IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.07.2020
CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2570 and 3205 of 2007

C.M.A.No.2570 of 2007:

National Insurance Co. Ltd.,
No.37, Pantheon Road,
Egmore, Chennai-600 008. ... Appellant/2nd Respondent

..Vs..

1. N.Rama Rao
2. M. Lakshmi
3. M.Sridevi
4. M.Sindhu(Minor)
5. Harsha(Minor) Respondents/ Petitioners
6. P.Mani
7. R.Ekambaram
8. A.Sekar
9. United India Insurance Co. Ltd.,
No.82, G.M.M.Street,
Chennai-600 079.

(Respondents 6,7 and 8 are set exparte in the lower court)
(Minors rep.by their Mother and Natural Guardian R3 herein)
.....Respondents/ Respondents1,3,4&5

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 28.03.2007 made in MCOP No.1050 of 2002 on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.Vadivel
For Respondents : Mr.R.Swaminathan - R1 to R5
R6, 7 & 8 - ex parte
Mr.M.Krishnamoorthy - R9

C.M.A.No.3205 of 2007:
1. N.Rama Rao
2. M. Lakshmi
3. M.Sridevi
4. M.Sindhu
5.Harsha
6.

(Appellants 4 & 5 are declared as Major and 3rd appellant discharged from the guardianship and next friend vide court order dated 07.08.2019 in CMP. No.16779, 16781, 16783 and 16787 of 2019 in CMA. No.3205 of 2007)

... Appellants/ Petitioners

..Vs..

1. P.Mani
2. National Insurance Co. Ltd., No.37, Pantheon Road, Egmore, Chennai-600 008.
3. R.Ekambaram
4. A.Sekar
5. United India Insurance Co. Ltd., No.82, G.M.M.Street, Chennai-600 079.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against order and decreetal order dated 28.03.2007 in MACTOP. No.1050 of 2002 on the file of the Small Causes Court-II, Motor Accidents Claims Tribunal, Chennai.

For Appellants : Mr.R.Swaminathan
For Respondent : Mr.S.Vadivel - R2
Mr.M.Krishnamoorthy - R5
Not ready in notice - R1,R3 & R4

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

[These Appeals have been taken up for hearing through Video conferencing]

C.M.A.No.2570 of 2007 has been filed by the National Insurance Company Limited and C.M.A.No.3205 of 2007 has been filed by the claimants. Both of them have challenged the common award dated 28.03.2007 passed by the Motor Accident Claims Tribunal, (II Judge, Court of Small Causes), Chennai, in MCOP. No.1050 of 2002.

Brief facts leading to the filing of these Appeals:

2. The National Insurance company/Appellant in C.M.A.No.2570 of 2007 has challenged the quantum of compensation assessed by the Tribunal. The Claimants/Appellants in C.M.A.No.3205 of 2007 has sought for enhancement of compensation.

3. On 23.05.2001, at about 11.45 P.M., when Mr.Srinivasa Rao (deceased), aged about 34 years, was travelling in a car bearing Registration No.PY-01-E-3231 owned by his friend P.Mani, 6th respondent in CMA. No.2570 of 2007, driven by R.E.Ekambaram, 1st respondent in CMA. Mo.2510 of 2007, insured with National Insurance Company, near Annasalai-Guindy over Bridge, hit behind the lorry bearing Registration No.TN 09 H 9527 owned by A.Sekar/8th respondent in CMA. No.2570 of 2007 and insured with United India Insurance Company/9th respondent in CMA.No.2570 of 2007. The accident occurred due to applying of sudden brake by the driver of the lorry without any signal or indicator. As a result of the said accident, Srinivasa Rao sustained severe injuries and died. According to the claimants, the accident happened only due to the rash and negligent driving by the driver of both the car and the lorry.

4. The claimants have preferred a claim before the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai in MCOP No.1050 of 2002 seeking compensation for the death of Srinivasa Rao (deceased), as a result of the said accident.

5. By an award dated 28.03.2007 in M.C.O.P. No.1050 of 2002, the Motor Accidents Claims Tribunal, (II Judge), Court of Small Causes, Chennai, directed both the Insurance Companies viz., National Insurance Company and United Indian Insurance Company equally to pay the claimants, a compensation of Rs.10,90,000/- together with interest @ 7.5.% per annum from the date of claim petition till the date of deposit, excluding interest from 27.01.2006 to 31.10.2006 and also awarded costs.

6. The break-up details of the compensation awarded by the Claims Tribunal in favour of the claimants are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	10,20,000/-
Funeral expenses	5,000/-
Loss of love and affection regarding wife of the deceased	15,000/-
Loss of love and affection regarding the children of the deceased	50,000/-
Total	10,90,000/-

7. Aggrieved by the award dated 28.03.2007 passed in

M.C.O.P. No.1050 of 2002, C.M.A.No.2570 of 2007 has been filed by the National Insurance Company and C.M.A.No.3205 of 2007 has been filed by the claimants.

8. Heard Mr.R.Swaminathan, learned counsel for the Claimants, Mr.S.Vadivel, learned counsel for the National Insurance Company Limited and Mr.M.Krishnamoorthy, learned counsel for the United India Insurance Company Limited. Mr.P.Mani, owner of the car, Mr.R.Ekambaram, driver of the car and Mr.A.Sekar, driver cum owner of the lorry were set ex-parte both before the Tribunal as well as this Court.

