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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2167 and 2729 of 2013
and
M.P.No.1 of 2013

C.M.A.No.2167 of 2013

M/s.HDFC General Insurance
Company Limited
Rep. by its Duly constituted Attorney
VI floor, Leela business park
Anderi-Kurla road, Anderi East
Mumbai-400 059.

.. Appellants/2nd Respondent

Vs.

1.Nagarajan
2.Kathuribai

3.Baskar

.. Respondents/Petitioners/
1st Respondent

C.M.A.No.2729 of 2013

1.Nagarajan
2.Kathuribai

.. Appellants/Petitioners

vs.

1.Baskar
(R1 remained exparte before the
Tribunal and hence, notice to R1
is dispensed with)

2.M/s.HDFC General Insurance
Company Limited
Rep. by its Duly constituted Attorney
VI floor, Leela business park
Anderi-Kurla road, Anderi East
Mumbai-400 059.

.. Respondents/Respondents



Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.06.2012 made in M.C.O.P.No.419 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

In C.M.A.No.2167 of 2013

For Appellant : Mr.J.Michael Visuvasam

For R1 and R2 : Mr.R.Amar Deep

For R3 : Exparte

In C.M.A.No.2729 of 2013

For Appellants : Mr.R.Amar Deep

For R2 : Mr.J.Michael Visuvasam

For R1 : Exparte

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

C.M.A.No.2167 of 2013 is filed by the Insurance Company challenging the award dated 28.06.2012 made in M.C.O.P.No.419 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

C.M.A.No.2729 of 2013 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 28.06.2012 made in M.C.O.P.No.419 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.Both the appeals are arising 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 the claim petition in M.C.O.P.No.419 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai, claiming a sum of Rs.61,00,000/- as compensation for the death of one Vignesh Kannan, who died in the accident that took place on 14.07.2008.



4. According to the claimants, on the date of accident, i.e., on 14.07.2008 at about 14.00 hours, while the deceased was riding in his motorcycle along with his friend as a pillion rider near Sathiyamangalam village in Tiruvannamalai to Gingee road, a car belonging to the 1st respondent driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the said impact, the deceased fell down on the road and both the deceased and the pillion rider of the motorcycle succumbed to their injuries. Therefore, the claimants filed the above claim petition claiming compensation against the respondents.

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

6. The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the car involved in the accident was not insured with the 2nd respondent/Insurance Company. The claimants have to prove that the driver of the car possessed valid driving license at the time of accident. The claimants have not mentioned the name of the hospital, in which the deceased has taken treatment as in-patient. The claimants have not made the owner and insurer of the motorcycle as parties. Therefore, the claim petition is bad for non-joinder of necessary parties. The 2nd respondent/Insurance Company has appointed an independent investigator to enquire the accident. The investigator in his report stated that the motorcycle driven by the deceased did not carry any registration number and it was newly purchased. The driver of the car belonging to the 1st respondent has consumed alcohol at the time of accident and in the charge sheet also, it has been mentioned. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st claimant, father of the deceased examined himself as P.W.1, one Balaraman, father of the pillion rider, was examined as P.W.2, one Parthasarathy, co-student of the deceased, was examined as P.W.3 and one Jayaraj, eye-witness to the accident, was examined as P.W.4 and marked 23 documents as Exs.P1 to P23. On the side of the respondents, one Sundaramurthy was examined as R.W.1, one Murugan, author of F.I.R., was examined as R.W.2, one Lakshmi, Constable, was examined as R.W.3, one Jayaraj, was examined as R.W.4 and marked six documents as Exs.R1 to R6.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to



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rash and negligent driving by the driver of the car belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said car to jointly and severally pay a sum of Rs.12,78,890/- as compensation to the claimants.

9. Against the said award dated 28.06.2012 made in M.C.O.P.No.419 of 2009, the 2nd respondent/Insurance Company has come out with C.M.A.No.2167 of 2013 challenging the quantum of compensation awarded by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.2729 of 2013 seeking enhancement of compensation.

