IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1110 and 1111 of 2016
and
CMP Nos.8288 and 8290 of 2016

M/s.Transport Corporation of India Limited,
Transport House, 1st Floor, 2nd Cross,
Kalasipalayam, New Extension,
Bangalore. ....Appellant in both appeals

Vs

1.Mr.Thimmarayappa

2.Minor Yeshwanth Kumar
Rep. by Next friend and father Mr.Thimmarayappa

3.The Branch Manager,
The United India Insurance Company Ltd.,
Kamla Nagar, Delhi 110 007. ...Respondents in CMA 1110/2016

1.Mr.Sivalingam

2.The Branch Manager,
The United India Insurance Company Ltd.,
Kamla Nagar, Delhi 110 007. ...Respondentsin CMA 1111/2016

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.03.2015 passeed in MCOP Nos.223 of 2012 and 135 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

For Appellant in both appeals	:	M/s.J.R.K.Bhavanantham
For Respondents in CMA 1110/2016	:	Mr.K.Prasanna for R1 and R2 for M/s.Mukund R.Pandian No Appearance for R3
For Respondents in CMA 1111/2016	:	Mr.K.Prasanna for M/s.Mukund R.Pandian for R1 No Appearance for R2

COMMON JUDGMENT

(These cases have been heard through Video Conferencing)

Heard the learned counsel for the appellant Corporation and the learned counsel for the respondents/claimants.

2. These two appeals arising out of the award passed by the Tribunal at Hosur in M.C.O.P.No.223 of 2012 and M.C.O.P.No.135 of 2013.

3. The point canvassed by the appellant in both the appeals are one and the same. Hence, the matter taken up together for final disposal.

4. Common facts in both the claim petition are as follows:

On 02.09.2012 at about 01.30 p.m., Rajamma, Wife of Thimmarayappa and Mother of minor Yeshwanth Kumar was travelling on pillion in the motor cycle driven by one Mr.Sivalingam. When they were proceeding on Hosur to Krishnagiri Main Road, a Trailer Lorry bearing Registration No.HR-38-E-4302 owned by the Transport Corporation of India Limited, Bangalore and duly insured under the United India Insurance Company, came rash and negligently and dashed behind the motor bike bearing Registration No.TN-70- F-9820 driven by Mr.Sivalingam. Due to the impact, the pillion rider Rajamma fell down and sustained severe injury. The front wheel of the lorry ran over the legs of Rajamma. She was taken to the hospital for treatment. But she died on her way to Bangalore hospital. The rider of the two wheeler Sivalingam also sustained injury and was admitted in Om Sakthi, Dharmapuri and treated as inpatient from 02.09.2012 to 06.09.2012.

5. Claim petition in M.C.O.P.No.223 of 2012 was filed by the husband and minor son of the deceased Rajamma seeking compensation of Rs.16,00,000/-. Similarly, the injured motor cycle rider Sivalingam filed claim petition in M.C.O.P.No.135 of 2013, claiming compensation of Rs.5,00,000/- for the injury he sustained.

6. Before the Tribunal, since the cause of action was one and the same, both the petitions were tried together. The Tribunal in M.C.O.P.No.223 of 2012 awarded a sum of Rs.13,90,000 for the dependents of the deceased Rajamma. It awarded Rs.1,41,500/- in M.C.O.P.No.135 of 2013 to the injured claimant Sivalingam.

7. The Tribunal, after considering the defense taken by the Insurance Company that the driver of the offending vehicle had no valid driving license on the date of accident, ordered pay and recovery.

8. The vehicle owner aggrieved by the order of pay and recovery had preferred C.M.A.No.1110 of 2016 and C.M.A.No.1111 of 2016, which is now under consideration.

9. The appeals were filed with some defects and delay. Before these two appeals could be tried and taken up for consideration, it has so happened that the Insurance Company also filed an appeal against the impugned award of the Tribunal dated 30.03.2015. At the S.R. Stage itself, the Insurance Company has entered into a settlement before the Lok Adalat and agreed to pay Rs.12,50,000/- to the dependents of Rajamma, who are claimants in M.C.O.P.No.223 of 2012 and the award of the Tribunal in respect of the claim petition filed by Sivalingam in M.C.O.P.No.135 of 2013 was confirmed in the Adalat. The Insurance Company has paid the compensation as settled by the National Lok Adalat.

10. Unfortunately in the Lok Adalat proceedings, the appellant herein, who is shown as the second respondent were not served with notice and they were not party to the Mediation took place during the National Lok Adalat held on 09.12.2017. In their absence and knowledge, the Insurance Company and the claimants have entered compromise.

11. In the said circumstances, when this matter came up for final disposal, learned counsel for the appellant submitted that when the Tribunal has awarded compensation with condition and liberty to the Insurance Company to pay and recover from the insured, without consent and participation of the insured, the Insurance Company has agreed to pay a sum of Rs.12,50,000/- to the claimants in M.C.O.P.No.223 of 2012 and Rs.1,41,500/- to the claimants in M.C.O.P.No.135 of 2013.

