

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

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

C.M.A.Nos.1513 & 75 of 2018
&
CMP.No.1037 of 2018

C.M.A.No.1513 of 2018

1.Anjali
2.Ramachandran
3.Tamizhselvi ... Appellants /Claimants

vs.

1.The Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry.
(1st Respondent herein was
set exparte before the
lower court)
... 1st respondent/owner of the insured vehicle

2.The New India Assurance Co. Ltd.,
No.30, Jawaharlal Nehru Street,
2nd Floor, Pondicherry - 605 001.
...Respondents/ Insurer

C.M.A.No.75 of 2018

The New India Assurance Co. Ltd.,
No.30, Jawaharlal Nehru Street,
Second Floor, Pondicherry-605 001. ... Appellant/2nd Respondent

vs.

1.Anjali
2.Ramachandran
3.Tamizhselvi ... Respondents 1 to 3 /Claimants

4.The Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry.

... Respondent 4/ owner of the vehicle

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22nd day of September, 2017 made in MCOP.No.403 of 2016 on the file of the Motor Accident Claims Tribunal (I Additional District Judge) at Tindivanam.

For Claimants : Mr.F.Terry Chellaraja
for Ms.U.Anunitha
for Appellants in CMA 1513/2018
and Respondents
1 to 3 in CMA 75/18

For Insurance Company: Mr.G.Anandan
Respondent in CMA 1513/18 and
Appellant in CMA 75/18

For insured : Mrs.A.V.Bharathi
for R4 in CMA 75/18 and R1 in
CMA 1513/18

COMMON JUDGMENT

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

CMA.No.1513 of 2018 has been filed by the claimants and CMA.No.75 of 2018 has been filed by the insurance company. The insurance company has challenged the award dated 22.09.2017 passed by the Motor Accident Claims Tribunal (I Additional District Judge) at Tindivanam in MCOP.No.403 of 2016 apart from challenging the quantum of compensation assessed by the Tribunal has also challenged the award on the ground that the deceased is also equally responsible, since he was not wearing a helmet at the time of the accident.The claimants have filed the appeal seeking enhancement of compensation.

Brief facts leading to the filing of the instant appeals:

2. A person by named R.Veeramuthu died on 22.01.2014 as a result of an accident caused by a bus bearing registration No.PY01-X-3489. The deceased R.Veeramuthu was riding a motor cycle bearing registration No.PY01-BR-0015 from north to south direction in the East Coast Road, Chennai and was proceeding from Puducherry and near Boomyarpalayam Odai at extreme left side of the road, when the bus bearing registration No. PY01-X-

3489 owned by the Registrar, Pondicherry University, R.V.Nagar, Kalapet, Puducherry and insured with the New India Assurance Co. Ltd., No.45, 2nd Line Beach, Moore Street, Chennai - 600 001 coming from the opposite direction, dashed against a motor cycle and R.Veeramuthu was thrown out of the motor cycle and sustained head injuries which resulted in his death in the hospital on the same day of the accident.

3. The claimants who are the mother, father and sister of the deceased respectively preferred a claim against the owner of the bus as well as the insurance company in which the vehicle was insured before the Motor Accident Claims Tribunal, 1st Additional District Judge, Dindugul in MCOP.No.403 of 2016 seeking a compensation of Rs.50,00,000/- for the death of R.Veeramuthu.

4. By an award dated 22.09.2017, the Motor Accident Claims Tribunal partly allowed the claim petition and directed the Insurance Company to pay a sum of Rs.19,86,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The Tribunal further directed that out of the award amount, the first and second claimants were each entitled to Rs.8,00,000/- and the third respondent was entitled to Rs.3,86,000/-.

5. Aggrieved by the award dated 22.09.2017 passed by the Motor Accident Claims Tribunal in MCOP.No.403 of 2016, CMA.No.1513 of 2018 has been filed by the claimants seeking enhancement of compensation and CMA.No.75 of 2018 has been filed by the insurance company challenging the finding of the Tribunal that the entire negligence is on the insured vehicle and they have also challenging the quantum of assessment of compensation by the Tribunal.

6. Heard Mr.F.Terry Chellaraja, learned counsel for the claimants, Mr.G.Anandan, learned counsel for the insurance company and Mrs.A.V.Bharathi, learned counsel appearing for the owner of the bus.

