favour of the sisters at Rs.1,00,000/- each is an erroneous order.

14. The Tribunal has erroneously awarded a consolidated amount of Rs.1,00,000/- as compensation towards loss of love and affection. We are of the considered view that the first and second claimants are each entitled to Rs.40,000/- towards loss of love and affection as per the Constitution Bench Judgment of the Hon'ble Supreme Court in Pranay Sethi case referred to supra.

15. The Tribunal has not awarded any compensation towards loss of estate as well as towards transportation charges for which the claimants 1 and 2 are entitled to as per the Constitution Bench Judgment of the Hon'ble Supreme Court in Pranay Sethi case referred to supra. Therefore we are awarding a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards Transportation Charges in accordance with Pranay Sethi judgment.

16. Insofar as the enhancement of compensation claim made by the claimants are concerned, they are not entitled for any enhancement as the assessment of the notional monthly income of the deceased by the Tribunal at Rs.10,000/- is a correct one and does not call for any interference.

17. For the foregoing reasons, we do not find any merit in CMA.No.2624 of 2019 filed by the claimants and the award is modified by this Court in the following manner:

Heads	Awarded by the Tribunal	Awarded by this Court
Pecuniary loss	Rs.16,20,000/- (Rs.10,000+5000=15,000 x 12 x 18 x $\frac{1}{2}$)	Rs.15,12,000/- (10,000+4000 = 14000 x 12 x 18 x $\frac{1}{2}$)
Loss of love and affection	Rs.1,00,000/-	Rs.80,000/-
Loss of Estate	Nil	Rs.15,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Transportation	Nil	Rs.10,000/-

Heads	Awarded by the Tribunal	Awarded by this Court
Total	Rs.17,35,000/-	Rs.16,32,000/-

Conclusion:

18. In the result, CMA.No.2624 of 2019 is dismissed and CMA.No.1401 of 2019 is partly allowed by reducing the award amount passed in MCOP.No.2724 of 2013 passed by the II Court of Small Causes (Motor Accident Claims Tribunal), Chennai from Rs.17,35,000/- to 16,32,000/-. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Insurance Company is directed to deposit the entire award amount as per the order of this court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.2724 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount in equal shares along with interest to the first and second through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.

2.The Section Officer,
VR Section, High Court,
Chennai.

1cc to M/s.M.Krishnamoorthy, Advocate Sr.76445

C.M.A.Nos.2624 & 1401 of 2019

bp[co]
srg 27/02/2020