IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2439 of 2017
and
C.M.A.No.495 of 2018

C.M.A.No.2439 of 2017

United India Insurance Co. Ltd.,
48, Arcot Road, Chennai - 93. ... Appellant

Vs.

1.Rakhi Kumari
2.Dhruv (minor)(Minor Rep by his Guardian Rakhi Kumari)
3.M.Malliga
4.P.Palani ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 20.10.2016 made in M.C.O.P.No.848 of 2014 on the file of The Motor Accidents Claims Tribunal, II Additional District Judge, Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 3 : Mr.K.Varadha Kamaraj

R4 : Exparte

C.M.A.No.495 of 2018

1.P.Arunachalam
2.A.Rajathi
3.A.Raja
4.A.Balachandran
... Appellants

Vs.

1.P.Palani
(R-1 set exparte in the trial Court)

2.United India Insurance Company Ltd.,
Motor Third Party Claims HUB,
Silinghi Buildings,
No.134, Greams Road,
Chennai - 600 006. ... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 01.02.2018 made in MACT.O.P.No.2545 of 2015 on the file of the Chief Judge, Motor Accidents Claims Tribunal,(Court of Small Causes), Chennai.

For Appellants	:	Mr.M.Swamikannu
R1	:	Set ex-parte
For Respondent-2	:	Mr.S.Arunkumar

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

Judgement of the Court was delivered by Krishnan Ramasamy,J.

CMA.No.2439/2017 has been filed by the Insurance Company challenging both the liability as well as quantum of compensation awarded by the Tribunal. CMA No.495/2018 has been filed by the claimants against the dismissal of the Claim Petition No.2545 of 2015.

2. On 03.10.2014 at about 12.45 hours, when one Kalicharan was riding a motorcycle, bearing Registration No.TN 01 G 5382 along with A.Chelladurai, as Pillion Rider, from South to North direction in Vandalur to Nemilicherri 400 feet main road, near Varadarajapuram Nazarethpet bridge, Tempo Traveller Van, bearing Registration No.TN 11 E 9896 driven by its driver came in a rash and negligent manner and dashed against the motorcycle. Due to the said accident, both the rider and the pillion rider sustained severe injuries and died on the way to the hospital. Therefore, the legal heirs of the deceased Kalicharan filed a claim petition in MCOP No.848/2014, claiming a sum of Rs.60,00,000/- as compensation. Similarly, the legal heirs of the deceased Chelladurai filed in MCOP No. 2545 of 2015, claiming a sum of Rs.36,00,000/- as compensation.

3. Since both the Appeals arise out of the same accident, they were heard together and disposed of by way of this common judgment.

4. Insofar as M.C.O.P.No.848 of 2014 is concerned, the Tribunal, on evaluation of both pleadings and evidence, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Tempo Traveller Van bearing Registration No.TN 11 E 9896 owned by the first respondent before the Tribunal (fourth respondent herein), and therefore, fixed the entire liability on the appellant/Insurance Company, as being the insurer of the Tempo and directed the Insurance Company to pay the compensation. The break up details of the compensation amount awarded by the Tribunal are as follows ;-

Loss of Income	Rs.51,46,920/-
Funeral Expenses and Transportation	Rs.50,000/-
Loss and affection for all the three claimants	Rs.3,00,000/-
Loss of Consortium for the wife of the deceased	Rs.1,00,000/-
Damage to Cloth (5)	Rs.2,000/-
Total	Rs.55,98,920/-

5. Aggrieved by the quantum of compensation awarded by the Tribunal as well as the liability fastened on them, in MCOP.No.848/2014, the Insurance Company has filed the present Appeal, as already stated above.

. 6. Insofar as M.C.O.P.No.2545/2015 is concerned, the Tribunal, on evaluation of both pleadings and evidence, dismissed the Claim Petition as not maintainable by holding that since the Driver of the Tempo Traveller was charge sheeted for the offences under Section 279 and 304 (II) of Indian Penal Code and not under Section 304 (A) of IPC, it is a case, where, an offence of culpable homicide has been registered against the driver of the Tempo Traveller and therefore, the Tribunal has no jurisdiction to entertain such cases, as the Tribunal can only deal with cases involving bodily injury or death in a motor accident.

7. Aggrieved by the dismissal of the claim petition, the claimants in MCOP No. 2545 of 2015 have filed the C.M.A.No. 495 of 2018, as stated supra.

8. We have heard the submissions made by the learned counsel for the parties in both the Appeals and have carefully gone through the entire materials available on record.

9. Now, there are two issues to be decided by this Court in both CMAs, which are as follows:-

1. Whether the liability fixed by the Tribunal is correct?
2. Whether the quantum of compensation awarded by the tribunal in M.C.O.P.No.848 of 2014 is just and fair?
3. Whether the Tribunal was right in dismissing the claim petition No.2545 of 2015, on the ground of want of jurisdiction?

