IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3055 and 4547 of 2019

C.M.A.No.3055 of 2019

1.Indhira
2.Benat
3.Sobha .. Appellants/Petitioners

Vs.

1.Umamaheswaran

2.Reliance General Insurance Co. Ltd.,
3rd floor, 358, Perundhurai road
Erode District - 638 011. .. Respondents/Respondents

C.M.A.No.4547 of 2019

Reliance General Insurance Co. Ltd.,
3rd floor, 358, Perundhurai road
Erode District - 638 011. .. Appellant/2nd Respondent

Vs.

1.Indra
2.Bent
3.Shoba .. Respondents 1 to 3/Petitioners
4.Umamaheswaran .. 4th Respondents/Respolndent 1

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2019 made in M.C.O.P.No.156 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

In C.M.A.No.3055 of 2019

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Ms.C.Bhuvanasundari

In C.M.A.No.4547 of 2019

For Appellant : Ms.C.Bhuvanasundari

For R1 to R3 : Mr.T.S.Arthanareeswaran for Mr.C.Paraneedharan

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

C.M.A.No.3055 of 2019 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 12.04.2019 made in M.C.O.P.No.156 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

C.M.A.No.4547 of 2019 is filed by the Insurance Company against the award dated 12.04.2019 made in M.C.O.P.No.156 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed M.C.O.P.No.156 of 2014 on the file of Motor Accidents Claims Tribunal, Sub Court, Sankari, claiming a sum of Rs.25,00,000/- as compensation for the death of one Gunasingh, who died in the accident that took place on 22.05.2014.

4.According to the claimants, on the date of accident i.e., on 22.05.2014 at 5.00 p.m., while the 2nd claimant, son of the deceased, was driving the Maruthi Swift Dezire car along with the deceased from Salem to Coimbatore road, near Sankari R.T.O., the driver of the Tarus lorry coming from Sankari to Salem drove the same in a rash and negligent manner, dashed against the car and caused the accident. On 31.05.2014, the deceased Gunasingh succumbed to his injuries. Therefore, the claimants filed the above claim petition claiming compensation.

5.The 1st respondent, owner of the lorry, remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made by the claimants and contended that the Tarus lorry involved in the accident was not insured with the 2nd respondent at the time of the accident. The driver of the lorry did not possess driving license. It is the driver of the Maruthi car, who drove the same in a rash and negligent manner and invited the accident and hence he is responsible for the accident. The driver of the Maruthi car did not possess driving license at the time of the accident. The claimants have not impleaded the owner and insurer of the Maruthi car and the claim petition is bad for non-joinder of necessary parties. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimants.

7.Before the Tribunal, 2nd claimant Benat examined himself as P.W.1 and one Stephen, partner of the deceased was examined as P.W.2 and marked thirteen documents as Exs.P1 to P13. On the side of the respondents, no oral and documentary evidence was let in.

8.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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.13,50,000/- as compensation to the claimants.

9.Not being satisfied with the amounts granted by the Tribunal, the claimants have come out with C.M.A.No.3055 of 2019 seeking enhancement of compensation. Against the said award dated 12.04.2019 made in M.C.O.P.No.156 of 2014, the 2nd respondent/Insurance Company has come out with C.M.A.No.4547 of 2019 challenging the liability fastened on them as well as quantum of compensation.

10.The learned counsel appearing for the claimants contended that the 2nd respondent/Insurance Company has not let in any oral and documentary evidence to prove that the accident occurred only due to rash and negligent driving by the 2nd claimant, driver of the car. In the absence of any contra evidence, the Tribunal has rightly held that the accident occurred only due to rash and negligent driving by the driver of the lorry. The claimants contended that the deceased was doing agriculture and real estate business and was earning Rs.30,000/- per month. The claimants have examined P.W.2, partner of the deceased to prove the avocation and income of the deceased. The deceased took treatment as in-patient in the hospital from 22.05.2014 to 31.05.2014 and succumbed to injuries on 31.05.2014. Due to the sudden death of the deceased, the claimants are struggling for their day-to-day expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for allowing C.M.A.No.3055 of 2019 filed for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal erred in holding that the driver of the lorry belonging to the 1st respondent is responsible for the accident without considering the manner of occurrence and evidence placed on record. In the absence of any evidence with regard to the age of the deceased, the Tribunal ought to have taken the age of the deceased as 73 years as per the post-mortem certificate. The Tribunal has fixed a sum of Rs.20,000/- as monthly income of the deceased only based on the evidence of P.W.1 and P.W.2 without any documentary proof. The amounts awarded by the Tribunal towards transportation and pain & suffering are excessive and prayed for allowing C.M.A.No.4547 of 2019 filed by the 2nd respondent/Insurance Company.

