

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.330 and 467 of 2018 and
C.M.P.No.3321 of 2018

C.M.A.No.330 of 2018:

The New India Assurance Company Limited,
Motor III Party Claims Office,
No.45, Moore Street,
Chennai - 600 001. ... Appellant/Respondent-2

Vs.

- 1.Girija
- 2.Minor.Videsh
(Minor second respondent represented by his mother
and natural guardian, the first respondent herein)
- 3.Devi
- 4.M.Srinivasan ... Respondents/Petitioner & R1

C.M.A.No.467 of 2018:

- 1.Girija
- 2.Minor.Videsh
(Minor second Appellant represented by his mother
and natural guardian, the first herein)
- 3.Devi ... Appellants/Petitioners

Vs.

- 1.M.Srinivasan
- 2.The New India Assurance Company Limited,
Motor III Party Claims Office,
No.45, Moore Street,
Chennai - 600 001. ... Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 07.11.2017 made in M.C.O.P.No.4066 of 2015 on
the file of the Motor Accident Claims Tribunal, II Small Causes
Court, Chennai.

C.M.A.No.330 of 2018:

For Appellant : Mrs.Elveera Ravindran for
Mr.S.Manohar
For RR1 to 3 : Ms.Y.Jayanthi Bhaskar for
Mr.J.Mahalingam

C.M.A.No.467 of 2018:

For Appellants : Ms.Y.Jayanthi Bhaskar for
Mr.J.Mahalingam
For R2 : Mrs.Elveera Ravindran for
Mr.S.Manohar

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

These Civil Miscellaneous Appeals have been filed against the award dated 07.11.2017 made in M.C.O.P.No.4066 of 2015 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

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

3.The appellant in C.M.A.No.330 of 2018 is the second respondent in M.C.O.P.No.4066 of 2015. The appellants in C.M.A.No.467 of 2018 is the claimants in M.C.O.P.No.4066 of 2015. The claimants filed the above said claim petition claiming a sum of Rs.68,00,000/- as compensation for the death of one Devendran, who died in the accident that took place on 31.10.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent parking by the driver of the van belonging to the first respondent and directed the second respondent-Insurance Company as insurer of the van to pay a sum of Rs.20,19,000/- as compensation to the claimants.

5.Against the said award dated 07.11.2017 made in M.C.O.P.No.4066 of 2015 granting compensation to the claimants, the second respondent-Insurance Company has come out with an appeal of C.M.A.No.330 of 2018. Not being satisfied with the amount awarded by the Tribunal, the claimants have come out with

an appeal in C.M.A.No.467 of 2018, for enhancement of compensation.

6.The learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal erred in fixing entire negligence on the part of the driver of the van belonging to the first respondent and liability on the second respondent-Insurance Company. The Tribunal failed to see that the van was parked on the edge of the road and accident occurred at 1.40 P.M. in broad day light. The deceased was riding his motorcycle in a rash and negligent manner and dashed against the backside of the van, as he could not control the speed of the motorcycle and dashed against the backside of the van. In the F.I.R., it has been stated that deceased could not control the speed of the motorcycle and dashed against the van. The Tribunal erred in holding that parked van did not have triangle symbol and failed to see that triangle symbol is not a part of standard signal available in the Act and Rules. The Tribunal ought to have seen that deceased contributed negligence to the accident and the Tribunal ought to have dismissed the claim petition. The claimants failed to prove the age and avocation of the deceased. The Tribunal having rejected Ex.P22/salary certificate, not accepting the evidence of P.W.2, erred in fixing notional income of the deceased at Rs.8,000/- per month, without any basis. The Tribunal erred in awarding 50% enhancement towards future prospects and the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.467 of 2018.

7.Per contra, Ms.Y.Jayanthi Bhaskar for Mr.J.Mahalingam, learned counsel appearing for the claimants contended that the driver of the van belonging to the first respondent parked the van in a negligent manner without any indicator. The triangle indicator must be kept before 15 metres from the parked van. P.W.3/eye-witness has stated that accident has occurred due to the negligent parking of the van. F.I.R. was registered only against the driver of the parked van belonging to the first respondent. The Tribunal considering the above materials, rightly held that accident has occurred due to the negligence on the part of the driver of the van belonging to the first respondent and fixed liability on the second respondent-Insurance Company. The learned counsel for the claimants contended that the deceased was working as Documents Specialist at William Lea (India) Pvt. Ltd., Chennai, and was earning a sum of Rs.17,656/- per month. The claimants examined P.W.2/employer from the William Lea (India) Pvt. Ltd., Chennai, to prove the avocation and income of the deceased and marked Ex.P22/salary certificate. The Tribunal erroneously did not accept the same and fixed meager sum of Rs.8,000/- as monthly income. The Tribunal ought to have applied multiplier '18' as per second

Schedule and awarded excessive amount towards funeral expenses and transportation and fixed 12% of interest and prayed for enhancement of compensation under different heads and for dismissal of C.M.A.No.330 of 2018.

