IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.242 of 2014 & 125 of 2014
and
MP.No.1 of 2014

CMA.No.242 of 2014

M/s. United India Insurance Company Ltd.,
No.9, Shanmugam Road,
Tambaram West,
Chennai - 600 045. .. Appellant

..Vs..

1.H.Kothainayaki
2.K.S.Hemanth Kumar
3.V.Saravanan
..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.11.2012 in MCOP.No.2676 of 2008 on the file of the Motor Accidents Claims Tribunal / XVII Additional District & Sessions Court, Chennai.

For Appellant : Mr.R.Ravichandran
For Respondents : Mr.K. Varadhakamaraj
for Mr.G.Shanmugam for R1 and R2
No appearance for R3

CMA.No.125 of 2014

1.H.Kothainayaki
2.K.S.Hemanth Kumar
.. Appellants

vs.

1.V.Saravanan
2.M/s. United India Insurance Company Ltd.,
No.9, Shanmugam Road,
Tambaram West,
Chennai - 600 045.
..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.11.2012 in MCOP.No.2676 of 2008 on the file of the Motor Accidents Claims Tribunal / XVII Additional District & Sessions Court, Chennai.

For Appellants : Mr. Varadhakamaraj
for Mr.G.Shanmugam

For Respondents : Mr.R.Ravichandran for R2
No appearance for R1

COMMON JUDGMENT

The appellant in CMA.No.242 of 2014 is the second respondent in MCOP.No.2676 of 2008 on the file of the Motor Accidents Claims Tribunal / XVII Additional District & Sessions Court, Chennai, while the appellants in CMA.No.125 of 2014 are the claimants in the said MCOP. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the MACT Rules seeking compensation of Rs.25,00,000/- for the death of their son K.H.Venunath Kumar in a road accident that took place on 03.01.2007.

2. The parties are referred to as per their ranking in MCOP.No.2676 of 2008 and at appropriate places, their ranks in the present appeals would also be indicated, if necessary.

3. The case of the claimants is that while their son was travelling as a pillion rider in a motorcycle bearing Registration No.TN 60 Y 1923 with his friend Deepak along the GST road near SRM Hospital, Potheri, a speeding van bearing Registration No.TN 22 E 7119 belonging to the first respondent hit the motorcycle, as a result of which, the deceased sustained injuries all over his body and was immediately rushed to SRM Hospital where he succumbed to injuries on the same date. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration No.TN 22 E 7119 was the cause of the accident and that since, the said van was insured with the United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. The owner of the offending vehicle remained absent before the Tribunal and therefore, he was set exparte. The United India Insurance Company Limited contested claim petition. The learned Motor Accidents Claims Tribunal / XVII Additional District & Sessions Judge, Chennai after analysing the evidence on record awarded a compensation of Rs.13,28,000/- to the

claimants together with interest at the rate of 7.5% per annum. Questioning the quantum of compensation, the United India Insurance Company Limited filed CMA.No.242 of 2014 and the claimants filed CMA.No.125 of 2014 seeking for enhancement of compensation.

5. It is not in dispute that the deceased was a final year student studying Engineering and his parents have filed the claim petition. The Tribunal therefore fixed the notional income of the deceased at Rs.15,000/- per month and deducted 50% of the same, since the deceased died as a bachelor.

6. Mr.G.Shanmugam, learned counsel appearing for the claimants relied on the decision in S.Saraswathy and another vs. A.Elumalai and another reported in 2016 (2) TN MAC 424 (DB) and contended that in the case of a final year student studying in Engineering College, the notional income was fixed at Rs.20,000/- per month and the same analogy should be applied to the facts of the present case also.

7. In the decision in S.Saraswathy and another vs. A.Elumalai and another (cited supra), the accident took place on 05.08.2011 and the deceased was in his final year studying Engineering in Eswari Engineering College and his parents were also doing business. They had also filed several documentary evidence including the Income Tax returns filed by their son. In fact, the deceased in that case was an Income Tax Assessee and therefore, the income of the deceased was fixed at Rs.20,000/- per month. The facts of the present case are totally different and the deceased is not an Income Tax Assessee. Moreover, the accident took place in the year 2007. Therefore, the monthly income of the deceased fixed by the Tribunal at Rs.15,000/- per month is found to be reasonable. The deceased also died as a bachelor and therefore, after deducting 50%, Rs.7,500/- is taken up for calculating the loss of income. It is also admitted that the deceased was aged 21 years on the date of the accident and therefore, the proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation
Income fixed = Rs.15,000/-
After 50% deduction = Rs.7,500/-
Loss of Income
= Rs.7,500/- x 18 x 12
= Rs.16,20,000/-

8. Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-

towards loss of estate, loss of love and affection and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs.16,20,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.16,90,000/-

Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,28,000/- to Rs.16,90,000/-.

9. In the result,

(i) The CMA.No.242 of 2014 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The CMA.No.125 of 2014 is partly allowed. No costs.

(iii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.13,28,000/- to Rs.16,90,000/-.

(iv) The claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from today ie., 05.09.2019 and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The United India Insurance Company Limited is directed to deposit the enhanced compensation amount ie., Rs.16,90,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.2676 of 2008 on the file of the Motor Accidents Claims Tribunal/ XVII Additional District & Sessions Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment granted before the Tribunal after following due process of law.

s/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   The XVII Additional District & Sessions Court,
   Chennai.

2. The Section officer
   VR Section
   High Court, Madras 104.

+1 CC to Mr. Varadhakamaraj Advocate sr 77683.
+1 CC to Mr.R.Ravichandran, Advocate sr 76806.

CMA.Nos.242 of 2014
& 125 of 2014
and
MP.No.1 of 2014

MGI(CO)
SP(07/09/2020)