

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1835 and 1836 of 2014

Basavaraju ... Appellant in CMA.No.1835 of 2014

1. Sarajamma
2. Paramila
3. Prasanna
4. Prathapa
5. Chikkaiah

... Appellants in CMA.No.1836 of 2014
Vs.

1.Santhana Vetrivel

2.The Reliance General Insurance Co.,
Gee Jay Arcade,
141/71, T.V.Samy Road,
West R.S.Puram.
Coimbatore - 641 002.

.. Respondents in both the appeals.

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.Nos.533 and 538 of 2008 dated 03.01.2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari respectively.

For Appellants : Mr.N.S.Sivakumar
in both the appeals.

For Respondents : R1 - Notice Served.
No appearance.
Mr.K.Moorthy, for R2
in both the appeals.

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COMMON JUDGMENT

The appellants, who are the claimants, filed there appeal for enhancement of compensation, as against the judgment and decree made in MCOP.Nos.533 and 538 of 2008 dated 03.01.2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2. According to the appellants, on 17.03.2008 at about 4.30pm the Basavaraju/appellant in CMA.1835 of 2014 and deceased Boraiah along with some others went in a tourist van bearing Reg.No.KA12-8439. The appellants in CMA.No.1836 of 2014 are the legal heirs of deceased Boraiah (i.e, wife, daughter, sons and father). The driver of the first respondent drove the bus bearing Reg.No.TN63-D-0693 hit the van in Dindigul to Madurai main road near Dabedar Sandai. The injured were admitted in Government Hospital Madurai and thereafter shifted to Sagar Apollo Hospital, Bangalore. At the time of accident Basavaraju was aged about 45years and earning a sum of Rs.25,000/- through his agricultural work and deceased Boraiah was 40years and earning a sum of Rs.10,000/- through village secretary job. A criminal case was registered in Samayanallur Police Station for the offences under Section 279, 337, 338, 304 (A) IPC, against driver of the 1st respondent bus/Pandi.

3. The case of the second respondent/insurance company is that the accident had happened only due to carelessness of the driver of the van, both the vehicles got damaged in front portion, it shows that there is a head on collision. Therefore, the composite negligence of the driver of the van also to be taken into consideration. The accident is a head on collision, the owner and insurer of the van are also to be added as necessary parties in the claim petition. Hence, the claim is bad for non-joinder of necessary parties.

4. Though notice to the 1st respondent was served as early as on 26.07.2014, there is no representation for him either in person or through the learned counsel.

5. In order to prove the case of the claimant, PW1 to PW3 were examined and marked Ex.P1 to Ex.P12. No oral and documentary evidence has been marked on the side of the respondents.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The learned counsel for the appellant submits that the appellant in CMA.No.1835 of 2014 is earning a sum of Rs.25,000/- p.m. through his agricultural work. Failure on the part of the appellant to produce any documents to prove his monthly income, the Court below fixed the income at Rs.4,500/-p.m., in the agricultural activities, no one can give any proof for the income out of the agricultural proceeds. The Doctor/PW3 has examined the appellant and fixed the disability at 80% for permanent disability, the Tribunal has taken only 75% for calculating the permanent disability.

8. The learned counsel for the second respondent/insurance company submits that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant in CMA.No.1835 of 2014 and awarded fair compensation, which is on higher side.

9. From the available records, it is seen that the tribunal has rightly considered the case of the claimant in CMA.No.1835 of 2014 in fixing the disability at 75% and Rs.2000/- per percentage is a reasonable amount for disability factor. Considering the age of the claimant and fixed a sum of Rs.4,500/-p.m. as monthly income, that too in the absence of any material evidence to prove his income is justifiable one. That apart considering the head on collusion and other mentioned circumstances, Tribunal has rightly held that the drivers of both the vehicle are jointly responsible and thereby fixed 80% liability on the driver of the 1st respondent bus and 20% on the driver of the Van. However, the Tribunal has not awarded any amount towards attendant charges and awarded only a meager amount towards pain and sufferings, considering the nature of the injuries sustained by the claimant in CMA.No.1835/2014, definitely a person would have assisted him in carrying out even his day today activities, hence, this Court is inclined to award a sum of Rs.10,000/- towards attendant charges and enhance the amount of Rs.15,000/- to Rs.35,000/- under the head of pain and sufferings. In CMA.No.1836 of 2014, this Court inclined to enhance the amount of Rs.5,000/- to Rs.10,000/- towards funeral expenses and Rs.1,25,000/- awarded under the head of love and affection is hereby enhanced to Rs.1,50,000/-. The award amount of Rs.50,000/- towards consortium to the wife of the deceased shall be reduced to Rs.40,000/-.

10. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation in both the cases are as follows :-

CMA.No.1835 of 2014

Sl.No.	Heads	Amount
1	Disability	1,50,000
2	Pain and sufferings	35,000
3	Loss of income during treatment	13,500
4	Extra Nutrition	5,000
5	Transport	10,200
6	Medical bills	4,21,300
7	Attendant charges	10,000
	Total	6,45,000

Sl.No.	Heads	Amount
	Appellant is entitled for after deducting 20%	5,16,000

CMA.No.1836 of 2014

Sl.No.	Heads	Amount
1	Loss of dependency	5,26,500
2	Loss of Consortium (wife of the deceased)	40,000
3	Loss of Love and affection	1,50,000
4	Funeral expenses	10,000
5	Transport	5,000
	Total	7,31,500
	Appellants are entitled for after deducting 20%	5,85,200

11. The compensation of Rs.6,15,000/- is enhanced to Rs.6,45,000/- after deducting the 20% the claimant in CMA.No.1835 of 2014 is entitled for Rs.5,16,000/-. The compensation of Rs.7,11,500/- is enhanced to Rs.7,31,500/- after deducting the 20% the claimants in CMA.No.1836 of 2014 are entitled for Rs.5,85,200/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimants are permitted to withdraw the entire amount by filing separate cheque application.

12. In the result, the Civil Miscellaneous appeals are partly allowed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsh

To The Motor Accident Claims Tribunal,
Sub Court, Sankari.

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

+2ccs to Mr.N.Siva kumar , Advocate SR.No. 5149,5150

+2ccs to Mr.K.Moorthy, Advocate SR.No. 62559,6256

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A.SK(31.03.2021)