I) Liability -

10. The learned counsel appearing for the Insurance Company argued that the cause of the death was not on account of an accident but a culpable homicide not amounting to murder, and regarding the incident, an FIR has been registered for offence under Section 304 (II) IPC. and charge sheet also filed. Therefore, he would contend that in a case of murder, the claimants are not entitled for any compensation. However, he fairly admitted that in order to substantiate that the death was not on account of an accident but it is a culpable homicide, they have not produced any either oral or documentary evidence before the Tribunal.

11. On the other hand, the learned counsel appearing for the respondents/claimants in CMA No. 2439 of 2017 would contend that the accident occurred due to the negligence on the part of the driver of the vehicle, viz., Tempo Traveler Van, bearing Registration No.TN 11 E 9896. In this regard, FIR was marked as Ex.P1. In the FIR, it has been clearly stated that the accident was occurred due to the rash and negligent driving on the part of the driver of the tempo traveler. Even an eyewitness to the accident, who was examined as PW.2 deposed that the accident occurred due to the rash and negligent driving on the part of the driver of the tempo traveler. Further, the evidence of P.W.1/Rakhi Kumari, (wife of the deceased) corroborates the deposition of P.W.2 eyewitness. Under these circumstances, the Tribunal arrived at the finding that the accident occurred due to the rash and negligent driving on the driver of the tempo traveler and accordingly fixed the liability on the Insurance Company, as being its insurer. Therefore, he contend that there is no need to interfere in the findings of the tribunal with regard to the fixation of liability.

12. On the perusal of deposition of P.W.2/Eyewitness, it is evident that the accident had occurred due to the rash and negligent driving on the part of the tempo traveler. Further, P.W.1, the wife of the deceased Kalicharan also corroborated the oral evidence of P.W.2/Eyewitness. Even in Ex.P.1/FIR and the charge sheet laid pursuant to the said incident, it is clearly stated that the accident occurred due to the rash and negligent driving on the part of the driver of the tempo traveler, nowhere, it has been stated that it was a culpable homicide. Further, no one was examined and no documentary proof have been produced by the Insurance Company to establish that the death was not on account of accident but it was a culpable homicide. Even during the cross examination of the claimants witness, the Insurance Company was not able to cull out anything to prove that the death was not an accident but it was a culpable homicide. Thus, in the absence of any oral or documentary evidence produced by the Insurance Company, and under these circumstances only, the tribunal based on Ex.P.1, and the evidence of P.W.1 and P.W.2, came to the right conclusion in MCOP.No.848/2014 that the accident was occurred due to rash and negligent driving of the driver of the tempo. Therefore, we are of the view that there is no need for us to interfere with the findings of the tribunal with regard to the fixation of the negligence against the driver of the tempo traveler and liability against the insurer of the tempo traveler. Hence, this Court confirm the findings of the Tribunal with regard to the fixation of the negligence against the driver of the tempo traveller and the liability against insurer.

13. Insofar as MCOP.No.2545 of 2015 is concerned, it is seen that MCOP.No.848/2014, arises out of the same accident, wherein, the Tribunal rightly held that the accident occurred due to the rash and negligent driving on the part of the driver of the tempo traveller and this Court also confirmed the said findings, as noticed above. Hence, the findings of the Tribunal in MCOP.No.2545/2015 that the claim is not maintainable, since the Driver of the Tempo Traveller was charge sheeted for the offences under Section 279 and 304 (II) of Indian Penal Code and not under Section 304 (A) of IPC, it is a case of culpable homicide, and therefore, the Tribunal has no jurisdiction to entertain such cases, is not correct and the same is liable to be set aside. Further, in MCOP.No.848/2014, P.W.2, an eyewitness to the accident, deposed that the accident occurred due to the rash and negligent driving on the driver and the same was also corroborated by P.W.1, the wife of the deceased Kalicharan. To controvert this statement, the insurance Company have not culled out anything from cross examinations of P.W.1 and P.W.2. In the FIR, though offence punishable under Section 304 (II) has been mentioned, the same was due to some mistake committed by the Police, as, instead of stating Section 304 (A)

offence, it has been wrongly mentioned as Section 304 (II) offence. However, on perusal of the averments contained in the FIR, it is stated that the accident occurred due to the rash and negligent driving of the Driver of the tempo traveller van, and nowhere, does the reason for motivation for culpable homicide has been stated. Hence, we do not have any hesitation to set aside the findings of the Tribunal, which resulted in dismissal of the claim petition filed in MCOP No. 2545 of 2015 and we hold that the accident had occurred due to the rash and negligent driving on the part of the driver of the tempo. Accordingly, we set the findings rendered by the Tribunal with regard to the dismissal of M.C.O.P.No.2545 of 2015 holding that the said Petition was not maintainable on the ground of lack of jurisdiction and we fix the entire liability against the Insurance Company.

