IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. Nos.2130 of 2015 and 695 of 2017
And
M.P.No.1 of 2015

CMA No.2130 of 2015:

United India Insurance Company Limited,
No.235, New Military Road,
Avadi,
Chennai. .. Appellant/Respondent No.2

vs.

Amudha .. Respondent No.1/Petitioner No.1
Minor Rajesh .. Respondent No.2/Petitioner No.2
Minor Kala .. Respondent No.3/Petitioner No.3
(Minors R-2 and R-3 are represented by their mother R-1/Mrs.Amudha)
Saroja .. Respondent No.4/Petitioner No.4
G.P.Chitra Parthasarathy .. Respondent No.5/Respondent No.1

CMA No.695 of 2017:

Amudha .. Appellant No.1/Petitioner No.1
Minor Rajesh .. Appellant No.2/Petitioner No.2
Minor Kala .. Appellant No.3/Petitioner No.3
(Minors Appellants 2 and 3 are represented by their mother and next friend first Appellant/Mrs.Amudha)

Saroja .. Appellant No.4/Petitioner No.4

Vs.

1.G.P.Chitra Parthasarathy

2.United India Insurance Company Limited,
No.235, New Military Road,
Avadi,
Chennai. .. Respondents/Respondents

CMA No.2130 of 2015 is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2014 passed in M.C.O.P.No.296 of 2010 on the file of the learned II Additional District Judge, II Additional District Court-cum-Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

CMA No.695 of 2017 is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2014 passed in M.C.O.P.No.296 of 2010 on the file of the learned II Additional District Judge, II Additional District Court-cum-Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

For Appellant in CMA No.2130 of 2015 and for R-2 in CMA 695 of 2017 : Mr.C.Paranthaman

For Respondents 1 to 4 in CMA No.2130 of 2015/Appellants in CMA No.695 of 2017 : Mr.J.Mahalingam

For R-1 in CMA No.695 of 2017 and R-5 in CMA No.2130 of 2015] : Ex Parte

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

CMA No.2130 of 2015 is directed against the judgment and decree dated 19.02.2014 passed by the learned II Additional District Judge, II Additional District Court-cum-Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee in M.C.O.P.No.296 of 2010.

2. CMA No.695 of 2017 is directed against the judgment and decree dated 19.02.2014 passed by the learned II Additional District Judge, II Additional District Court-cum-Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee in M.C.O.P.No.296 of 2010.

3. The accident occurred on 11.12.2006 at about 09.00 A.M., when the deceased was riding the Motorcycle bearing Registration No.TN-24-K-3627 on the East-West Hanumanthapuram-Kondamangalam Road, the driver of the first respondent's Car bearing Registration No.TN-05-A-9168 driven the said Car in a rash and negligent manner in the opposite direction and dashed against the Motorcycle, which resulted in the deceased sustained

fatal injuries and died. The Maraimalai Nagar Police Station registered a case in Crime No.603 of 2006.

4. The claim petition was filed, claiming Rs.13 lakhs. The Insurance Company disputed the compensation stating that at the time of accident, the deceased was riding his Motorcycle in a rash and negligent manner and due to hurry, skidded on the road and sustained head injury and died. Therefore, the deceased is the tort-feasor and hence, he is not liable to get any compensation from the Insurance Company.

5. The Tribunal adjudicated the issues with reference to the claim petition as well as the counter filed by the Insurance Company. The Tribunal arrived a conclusion that the deceased also committed an act of negligence by driving the Motorcycle in a rash and negligent manner. However, the Tribunal fixed 30% negligence on the side of the driver, who was driving the Motorcycle and 70% liability is fixed on the Insurance Company. In other words, 30% compensation was fixed for the negligence of the deceased Mr.Murugan and 70% liability is fixed on the Insurance Company in view of the fact that the policy coverage was established and the liability is also fixed.

6. The Car, which is met with an accident, was insured with the appellant-Insurance Company. Thus, 70% liability was fixed on the appellant-Insurance Company. The Tribunal considered the age of the deceased and applied multiplier 17 and awarded compensation of Rs.10,27,000/-.

