IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.2091 & 3109 of 2019
and
C.M.P.No.17311 of 2019

C.M.A.No.2091 of 2019:
1.Clain Julie

2.Amul Krishty (Minor)

3.Augestin Christopher (Minor)

4.Prita Jasmine (Minor)

Minor appellants 2 to 4 are represented
by their mother and Next Friend 1st appellant

5.Jaya Jothi .. Appellants/Claimants

Vs.

1.B.Dayanithi

2.The Oriental Insurance Co. Ltd.,
Motor Third Party Hub,
No.115, Broadway, Chennai - 108. .. Respondents/Respondents

C.M.A.No.3109 of 2019:

The Oriental Insurance Co. Ltd.,
Motor Third Party Hub,
No.115, Broadway, Chennai - 108. .. Appellant/2nd Respondent

Vs.

1.Clain Julie

2.Amull Kristly (Minor)

3.Augestin Christopher (Minor)

4.Prita Jasmin (Minor)

2 to 4 represented by their mother and
NF 1st petitioner Clain Julie

5.Jaya Jothi .. Respondents 1 to 5/Claimants

6.B.Dayanithi ..2nd Respondent/1st Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 30.10.2018 made in M.C.O.P.No.2060 of 2016 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes Court at Chennai.

In C.M.A.No.2091 of 2019

For Appellants : Mr.R.Nalliyappan
R1 : No Appearance

For R2 : Mr.J.Chandran

In C.M.A.No.3109 of 2019

For Appellant : Mr.J.Chandran
R6 : No Appearance

For Respondents 1 to 5 : Mr.R.Nalliyappan

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

These Civil Miscellaneous Appeals are filed against the award dated 30.10.2018 made in M.C.O.P.No.2060 of 2016 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes Court at 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 appellants in C.M.A.No.2091 of 2019 are claimants in M.C.O.P.No.2060 of 2016 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes Court at Chennai. The claimants filed the above claim petition claiming a sum of Rs.33,00,000/- as compensation for the death of one Aruldoss, who died in the accident that took place on 25.02.2016. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by both the deceased as well as the driver of the car belonging to the 1$^{st}$ respondent and fixed 10% contributory negligence on the part of the deceased and 90% contributory negligence on the part of the driver of the car belonging to the 1$^{st}$ respondent and awarded a sum of Rs.24,37,500/- as compensation to the respondents and directed the 2$^{nd}$ respondent/Insurance Company to pay 90% of the award amount i.e., Rs.21,94,000/- as compensation to the respondents. Not being satisfied with the award amount granted by the Tribunal, the claimants have come out with C.M.A.No.2091 of 2019 seeking enhancement of compensation. Against the said award dated 30.10.2018 made in

M.C.O.P.No.2060 of 2016, the 2nd respondent/Insurance Company has come out with C.M.A.No.3109 of 2019 challenging the liability fastened on them.

4.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was a mason and the compensation awarded by the Tribunal is exorbitant and unsustainable. The Tribunal failed to see that the deceased was under the influence of alcohol at the time of accident. RW1/Babu Senior Assistant of the Company has marked Ex.R1/medical records to prove that the deceased was under the influence of alcohol. The Tribunal held that the Insurance Company has not taken any steps to prove that the deceased was under the influence of alcohol by examining the hospital authorities. The Tribunal erred in fixing higher sum of Rs.15,000/- per month as income of the deceased. On the whole, the compensation awarded by the Tribunal is on the higher side.

5.Per contra, the learned counsel appearing for the claimants contended that the Tribunal erred in fixing 10% contributory negligence on the part of the deceased for the reason that he was under the influence of alcohol at the time of accident. The 2nd respondent/Insurance Company has not examined anyone to prove that the deceased was under the influence of alcohol. The Tribunal ought not to have deducted 1/4th instead of 1/5th from the monthly income of the deceased as personal expenses as there are five claimants. The Tribunal has not awarded any sum under the head of loss of love & affection and mental agony caused to the claimants. The Tribunal failed to consider the fact that the claimants 2 to 4 are minor and they are solely depend on the income of the deceased. The amount awarded by the Tribunal under different heads are meagre and prayed 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.According to the 2nd respondent/Insurance Company the deceased was solely responsible for the accident who was under the influence of alcohol, at the time of accident. The contributory negligence fixed at 10% on the part of the deceased needs to be interfered by this Court.

