

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1400 & 1963 of 2018
and C.M.P.No.21922 of 2018

C.M.A.No.1400 of 2018:

Universal Sompo General Insurance Co. Ltd.
'Vadjiram Towers', Flat No.103,
New No.44, Old No.39, 1st Floor,
Halls Road, Chennai - 600 008. ... Appellant/2nd Respondent

Vs.

1.E.Eswari ... 1st Respondent/Claimant

2.P.Thirunavukkarasu ... 2nd Respondent/1st Respondent

C.M.A.No.1963 of 2018:

E.Eswari ... Appellant /Claimant

Vs.

1. P.Thirunavukkarasu

2.Universal Sompo General Insurance Co. Ltd.
'Vadjiram Towers', Flat No.103,
New No.44, Old No.39, 1st Floor,
Halls Road, Chennai - 600 008. ... 1st & 2nd Respondents/
1st & 2nd Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 06.01.2018 made in M.C.O.P.No.1005 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

In C.M.A.No.1400 of 2018

For Appellant : Ms.R.Sreevidhya

For R1 : Mr.A.Shanmugaraj

In C.M.A.No.1963 of 2018

For Appellant : Mr.A.Shanmugaraj

For R2 : Ms.R.Sreevidhya

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

These Civil Miscellaneous Appeals are filed against the award dated 06.01.2018 made in M.C.O.P.No.1005 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

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 appellant in C.M.A.No.1963 of 2018 is claimant in M.C.O.P.No.1005 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. The claimant filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Ettiyappan, who died in the accident that took place on 15.06.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent as well as negligent act on the part of the deceased, fixed 10% contributory negligence on the part of the deceased and 90% contributory negligence on the part of the 2nd respondent/Insurance Company, awarded a sum of Rs.16,75,000/- as compensation and directed the 2nd respondent/Insurance Company to pay a sum of Rs.15,07,500/- i.e., 90% of the award amount, as compensation to the appellant. The claimant has come out with C.M.A.No.1963 of 2018 seeking enhancement of compensation and setting aside 10% contributory negligence fixed on the deceased. Against the said award dated 06.01.2018 made in M.C.O.P.No.1005 of 2015, the 2nd respondent/Insurance Company has come out with C.M.A.No.1400 of 2018 challenging the liability fastened on them.

4.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal erred in fixing notional income of the deceased at Rs.10,000/- per month, which is excessive. The Tribunal ought to have fixed monthly income of the deceased at Rs.8,000/-. Further the sum fixed by the Tribunal towards loss of income for the minor child and future prospects are also on the higher side and prayed for allowing C.M.A.No.1400 of 2018 and prayed for dismissal of C.M.A.No.1963 of 2018 filed by the claimant.

5.Per contra, the learned counsel appearing for the claimant contended that the deceased was a painter and he was earning a sum of Rs.18,000/- per month. The Tribunal failed to consider the same and erred in fixing the monthly income of the deceased at Rs.10,000/-. The Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. While the deceased was travelling as passenger in Auto, the accident took place by the negligence of the auto driver, who hit against a tree and that the auto driver is solely responsible for the accident. Therefore, the Tribunal ought not to have fixed 10% contributory negligence on the part of the deceased. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard the learned counsel appearing for the claimant 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 on 15.06.2014 at about 05.45 p.m., while the deceased Ettiyappan and the deceased minor Srimathi were travelling as passengers in an auto bearing Reg.No.TN-09-BE-3513, the driver of the said auto drove the same rashly and negligently endangering the public safety, suddenly applied the break, the above said auto dashed against tamarind tree and thus caused fatal accident. PW1/claimant deposed that in the above said accident, her husband and her minor daughter, who was 4 years old died. In Ex.P1/ FIR, it is stated that the accident took place, since a cattle came in the road suddenly and to avoid hitting the same, the driver of the auto applied sudden brake and hit on the tamarind tree. The driver of the auto has shown as accused in the FIR. PW1 in her cross examination stated that six persons traveled including auto driver in the auto. It shows that more than the maximum limit of persons travelled as passengers in the auto. Therefore, 10% contributory negligence fixed by the Tribunal on the part of the deceased does not require any interference by this Court.