12. Having agreed to pay the said amount on their own without the concurrence of the vehicle owner, the liberty given by the Tribunal to the insurer to recover the money from the insured gets waived. That apart, on merits, the driver of the

offending lorry had a valid license to drive LMV. In view of the decision rendered in Mukund Devanand case by the Supreme Court and followed by other judgments of this Court, the driver of the vehicle deemed to have valid driving license to drive the Trailer Lorry, since there were no whisper about the laden weight of the vehicle.

13.The second limb of the submission made by the learned counsel for the appellant is that the Tribunal has erroneously and excessively fixed the compensation payable to the dependents of the deceased Rajamma. When there is no evidence to show her income, the Tribunal has notionally fixed Rs.6,500/- as her monthly income and 50% added towards future prospects. Besides, awarded sum of Rs.1,00,000/- for loss of consortium and Rs.20,000/- for funeral expenses. By any parameter, the said compensation falls under the category of excessiveness.

14. Learned counsel appearing for the claimant in both the cases would submit that pursuant to the Lok Adalat Award dated 09.12.2017, the Insurance Company have deposited the money and the claimants have withdrawn the money. Insofar as the pay and recovery condition, the learned counsel for the claimants submit that in the National Lok Adalat Award, it is specifically stated that the order of pay and recovery by the Tribunal remains unchanged. Therefore, there is no purpose in entertaining this appeal, which has already been reached finality by the award of Lok Adalat.

15. Considering the legal principle involved in the matter, this Court at the outset would like to record that in the absence of consent and participation in the Lok Adalat held on 09.12.2017, the said award will not bind the appellant herein. If the Insurance Company has taken a conscious decision to settle Rs.12,50,000/- to the claimants in M.C.O.P.No.223 of 2012, it is their decision, that will not bind on the appellant.

16. As far as the second issue regarding the validity of the pay and recovery order, this Court on perusing the driving license of Mr.Md Sahid Khan, who was the driver of the offending vehicle, finds that it is LIGHT MOTOR VEHICLE TRANSPORT GOODS, TRANSPORT VEHICLE M/HMV (REGD CHASIS) GOODS. It was issued on 02.09.2015, later renewed after expiry from 08.09.2012. The accident occurred on 02.09.2012 at about 01.30 p.m. On the date and time of the accident, the driver of the offending vehicle had no license. Therefore, the order of the Tribunal to pay and recovery is justifiable.

17. Regarding the quantum, this Court finds on the face of the award, the quantum of compensation awarded to the claimants

in M.C.O.P.No.223 of 2012 is excessive beyond the parameter and guidelines laid by the Constitution Bench of the Supreme Court.

18. Relying upon Syed Sadiq case 2014(1) TNMAC 459 (SC), the Tribunal has notionally fixed Rs.6,500/- for the deceased Rajamma. At the time of her death, Rajamma was 37 years old, her husband was 43 years old and the second claimant/her son was 17 years old. It is stated in the claim petition that she is an agriculturist, self employed and earning Rs.10,000/- p.m.. For none of these three factors, the claimant had placed evidence before the tribunal.

19. Whether she is an agriculturist as a landlord or Coolie, whether she was self employed owning some land and from that land, she was earning Rs.10,000/- per month is left to the imagination of the Tribunal. When there is no evidence to indicate that the deceased was having some source of income, we have to take her as a Home Maker. For notional income fair assessment based on status of life should have been taken into consideration. Mechanically fixing the notional income unrelated to evidence placed is unfair.

20. The Tribunal has blindly fixed the notional income of the deceased. Without taking note of the fact no evidence placed by the claimant to show source of income or skill to earn. Therefore, this Court holds that a sum of Rs.4,500/- shall be the reasonable income of the Home Maker during the period 2012. The Tribunal has added 50% future prospects, which should be only 40% as per Pranay Sethy's case. Since the deceased was 37 years old at the time of death, by applying multiplicand 15, after deducting 1/3 towards her personal expenditure, the loss of income is computed to Rs.7,56,000/- (4500+1800)X2/3X12X15). Accordingly, the award of the Tribunal is modified as below:

Compensation under Various Heads	Award passed by this Court
Loss of income (4200X12X15)	Rs.7,56,000/-
Loss of Consortium (40,000X2)	Rs. 80,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.8,66,000/-

21. Thus, the fair and justifiable compensation for the claimants in M.C.O.P.No.223 of 2012 shall be Rs.8,66,000/-.

However, as the Insurance Company has voluntarily offered and agreed to pay Rs.12,50,000/- in Lok Adalat without the consent of the insured, the claimants need not repay the excess amount paid. It is for the Insurance Company to bear the excess amount and only Rs.8,66,000/- along with interest at 7.5% p.a. from the date of accident till the date of recovery shall be recoverable from the appellant/Owner of the Vehicle.

22. As far as CMA No.1111 of 2016, where the award is Rs.1,41,500/-, this Court finds that there is no necessity to interfere with the said quantum of the award for the injured claimant Sivalingam. The Insurance Company is entitle to recover the same from the appellant/insured.

23. With the above finding and modifications, both the appeals are partly allowed. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Vri

To

Motor Accidents Claims Tribunal,
Sub Judge,
Hosur.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Mukund R.Pandian, Advocate Sr.39868

CMA Nos.1110 and 1111 of 2016

gmr[co]
srg 12/08/2021