Discussion:

7. The claimants have sought for enhancement of compensation on the ground that the Tribunal has erroneously assessed the monthly notional income of the deceased at Rs.12,000/- which is very low, despite the claimants having filed the salary slip and receipts pertaining to the deceased which were marked as exhibits and would reveal the deceased was earning a much higher monthly income. Further it is the case of the claimants that the Tribunal has not awarded any amount towards transportation charges and has also awarded very meager sums under various other heads.

8. However, the insurance company has challenged the award on the ground that the Tribunal has erred in applying the multiplier of 17 instead of the multiplier of 16 and has also fixed the notional monthly income of the deceased at 12,000/- without any oral evidence. According to the insurance company, the Tribunal has erred in awarding 50% towards loss of Future Prospects whereas the claimants are entitled only to 40% towards loss of Future Prospects as per 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

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-Ramachandran, father of the deceased as well as PW2 - Palanirasu, an eye-witness. The claimants have also filed nineteen documents which were marked as Ex.P1 to Ex.P19, before the Tribunal. However, on the side of the insurance company, neither any witness was examined nor any document marked as an exhibit.

11. Admittedly, Ex.P1- FIR was registered only against the driver of the bus bearing registration No.PY01-X-3489 which is the insured vehicle and there is no contra evidence against the contents of the FIR. Therefore, the Tribunal has given a correct finding that the accident had happened only due to the rash and negligent driving by the driver of the bus.

12. PW1, the father of the deceased deposed that the deceased was working as a building construction supervisor in L-Win Electrical Services, Singapore and earning a sum of Rs.45,000/- per month. In support of the same, he has filed Ex.P7-salary certificate of the deceased and Ex.P9-salary receipts of the deceased before the Tribunal. Eventhough the salary slip discloses that the deceased was earning a monthly income of Rs.45,000/-, the Tribunal fixed the notional monthly income of the deceased only at Rs.12,000/- since the employer was not examined as a witness. In our view, the assessment of the notional monthly income of the deceased at Rs.12,000/- is too low. As a person working as a labourer in Singapore, judicial notice can be taken that his net monthly income after deductions will be much more. We are of the considered view that the accident having happened in the year 2014, the assessment of the monthly income of the deceased at Rs.15,000/- will be just and reasonable. Therefore, the notional monthly income assessed by the Tribunal at Rs.12,000/- is enhanced to Rs.15,000/-

13. The deceased was aged 30 years at the time of the accident as evidenced from the postmortem report Ex.P4. As a construction worker in Singapore, he is only a temporary employer. The work permit issued by the Singapore authorities also confirms that the deceased is allowed to work only for two years at Singapore. The Tribunal has not considered this aspect and erroneously fixed the loss of future prospects at 50%. We are of the considered view that as per 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, the loss of future prospects has to be fixed at 40% only.

14. The deceased being a bachelor, the Tribunal has rightly deducted 50% towards personal and living expenses and applied the multiplier of 17 and we do not find any infirmity in the said finding.

15. Insofar as the compensation awarded under various other heads are concerned, we do not find any infirmity in the same and therefore, the same does not call for any interference.

16. For the foregoing reasons, the award of the Tribunal is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Dependency	18,36,000/- (12,000+50% = 18,000 - 50% = 9,000 x 12 x 17)	21,42,000/- (15,000 + 40% = 21,000 - 50% = 10,500 x 12 x 17)
Funeral Expenses	25,000/-	25,000/-
Loss of Love and affection	1,25,000/-	1,25,000/-
Total	19,86,000/-	22,92,000/-

Conclusion:

17. In the result, CMA.No.75 of 2018 is dismissed and CMA.No.1513 of 2018 is partly allowed by modifying the award amount passed in MCOP.No.403 of 2016 passed by the Motor Accident Claims Tribunal (Ist Additional District Judge) at Tindivanam from Rs.19,86,000/- to Rs.22,92,000/-. Out of the award amount, the first and second claimants are each entitled to Rs.9,00,000/- and the third claimant is entitled to Rs.4,92,000/-. 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.403 of 2016 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 share of award amount along with interest to the respective claimants through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(I Additional District Judge) at Tindivanam.

Copy to

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

+2cc to Mrs.A.V.Bharathi, Advocate Sr.77855 and 77854
+1cc to M/s.U.Anunitha, Advocate Sr.77951
+1cc to Mr.G.Anandan, Advocate Sr.77672

C.M.A.Nos.1513 & 75 of 2018

svi[co]
srg 13/07/2020