8.As far as quantum of compensation is concerned, the Tribunal after considering the materials available on record, has awarded sum under different heads. On perusal of the award, it is seen that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection, on the ground that the claimant has lost her husband in a young age of 27 years. Further, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium. Under such circumstances, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection is hereby set aside. The sum awarded under other heads are proper and does not require any modification. 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)
1.	Loss of dependency	Rs.15,00,000/-	Rs.15,00,000/-
2.	Loss of consortium	Rs.40,000/-	Rs.40,000/-
3.	Loss of love and affection	Rs.1,00,000/-	Set aside
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-
5.	Transport charges	Rs.5,000/-	Rs.5,000/-
6.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.16,75,000/-	Rs.15,75,000/-

9. In the result, C.M.A.No.1400 of 2018 filed by the Insurance Company is partly allowed and C.M.A.No.1963 of 2018 is dismissed and the compensation of Rs.16,75,000/- awarded by the Tribunal is reduced to Rs.15,75,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The 2nd respondent/Insurance Company is directed to deposit 90% of the modified award amount now determined by this Court i.e. Rs.14,17,500/- 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 appellant/claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.1005 of 2015, if the entire award amount has already been deposited by them.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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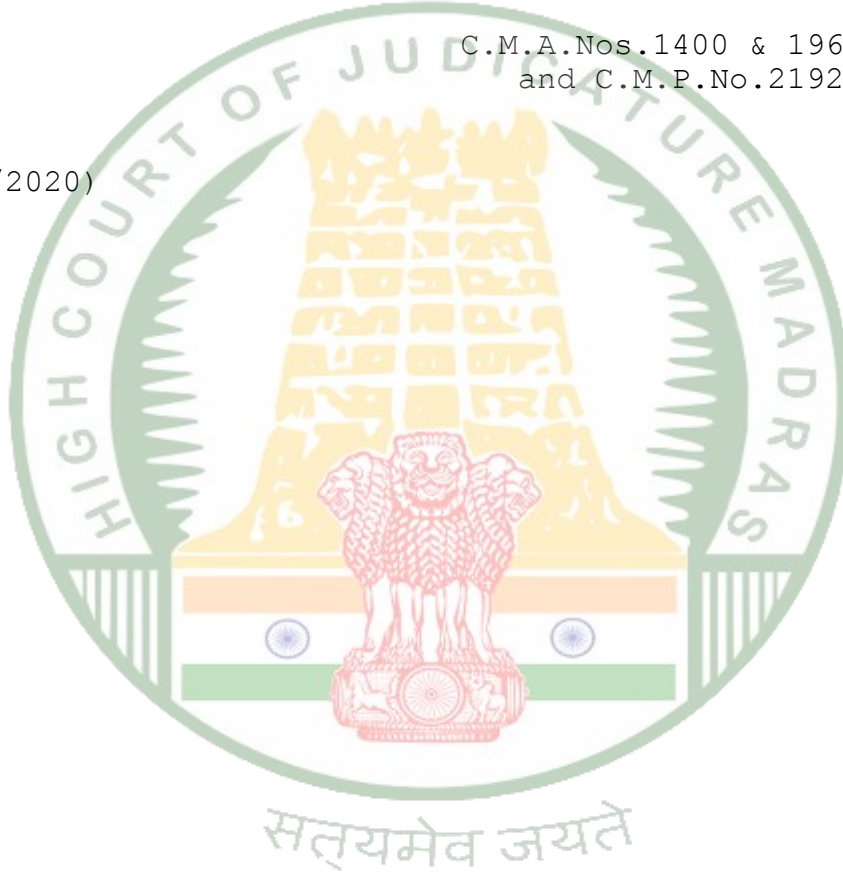
The Special Subordinate Judge No.1,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.69529

+1cc to Ms.R.Sreevidhya, Advocate SR.No.70097

C.M.A.Nos.1400 & 1963 of 2018
and C.M.P.No.21922 of 2018

TM(CO)
GMY(07/01/2020)



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