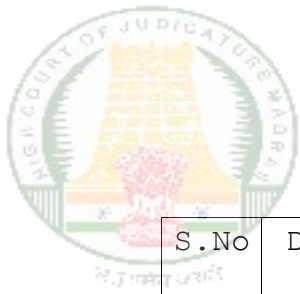
10. The learned counsel appearing for the claimants contended that the deceased had completed B.E. degree and was earning a sum of Rs.30,000/- per month by doing real estate & share market business at the time of accident. The Tribunal without considering the same, fixed only a meagre sum of Rs.12,000/- per month as notional income of the deceased. The Tribunal ought to have applied multiplier '18' based on the age of the deceased. The Tribunal has not granted any enhancement towards future prospects and awarded any compensation towards loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of C.M.A.No.2167 of 2013 filed by the 2nd respondent/Insurance Company.

11. The learned counsel appearing for the 2nd respondent/Insurance Company contended that in the absence of any material evidence to prove the income of the deceased by earning through self-employment, the Tribunal erred in fixing a sum of Rs.12,000/- per month as notional income of the deceased. The deceased was a bachelor and the Tribunal ought to have deducted 1/2 instead of 1/3rd towards personal expenses. The 1st claimant is father of the deceased, he has source of income and he is not the dependant of the deceased. The Tribunal failed to see that the age of the claimants are 54 and 49 years respectively and erred in fixing the age as 50 years by taking average for applying multiplier. The amounts awarded by the Tribunal under different heads are excessive. The claimants are not entitled for any enhancement of compensation and prayed for allowing C.M.A.No.2167 of 2013 filed by the 2nd respondent/Insurance Company and dismissal of C.M.A.No.2729 of 2013 filed by the claimants.

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



13. It is the contention of the claimants that the deceased was a B.E. graduate and was earning a sum of Rs.30,000/- per month by doing real estate business in the name of N.K.B. Land Promoters and also share market business at the time of accident. They have marked the apprentice appointment order from Sutherland Global Services as Ex.P5 to prove that the deceased was also selected for the job. It is the further contention of the claimants that if the deceased is alive, he would have got decent job with good salary. The Tribunal considering the fact that the deceased was a B.E. graduate from a reputed institution and Ex.P5/appointment order, fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is meagre. The claimants have not filed any document to show that the deceased joined in the Sutherland Global Services and have not filed any income tax returns. Considering the educational qualification of the deceased and the year of accident, i.e., 2008, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. As per Ex.P2/post-mortem certificate, the deceased was aged 22 years at the time of accident. The Tribunal erred in applying multiplier '11' based on the age of the parents of the deceased. As per the judgment of the Hon'ble Apex Court, age of the deceased has to be taken into account for applying multiplier. The correct multiplier applicable is '18' as the deceased was aged 22 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 1/2 instead of 1/3rd towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,65,600/- (Rs.13,000/- + 5200 [Rs.13,000/- X 40%] X 12 X 18 X 1/2). The Tribunal has awarded a sum of Rs.10,000/- altogether towards funeral expenses & transportation, which is meagre. Hence, a sum of Rs.15,000/- and Rs.10,000/- are awarded separately towards funeral expenses and transportation respectively. The sum of Rs.20,000/- awarded by the Tribunal towards loss of love & affection is meagre. Considering the fact that the claimants have lost their son at young age, the compensation awarded by the Tribunal towards loss of love & affection to the claimants is hereby enhanced to Rs.40,000/- each. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	11,88,000	19,65,600	Enhanced
2.	Loss of love and affection to the claimants	20,000	80,000	Enhanced
3.	Funeral expenses and transportation	10,000	15,000 10,000	Granted
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	59,890	59,890	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	12,78,890	21,46,490	Enhanced by Rs.8,67,600/-

14. In the result, C.M.A.No.2167 of 2013 filed by the 2nd respondent/Insurance Company is dismissed. C.M.A.No.2729 of 2013 filed by the claimants is partly allowed and the compensation of Rs.12,78,890/- awarded by the Tribunal is hereby enhanced to Rs.21,46,490/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the claimants are not entitled for any interest for the delay period on the amount of Rs.8,67,600/- enhanced by this Court as per the order of this Court dated 01.08.2013 in M.P.No.2 of 2013 in C.M.A.SR.No.56605 of 2013. Both the 1st respondent and the 2nd respondent/Insurance Company are directed to jointly and severally deposit the enhanced 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 as per the apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Judge
The Motor Accidents Claims Tribunal
Tiruvannamalai.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.23721

+2cc to Mr.V.Karnan, Advocate, S.R.No.23798 & 23799

C.M.A.Nos.2167 and 2729 of 2013
and M.P.No.1 of 2013

PA (CO)
SB(28/07/2021)