9. Before the Tribunal, on the side of the claimants, seven documents were marked as Ex.P1 to Ex.P7 and two witnesses were examined viz., P.W.1 - Mrs.Sreedevi, wife of the deceased and P.W.2 - Mr.Srinivasa Raju - an eyewitness to the accident. On the side of National Insurance Company Limited/2nd respondent, two documents were marked as Ex.R1 and Ex.R2 and two witnesses were examined as R.W.1 and R.W.2.

10. Mr.Srinivasa Rao (deceased), aged about 34 years, died on 23.05.2001, as a result of the accident caused by two vehicles, viz., a Car bearing Registration No.PY-01-R-3231 insured with the appellant/National Insurance Company in CMA. No.2570 of 2007 and the lorry bearing registration No.TN 09 H 9527 insured with United India Insurance Company. FIR has been registered against the driver of the car insured with the appellant/National Insurance Company in CMA. No.2570 of 2007 and charge sheet has also been filed against him. Subsequently, he was acquitted by the criminal Court.

11. The legal representatives of the deceased have preferred a claim before the Motor Accidents Claim Tribunal seeking compensation for the death of M.Srinivasa Rao. In their claim petition, the claimants have pleaded that the deceased was an agriculturist and a partner in M/s.Virgo Leathers, having office at Nagappa Nagar, Chrompet, Chennai-44 and that he was earning around Rs.2,25,000/- per year from his partnership business as well as from the agricultural lands.

12. Before the Tribunal, the claimants have filed the income tax returns filed by the deceased for the assessment years 1999-2000, 2000-2001 and 2001 - 2002. As seen from the said income tax returns, which have been marked as Ex.P7 before the Tribunal for the assessment year 1999-2000, the deceased earned a sum of Rs.59,690/- from his partnership business and another sum of Rs.1,27,000/- through agriculture. Similarly, for the assessment year 2000-2001, the deceased earned a sum of Rs.69,337/- from his partnership business and Rs.91,400/- through agriculture and similarly, for the assessment year 2001-2002, the deceased

earned a sum of Rs.84,639/- from his partnership business and Rs.9,44,440/- through agriculture. No contra evidence has been produced by both the Insurance Companies to disprove the income tax returns viz., Ex.P7 filed by the claimants.

13. The Tribunal, under the impugned award has taken into consideration all the three income tax returns and has observed that the deceased would have earned a minimum of Rs.2,00,000/- per annum for the said period between 1999-2002. However, the claimants have not filed any supporting documents to prove that the agricultural income disclosed in the income tax returns was really earned by the deceased. The disclosure made by the deceased in his income tax returns regarding his agricultural income cannot be accepted without supporting documents as agricultural income is not subject to the payment of income tax. The Tribunal has rightly not accepted the income tax returns viz., Ex.P7. But, the Tribunal has fixed the income of the deceased on notional basis based on the contribution that he would have made to his dependents who are the claimants, and accordingly, the Tribunal has fixed the same at Rs.5,000/- per month. Excluding the agricultural income disclosed in the respective income tax returns for the assessment year 1999-2000, 2001-2002, if average of the income is taken from the partnership business, the assessment of the Tribunal with regard to monthly income of the deceased at Rs.5,000/- is a correct assessment.

14. The age of the deceased was 34 years at the time of the accident. Considering the age of the deceased, the Tribunal has rightly applied '17' multiplier as per judgment of the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC) and has rightly fixed the loss of dependency at Rs.10,20,000/-.

15. Insofar as the compensation awarded under various other heads are concerned, as indicated earlier in this judgment, the said compensation is also a just one and there is no scope for interference by this Court. Therefore, the appellant/National Insurance Company Limited in CMA. No.2570 of 2007 and the appellants/claimants in CMA. No.3205 of 2007, can neither seek for enhancement nor question the quantum of compensation assessed by the Tribunal under the impugned award.

16. The 9th respondent/United India Insurance Company in CMA. No.2570 of 2007 and the 5th respondent/United India Insurance Company in CMA. No.3205 of 2007, has not preferred any appeal against the finding given by the Tribunal that the driver of insured lorry is equally responsible for the accident. Hence, the said findings have now attained finality.

17. After considering the materials and evidence available on record, this Court is of the considered view that the quantum of compensation awarded by the Tribunal under the impugned award is a just compensation. Therefore, the grounds raised by the appellants viz., National Insurance Company and the claimants in both the appeals does not deserve any merit.

Conclusion:

18. Accordingly both these appeals are dismissed and the award passed by the Motor Accidents Claims Tribunal in MCOP. No.1050 of 2002 dated 28.03.2007 is confirmed. No costs.

19. It is represented by the learned counsel for the Appellant in CMA.No.2570 of 2007 that Appellant/National Insurance company Limited deposited the entire award amount pursuant to the order of this Court dated 12.10.2007 passed in M.P.No.1 of 2007. In view of the same, the National Insurance Company Limited is permitted to withdraw 50% of the award amount if it is found that they had deposited the entire award amount by filing appropriate application and the remaining 50% of the award amount shall remain to the credit of MCOP.No.1050 of 2002.

20. The 9th respondent/United India Insurance Company in CMA. No.2570 of 2007 is directed to deposit 50% of the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, after deducting the amount, if any, already deposited to the credit of MCOP.No.1050 of 2002, within a period of four weeks from the date of receipt of a copy of this Common Judgment.

21. On such deposit being made, the appellants/claimants in CMA. No.3205 of 2007 are permitted to withdraw their respective shares of award amount lying to the credit of MCOP.No.1050 of 2002 along with accrued interest by filing appropriate applications.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer
V.R.Section, High Court of Madras.

C.M.A.Nos.2570 and 3205 of 2007

ln co A.SK(11.03.2021)