II) Quantum in CMA.No.2439 of 2017

14. In MCOP.No.848/2014, the Tribunal has awarded a sum of Rs.55,98,920/- to the claimants, who are legal heirs of the deceased Kalicharan, viz. rider of the two wheeler. At the time of the accident, the deceased Kalicharan was aged about 34 years and was working as a Police Constables. As per Ex.P17/Salary Certificate, Kalicharan was drawing a gross salary of Rs.25,220/- per month. The first claimant is the wife of the deceased and the second claimant is the minor child aged about 9 years and 3rd claimant is the widowed mother of the deceased.

15. The learned counsel appearing for the Insurance Company would contend that the Tribunal while determining the compensation towards Loss of Income, has taken the monthly income of the deceased at Rs,25,220/- and added 50% towards future prospects of the deceased and made 1/3rd deduction towards his personal expenses and there is no dispute over the same. Insofar as the multiplier adopted by the Tribunal at '17', the learned counsel for the Insurance Company would fairly contend that the deceased was aged 35 years old, therefore, as held by the Hon'ble Apex Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the Tribunal ought to have applied multiplier '16' instead of 17. However, the learned counsel contended that no amount was deducted towards the income tax. Hence, the learned counsel sought for appropriate modification of the compensation awarded by the Tribunal.

16. The learned counsel appearing for the claimants submitted that the age of the deceased was 35 years, and therefore, the multiplier applied by the Tribunal as '17' is wrong. The learned counsel appearing for the respondents/claimants also fairly submit that no amount was deducted by the tribunal towards the income tax.

17. Since there is no dispute with regard to the fixation of the monthly salary of the deceased by the tribunal at Rs.25,220/-; the addition made towards future prospects at 50%; and 1/3rd deduction made; we confirm the same. However, so far as the multiplier adopted by the Tribunal at 17 is concerned, since both the learned counsel has submitted that the age of the deceased was 35 years, and therefore, multiplier applicable is 16, and since it is pointed out by both the counsel that no deduction was made towards tax, by taking monthly income of the deceased at Rs.25,220/- as fixed by the Tribunal, the loss of Income after adding future prospects will be a sum of Rs.4,53,960/-. The present accident occurred in the year 2014 and therefore, Rs.2 lakhs needs to be deducted towards tax. Thus, by deducting Rs.2 lakhs out of Rs.4,53,960/-, the tax requires to be calculated for a sum of Rs.2,53,960/- at the rate of 10%. So, the tax amount would be Rs.25,396/- and by deducting a sum of Rs.25,396 from the total income of Rs.4,53,960/-, the net income after deducting income tax would be a sum of Rs.4,28,564/- and out of the said amount 1/3rd requires to be deducted towards personal expenses. Thereafter, by applying the multiplier 16, the loss of income would be Rs.45,71,349/-. (i.e. Rs.4,28,564/- x2/3 x16 =Rs.45,71,349/-)

18. The tribunal awarded a sum of Rs.50,000/- towards funeral expenses and transportation, and we find the same to be on the higher side. Therefore, we are inclined to modify the same and we fix a sum of Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transportation. The Tribunal has awarded a sum of Rs.1 lakh towards consortium to the wife of the deceased and the same is also on the higher side and therefore, we are inclined to reduce it to Rs.40,000/-, as held by the Hon'ble Supreme Court in re National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 2 TNMAC 609 (SC). The Tribunal has awarded a sum of Rs.3 lakhs for love and affection for all the 3 claimants, and the said amount is also on the higher side. Since we have already awarded consortium for the wife of the deceased at Rs.40,000/- only the second and third claimants are entitled for compensation for loss of love and affection. Therefore, this Court is inclined to award a sum of Rs.80,000/- towards love and affection for the respondents/claimants 2 and 3. Further, it is seen from the award of the Tribunal that no amount was awarded towards loss of estate. Therefore, we are inclined to award Rs.15,000/- towards loss of estate. Since we awarded compensation for loss of estate, we feel that there is no necessity to award separate compensation for loss of damage to clothes and we set aside the compensation awarded by the Tribunal at Rs.2,000/- under the said head. Accordingly, the total compensation amount of Rs.55,98,920/- awarded by the Tribunal is modified and reduced

to Rs.47,31,349/-. The break up details of the same are as follows :-

Sl.No.	Heads	Tribunal Award	High Court	MODIFIED/CONFIRMED
1	Loss of Income	Rs.51,46,920/-	Rs.45,71,349/-	Modified
2	Funeral Expenses and Transportation	Rs.50,000/-	Rs.25,000/-	Modified
3	Loss of Love and Affection for 3rd and 4th claimants	Rs.3,00,000/-	Rs.80,000/-	Modified
4	Loss of Consortium	Rs.1,00,000/-	Rs.40,000/-	Modified
5	Loss of Damage to Cloths	Rs.2,000/-	Nil	Set aside
6	Loss of Estate	Nil	Rs.15,000/-	Awarded
	Total	Rs.55,98,920/-	Rs.47,31,349/-	

19.. Out of the above said compensation, the first claimant is entitled for a sum of Rs.25,00,000/-, the second claimant is entitled for a sum of Rs.15,00,000/- and third claimant is entitled for a sum of Rs.7,31,349/-. So far the share in respect of the minor is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the mother of the minor claimant is permitted to withdraw accrued interest once in three months.