8.I have heard the learned counsel appearing for the second respondent-Insurance Company as well as the claimants and perused the entire materials on record.

9.From the materials available on record, it is seen that the claimants have contended that the driver of the van belonging to the first respondent parked the van without any signal. According to the claimants, the driver of the van ought to have placed triangle signal 15 metres before the parked van. There is no signal placed by the driver of the van to indicate that van is parked in highway. It is not the case of the second respondent-Insurance Company that proper signal was placed indicating the parked vehicle in the road. According to the learned counsel for the second respondent-Insurance Company, there is no Rule which mandates placing of triangle signal when vehicle is parked in the road due to any defect or any other purpose. The said contention is not correct. At the same time, the contention of the learned counsel for the second respondent-Insurance Company is that the accident occurred at 1.40 P.M. in the clear day light and the deceased, who drove the motorcycle in a rash and negligent manner could not control the speed and dashed against the backside of the van and contributed negligence has considerable force and the same is acceptable. Considering the time of accident and due to impact the deceased died on the spot clearly shows that deceased also contributed negligence to the accident. Considering the fact that driver of the van did not place any indicator, the negligence on the part of the deceased is fixed at 25% and negligence on the part of the driver of the van is fixed at 75%. The finding of the Tribunal with regard to negligence is modified as above.

10.As far as quantum of compensation is concerned, the claimants have contended that deceased was working as Documents Specialist at William Lea (India) Pvt. Ltd., Chennai, and was earning a sum of Rs.17,656/- per month. To substantiate the same, the claimants have examined P.W.2, an employer from William Lea (India) Pvt. Ltd., Chennai, and marked Ex.P22/salary certificate. The claimants have not filed Account pay register and Bank statement. In the absence of supporting documents, the Tribunal fixed the monthly income of the deceased at Rs.8,000/- and granted 50% enhancement towards future prospects. The accident occurred in the year 2014 and the monthly income fixed by the Tribunal is meager. A sum of Rs.10,000/- is fixed by this Court as monthly income of the deceased. The deceased was aged 30 years at the time of accident and the claimants are entitled

to only 40% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the multiplier applicable is '17'. In view of the judgment of the Hon'ble Apex Court, the contention of the learned counsel for the claimants that the Tribunal ought to have applied multiplier '18' as per second Schedule is without merits. The amount awarded by the Tribunal towards loss of dependency is modified to Rs.19,04,000/- [Rs.10,000/- + 40% of Rs.10,000/- X 12 X 17 X 2/3]. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the first claimant, which is excessive. The first claimant is entitled to only a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded excessively a sum of Rs.25,000/- towards funeral expenses and the same is hereby reduced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.1,30,000/- towards loss of love and affection to the minor second claimant and Rs.50,000/- to the third claimant, which are excessive and the same are hereby modified as the minor second claimant is entitled to a sum of Rs.40,000/- and the third claimant is entitled to a sum of Rs.25,000/- towards loss of love and affection. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court 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	17,13,600/-	19,04,000/-	enhanced
2.	Loss of love and affection	1,80,000/-	65,000/-	reduced
3.	Loss of consortium	1,00,000/-	40,000/-	reduced
4.	Funeral expenses	25,000/-	15,000/-	reduced
5.	Loss of estate	-	15,000/-	granted
	Total	Rs.20,18,600/- rounded off to Rs.20,19,000/-	Rs.20,39,000/- 75% of the award amount comes to Rs.15,29,250/-	Reduced by Rs.4,89,750/-

11. In the result, both the appeals are partly allowed. The compensation awarded by the Tribunal at Rs.20,19,000/- is hereby modified to Rs.15,29,250/-. This Court fixed 25% negligence on the part of the deceased. Hence, the claimants are entitled to 75% of the total award amount i.e., Rs.15,29,250/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the modified 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 to the credit of M.C.O.P.No.4066 of 2015 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the claimants 1 and 3 are permitted to withdraw their respective share of the modified award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor second claimant is directed to be deposited in any one of the Nationalized Bank, till the minor second claimant attains majority. On such deposit, the first claimant, being the mother of the minor second claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor second claimant. The second 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.4066 of 2015, if the entire amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CSIV)

True Copy

Sub-Assistant Registrar

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To

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

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

+1 cc to Mr.S.Manohar Advocate ssr31516
+2 ccs to M/s.J.Mahalingam Advocate sr31836

C.M.A.Nos.330 and 467 of 2018 and
C.M.P.No.3321 of 2018

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