12.Heard the learned counsel appearing for the claimants as well as 2nd respondent/Insurance Company and perused the materials available on record.

13.From the materials available on record, it is seen that the claimants have examined P.W.1 and marked Ex.P1/F.I.R., which was registered against the driver of the lorry, to prove that the accident occurred only due to rash and negligent driving by the driver of the Taurus lorry belonging to the 1st respondent. In the absence of any contra evidence on the part of the respondents, the Tribunal has come to the conclusion that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay compensation to the claimants. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the 2nd respondent/Insurance Company has contended that as per post-mortem certificate, the deceased was aged 73 years at the time of accident. The Tribunal has fixed age of the deceased as 69 years considering the age of the claimants and applied multiplier 5, which does not warrant any interference by this Court. The claimants have contended that the deceased was doing real estate business as well as agriculture and was earning a sum of Rs.30,000/- per month and to prove the same, they have examined P.W.2, who is alleged to be the partner of the deceased. P.W.2/Stephen, in his evidence has deposed that the deceased and P.W.2 were doing real estate business for the past six years and were earning a sum of Rs.60,000/- per month. There were no documents to prove as to how many lands have been sold and what is the commission amount. The Tribunal has held that there may be ups and downs in the real estate business and therefore, it cannot be said that the deceased was earning Rs.30,000/- every month. The Tribunal in the absence of any documentary evidence, has fixed a sum of Rs.20,000/- as monthly income of the deceased, which is excessive. The claimants have not filed any document or income tax returns to show that the deceased was doing real estate business. In the absence of any material evidence to prove the avocation and income of the deceased, the monthly income fixed by the Tribunal is excessive. The accident is of the year 2014 and hence, a sum of Rs.15,000/- is fixed as monthly income of the deceased. By deducting 1/3rd towards personal expenses, a sum of Rs.6,00,000/- (Rs.15,000/- X 12 X 5 X 2/3) is awarded towards loss of future prospects. Considering the age of the claimants, who are all aged persons, a sum of Rs.1,50,000/- awarded by the Tribunal towards loss of love and affection is set aside. Similarly, a sum of Rs.70,000/- awarded by the Tribunal towards pain and suffering is also set aside. Though the claimants have contended that the deceased took treatment as in-patient in the hospital from 22.05.2014 to 31.05.2014 and succumbed to injuries on 31.05.2014, considering the amounts awarded by the Tribunal under other heads are just and reasonable, the claimants are not entitled to any enhancement of compensation. The amounts awarded by the Tribunal under the head of transportation, loss of estate and funeral expenses are reasonable and hence, they are confirmed. 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.	Future prospects	8,00,000	6,00,000	Reduced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	1,50,000	-	Set aside
4.	Medical expenses	2,50,000	2,50,000	Confirmed
5.	Pain and suffering	70,000	-	Set aside

6.	Transportation	10,000	10,000	Confirmed
7.	Loss of estate	15,000	15,000	Confirmed
8.	Funeral expenses	15,000	15,000	Confirmed
	Total	13,50,000	9,30,000	Reduced by Rs.4,20,000/-

15.In the result, C.M.A.No.3055 of 2019 filed by the claimants is dismissed and C.M.A.No.4547 of 2019 filed by the 2nd respondent/Insurance Company is partly allowed. The compensation of Rs.13,50,000/- awarded by the Tribunal is hereby reduced to Rs.9,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st claimant being wife of the deceased is entitled to a sum of Rs.6,10,000/- and 2nd and 3rd claimants being son and daughter of the deceased are entitled to a sum of Rs.1,60,000/- each as compensation. The 2nd 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. On such deposit, the claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.156 of 2014, if the entire award amount has already been deposited by them. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Sankari.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Ms.C.Bhuvanasundari, Advocate SR.No.104559

+2cc to Mr.C.Paraneedharan, Advocate SR.No.103692

C.M.A.Nos.3055 and 4547 of 2019

BR(CO)
GMY(25/08/2020)