III Quantum in CMA.No.495 of 2018

20. We have already fixed the entire negligence on the part of the driver of the tempo traveller. Therefore, we fix the entire liability against the second respondent/Insurance Company. At this juncture, the learned counsel for the appellants/claimants has filed a calculation memo today and by drawing our attention to the said calculation memo, submitted that the accident occurred in the year 2014, and at the time of the accident, the deceased pillion rider was an Engineering graduate, and therefore, the notional monthly income of the deceased is taken at Rs.15,000/- and based on the same, calculation has been done. The learned counsel for the claimants further submitted that, in the present case, there are 4 claimants. Therefore, he pleaded before us to award a sum of Rs.40,000/- towards love and affection and Rs.15,000/- towards

funeral expenses, and Rs.15,000/- towards loss of estate. The said calculation memo is also served on the learned counsel appearing for the Insurance Company. Though the learned counsel appearing for the Insurance Company fairly submitted that the compensation sought for by the claimants in the calculation memo is just and fair, he insisted that the same may be the order of the Court.

21. We have also perused the calculation memo filed by the learned counsel for the appellants in C.M.A.No.495 of 2018, wherein, it is seen that notional income has been taken as Rs.15,000/- per month and 40% was added towards future prospects and we find the same to be just and fair. Therefore, we are inclined to fix a sum of Rs.15,000/- as notional income along with the addition of 40% towards future prospects. Since the deceased was a Bachelor, 50% amount requires to be deducted towards his personal expenses. The age of the deceased was 26 years at the time of the accident, and therefore, the multiplier applicable in the present case is 16. Accordingly, the pecuniary loss to the claimants is determined in the manner stated below:-

"Rs.15,000/-+40% = Rs.21,000/-
Rs.21,000 -50% deduction = Rs.10,500/-,
Loss of income Rs.10,500x12x17=Rs.21,42,000/-."

22. Further, the amount stated in the calculation memo towards love and affection at Rs.40,000/- , funeral expenses at Rs.15,000/ and loss of estate at Rs.15,000/- are just, fair and reasonable and we are inclined to award the same. Thus, we determine the compensation in the manner stated below:-

Loss of income	Rs.21,42,000/-
Love and affection	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total	Rs.22,12,000/-

23. The apportionment of compensation to the claimants shall be made in the manner stated below:-

(i) The father of the deceased, who is the first appellant herein, shall receive a sum of Rs.9,00,000/-;

(ii) The mother of the deceased, who is the second appellant herein, shall receive a sum of Rs.9,00,000/-;

(iii) The brother of the deceased, who is the third appellant herein, shall receive a sum of Rs.2,00,000/-.

(iv) The another brother of the deceased, who is the fourth appellant herein, shall receive a sum of Rs.2,12,000/-.

24. Accordingly, CMA.No.2439 of 2017 is partly allowed by reducing the award of the Tribunal from Rs.55,98,920/- to Rs.47,31,349/- with interest and costs. CMA No.495/2018 is allowed by setting aside the Judgment dated 01.02.2018 passed in MACT.O.P. No. 2545 of 2015 by directing the Insurance Company to pay the award amount of Rs.22,12,000/- to the appellants. The Insurance Company, in both the Appeals is directed to deposit the entire award amount as determined by us in both the Appeals along with interest @ 7.5% from the date of petitions till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. We further direct the Tribunal to transfer the entire award amount to the claimants in both Appeals by way of RTGS to their respective bank accounts directly in equal proportion within a period of three weeks from the date of deposit of the award amount along with interest. No costs. Consequently, connected Miscellaneous Petitions, if any, are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AT

To
1.The Motor Accidents Claims Tribunal,
II Additional District Judge, Poonamallee.

2.The Chief Judge, Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.

+1 CC to Mr.M.Swamikannu, Advocate sr 106049.
+1 CC to Mr.S.Arun Kumar, Advocate sr 106448
+1 CC to Mr.P. Sankaranarayanan, Advocate sr 106125.

C.M.A.No.2439 of 2017
and
C.M.A.No.495 of 2018

SPD(CO)
SP(09/09/2020)