8.From the materials available on record, it is seen that though the 2nd respondent/Insurance Company contended that the deceased was under the influence of alcohol, they have not examined any hospital authorities to prove the same. Therefore, in my considered opinion 10% contributory negligence fixed by the Tribunal on the part of the deceased is just and proper and it does not warrant interference by this Court.

9.As far as quantum of compensation is concerned, the claimants have contended that the monthly income of the deceased was fixed at Rs.15,000/- which is meagre. Though

PW1/wife of the deceased in her evidence deposed that the deceased was working as a mason and was earning a sum of Rs.700/- per day, the claimants have not filed any documents to prove the income of the deceased, hence in the absence of any material evidence to prove the income of the deceased, the monthly income fixed at Rs.15,000/- is on the higher side. Therefore, this Court fixes a sum of Rs.10,000/- per month as notional income of the deceased, which would be proper and reasonable. As per Ex.P4/postmortem certificate, the age of the deceased was 42 years at the time of accident, the Tribunal has rightly applied multiplier '14'. As per Ex.P5/legal heirship certificate, the total number of dependents of the deceased are 5, hence by deducting 1/4th of the income towards personal expenses, adding 25% towards future prospects, the loss of dependency is modified to Rs.15,75,000/- [(Rs.10,000/- + 2,500 (Rs.10,000/- of 25%) x 12 x 14 x 3/4)]. Considering the submissions made by the claimants this Court awards a sum of Rs.15,000/- each to the minor claimants 2 to 4 under the loss of love & affection. The sum awarded by the Tribunal under other heads are reasonable 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.23,62,500/- | Rs.15,75,000/- |
| 2. | Loss of consortium | Rs.40,000/- | Rs.40,000/- |
| 3. | Loss of estate | Rs.15,000/- | Rs.15,000/- |
| 4. | Funeral expenses | Rs.15,000/- | Rs.15,000/- |
| 5. | Transport expenses | Rs.5,000/- | Rs.5,000/- |
| 6. | Loss of love and affection | - | Rs.45,000/- |
| | Total | Rs.24,37,500/-<br><br>(after deducting 10% contributory negligence, it comes to Rs.2,43,750/- [Rs.24,37,500/- - Rs.2,43,750/- = Rs.21,93,750 is rounded off to Rs.21,94,000/-]) | Rs.16,95,000/-<br><br>(after deducting 90% contributory negligence, it comes to Rs.15,25,500/-) |

10.In the result, C.M.A.No.2091 of 2019 filed by the claimants is dismissed and C.M.A.No.3109 of 2019 filed by the Insurance Company is partly allowed and the compensation of Rs.21,94,000/- awarded by the Tribunal is reduced to Rs.15,25,500/- 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.

11.The Insurance Company is directed to deposit 90% of the modified award amount i.e. Rs.15,25,500/- 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 1 & 5 are permitted to withdraw their respective share from the modified award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor claimants 2, 3 & 4 are directed to be deposited in any one of the Nationalized Bank till they attains majority. The mother of the minor claimants 2, 3 & 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. 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.2060 of 2016 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai, if the entire award amount has already been deposited by them.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mtl

To

The VI Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai,

+1cc to Mr.R.Nalliyappan, Advocate SR.No.70134

+1cc to Mr.J.Chandran, Advocate SR.No.71512

C.M.A.Nos.2091 & 3109 of 2019
and
C.M.P.No.17311 of 2019

TM(CO)
GMY(08/01/2020)