IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.894 & 602 of 2011
and
M.P.No.1 of 2011

CMA.No.894 of 2011
1.Krishnan
2.K.Valarmathy
3.K.Ambedhkar
4.K.Mohanasundaram
5.K.Poongothai
6.K.Velu
7.K.Meera … Appellants/Claimants

vs.

1.A.Kaja
2.United India Insurance Company Limited,
Kalpakkam Pudupattinam Road.
Now second respondent office at
T.P.Hubb, 134, Greams Road,
Chennai – 6. … Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree made in MCOP.No.1298 of 2007 dated 22.09.2010 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court) Chennai.

For Appellants : Mr.M.Velu
For Respondent 2 : Mr.D.Bhaskaran
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CMA.No.602 of 2011
United India Insurance Company Limited,
Kalpakkam Pudupattinam Road. … Appellant/2nd Respondent

vs.

1.Krishnan
2.K.Valarmathy
3.K.Ambedhkar
4.K.Mohanasundaram

5.K.Poongothai
6.K.Velu
7.K.Meera ...Respondents1 to 7/Claimants
8.A.Kaja ...8th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 22.09.2010 made in MCOP.No.1298 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judge, In the court of Small Causes) Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents 1 to 7 : Mr.M.Velu
For Respondent 8 : No appearance

COMMON JUDGMENT

(These Appeals have been taken up for hearing through Video Conferencing)

These two appeals have been filed, one by the insurance company and the other by the claimants challenging the award dated 22.09.2010 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) in MCOP.No.1298 of 2007.

2. The Insurance Company who is the Appellant in CMA.No.602 of 2011 has challenged the award questioning the quantum of compensation awarded by the Tribunal to the claimants who are the appellants in CMA.No.894 of 2011. The claimants being unsatisfied with the quantum of compensation awarded by the Tribunal have preferred CMA.No.894 of 2011 seeking for enhancement.

3. It is the contention of the insurance company that the claimants have not filed any material evidence like family ration card, voter identity card, school certificate etc., to prove the age of the deceased. According to them, the Tribunal has erroneously accepted the postmortem certificate as the proof for the age of the deceased and has erroneously fixed the same at 52 years. Further it is their contention that the Tribunal has applied 11 multiplier without any documentary evidence placed before the Tribunal to establish that the deceased was aged 52 years at the time of the accident. It is also their contention that the Tribunal erred in granting 3,16,800/- towards loss of income by adopting 11 multiplier without any basis and without any material evidence.

4. However, it is the contention of the claimants that the quantum of compensation awarded by the Tribunal is not a just

compensation. According to them, the deceased was earning Rs.200/- per day at the time of the accident. But the Tribunal has erroneously fixed the monthly income of the deceased as Rs.3,000/- per month which is too low. According to them, the deceased was a vegetable merchant at Koyambedu Market in Chennai and was earning Rs.200/- per day and therefore, the assessment of monthly income of the deceased by the Tribunal is erroneous. According to them, the just compensation is Rs.7,00,000/- whereas the Tribunal has awarded only Rs.3,45,000/- which is not a correct assessment.

5. Heard Mr.D.Bhaskaran, learned counsel for the Insurance Company and Mr.M.Velu, learned counsel for the claimants.

6. The Tribunal under the impugned award has awarded a sum of Rs.3,45,000/- to the claimants as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	3,16,800/- (3000 - 1/5 = 2,400 x 12 x 11)
Loss of consortium	10,000/-
Loss of love and affection	10,000/-
Funeral and Transport Expenses	8,200/-
Total	3,45,000/-

7. The finding as regards the negligence of the insured vehicle has now attained finality, since no appeal has been filed by the insurance company challenging the said finding.

8. As rightly pointed out by the learned counsel for the insurance company, without any material and documentary evidence and based on the postmortem certificate which was marked as Ex.P3, the Tribunal has fixed the age of the deceased as 52 years. As seen from the counter statement filed by the insurance company, they have categorically denied that the deceased was aged 50 years as pleaded in the claim petition filed before the Tribunal by the Claimants. They have pleaded in their counter statement that only through material and documentary evidence, the claimants will have to establish the age of the deceased at the time of the accident. While that be so, the claimants ought to have produced sufficient material documents like family ration card, voter Identity card or school certificate to prove the age of the deceased at the time of the accident.

9. Before the Tribunal, the claimants have not filed any such documentary evidence to prove that the deceased was aged 52 years at the time of the accident as held by the Tribunal. In the claim petition, the claimants have pleaded that the deceased was aged 50 years whereas the Tribunal has assessed the age of the deceased as 52 years based on the postmortem certificate Ex.P3. When the insurance company has categorically denied that the deceased was aged 50 years or 52 years as the case may be, the burden to prove the age of the deceased is upon the claimants who are the Appellants in CMA. No.894 of 2011. It is also contended by the learned counsel for the insurance company that the accident report reveals that the deceased was aged 70 years but the same was not marked as exhibit before the Tribunal.

10. After considering the aforementioned factors, this Court is of the considered view that the assessment of the age of the deceased as 52 years at the time of the accident by the Tribunal is an incorrect assessment and it is not supported by any material and documentary evidence. The Tribunal without proper assessment of the age of the deceased has applied 11 multiplier based on the age mentioned in the postmortem certificate Ex.P3. As observed earlier, the assessment of the age of the deceased has been erroneously done by the Tribunal and therefore, the adoption of 11 multiplier is incorrect.

11. The Appellants 2 to 7 in CMA.No.894 of 2011 being married sons and daughters of the deceased, cannot be treated as dependents of the deceased. No evidence has also been adduced before the Tribunal to prove that the Appellants 2 to 7 are the dependents of the deceased. Therefore, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased but instead the Tribunal has erroneously deducted 1/5th towards the personal expenses which is not in accordance with the judgment of the Hon'ble supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC Supreme Court. For the foregoing reasons, enhancement sought for by the claimants/Appellants in CMA.No.894 of 2011 does not deserve any merit as compensation awarded by the Tribunal is a just compensation.

12. After considering the year of the accident and in view of the fact that the claimants have not been able to prove the age of the deceased before the Tribunal as 52 years as fixed by the Tribunal, the compensation awarded under various heads by the Tribunal is a just compensation in the considered view of this Court. The appeal filed by the Appellant insurance company in CMA.No.602 of 2011 also does not deserve any merit as no

contra evidence has been produced by the insurance company to substantiate the contentions raised by them in their appeal.

13. In the result, both the appeals are dismissed. The Insurance company who is the Appellant in CMA.No.602 of 2011 is directed to deposit the amount awarded by the Tribunal after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.1298 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the amount along with accrued interest lying to the credit of MCOP.No.1298 of 2007 by filing an appropriate application. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

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

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

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