7. The learned counsel appearing on behalf of the appellant mainly contended that the ratio of negligence fixed by the Tribunal is 70% and 30% is improper. This apart, the multiplier applied is also incorrect, in view of the fact that 16% multiplier is to be applied as per the ratio laid down in Apex Court.

8. Challenging these two aspects, the leaned counsel appearing on behalf of the Insurance Company is of the opinion that the compensation awarded to claimants is exorbitant and it requires to be interfered with by this Court.

9. The learned counsel appearing on behalf of the appellant in the Courts below disputed the contentions by stating that the Tribunal has applied multiplier 17 based on the Schedule to the Motor Vehicles Act and this Apart, the deceased was aged about 32 years at the time of accident and the first claimant is the wife and the claimants 2 and 3 are the minor children and the fourth claimant is the mother of the deceased.

10.The deceased was the sole breadwinner of the family and all these factual circumstances were considered by the Tribunal and accordingly, the Tribunal fixed the compensation by taking note of the over all circumstances. Under these circumstances, the grounds raised by the Insurance Company is not tenable and in fact, the quantum of compensation is inadequate in view of the fact that the Tribunal awarded Rs.10,000/- towards loss of consortium, Rs.10,000/- towards love and affection to the claimants 2 and 3 and Rs.2,500/- towards love and affection to the fourth claimant. In all these heads, the Tribunal not awarded adequate compensation and therefore, the claimants have preferred CMA No.695 of 2017.

11. This Court is of the considered opinion that as far as the fixation of negligence is concerned, the findings of the Tribunal reveals that the rider of the Motorcycle and the deceased also committed an act of negligence. While considering the negligence committed by the deceased, Tribunal fixed the quantum of compensation at 30% on the side of the deceased and 70% liability on the side of the Insurance Company. In such cases, where the deceased is aged about 32 years and died leaving his wife and two children and the mother, the Courts are bound to take certain lenient approach in respect of fixing the quantum of compensation.

12. In CMA No.2130 of 2015, undoubtedly, the Tribunal considered the negligence committed by the Tribunal and fixed 30%. But, in the event fixing more percentage, then the quantum of compensation will be reduced and the same will cause prejudice to the interest of all claimants, more specifically, two minor children, unemployed wife and the age-old mother. This being the facts and circumstances, this Court is not inclined to accept the grounds raised by the Insurance Company.

13. As far as the Courts below is concerned, the Tribunal has not awarded adequate compensation under various, which requires reconsideration. However, in respect of other grounds, the same is to be re-enhanced. Accordingly, the following revised enhancement in compensation is awarded:-

	Rs.
Loss of Revenue (Rs.4,875/-x12x16)	9,36,000/-
Loss of Consortium to the first petitioner	40,000/-
Love and Affection to 2nd and 3rd petitioners	1,00,000/-

Love and Affection to fourth petitioner	50,000/-
Loss of Transport Expenses	10,000/-
Funeral expenses	15,000/-

Total Award amount	11,51,000/-
Deducted 30% compensation already awarded by Tribunal being negligence on the part of the deceased	3,45,300/-
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Balance	8,05,700/-
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Thus, the total balance compensation payable to the claimants/respondents comes to Rs.8,05,700/-, as detailed supra.

14. Accordingly, the appellant-Insurance Company is directed to deposit the enhanced compensation amount along with accrued interest at rate of 7.5% per annum, if not deposited, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents-claimants are permitted to withdraw the amount by filing an appropriate application and as per the apportionment granted by the Tribunal in the Motor Accidents Claims Tribunal less the amount already withdrawn. The payments are to be made only through RTGS.

15. Accordingly, CMA No.2130 of 2015 filed by the appellant/Insurance Company stands dismissed and consequently, C.M.A.No.695 of 2017 filed by the claimants stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

The II Additional District Judge,
II Additional District Court-cum-Motor Accidents Claims Tribunal,
Tiruvallur at Poonamallee.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+2ccs to Mr.C.Paranthaman, Advocate SR.No. 20687

CMA Nos.2130 of 2015

and 695 of 2017

A.SK(28.12.2020)