IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos. 2341 of 2014 and 767 of 2017

C.M.A.No.2341 of 2014:

United India Insurance Company Limited,
Near Telephone Exchange,
L.B.Road,Adyar,
Chennai-600 020 .. Appellant/R2

Vs.

1.Vishvakumar
2.Thanikachalam
3.Gomathi .. RR1 to 3/Petitioners
4.Kaliyappan .. Respondent 4/R1

C.M.A.No.767 of 2017

1.Vishvakumar
2.Thanikachalam
3.Gomathi .. Appellants/ Petitioners

Vs.

1.Kaliyappan
2.United India Insurance Company Limited,
Near Telephone Exchange,
L.B.Road,
Adyar,
Chennai-600 020 .. Respondents/ Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.01.2014 made in M.C.O.P.No.2042 of 2011 on the file of Motor Accidents Claims Tribunal, III Judge, Small causes Court, Chennai

C.M.A.No.2341 of 2014:

For Appellants	:	Mr.D.Bhaskaran
For R2	:	Mr.F.Terry Chella Raja

C.M.A.No.767 of 2017:

For Appellant	:	Mr.F.Terry Chella Raja
For R 2	:	Mr.D.Bhaskaran
R1	:	No Appearance

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

These Civil Miscellaneous Appeals are filed against the award dated 06.01.2014 made in M.C.O.P.No.2042 of 2011 on the file of Motor Accidents Claims Tribunal, III Judge, Small causes Court, Chennai

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The appellants in C.M.A.No.767 of 2017 are the claimants in M.C.O.P.No.2042 of 2011 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. The claimants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Vasantha who died in the accident that took place on 04.12.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the motorcycle and directed the second respondent, being the insurer of the motorcycle to pay a sum of Rs.6,20,000/- as compensation to the claimants.

5.Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.767 of 2017 seeking enhancement of compensation. Against the said award dated 06.01.2014 made in M.C.O.P.No.2042 of 2011, the 2nd respondent-Insurance Company has come out with C.M.A.No.2341 of 2014 challenging the liability fastened on them.

6.According to the claimant, on the date of the accident i.e. On 04.12.2010, at about 06.00 A.M., while the deceased was riding as pillion rider in the motorcycle bearing Registration No.TN-07-AD-9961 from Chengalpet to Tindivanam, direction, along G.S.T.Road, Irungundrapalli, Chengalpet, 1st respondent, rider of the motorcycle, drove the same in a rash and negligent manner, without giving any signal and suddenly applied break, as a result of which, the deceased pillion rider fell down and sustained injuries and died on 12.12.2010. Therefore, the claimants have filed above claim petition, claiming compensation.

7.The 2nd respondent/Insurance Company filed counter statement and denied various averments made by the claimants. According to the 2nd respondent, the accident did not occur as alleged by the claimants and they have filed the FIR with inordinate delay. Even in the said FIR, the claimants have contended that the deceased fell down from the vehicle and succumbed to injuries. Hence, the accident did not occur due to rash and negligent driving by the 1st respondent, rider-cum-owner of the motorcycle and 2nd respondent/Insurance Company is not liable to pay any compensation to the 1st respondent. The 2nd respondent also denied the age, avocation, dependency, income, medical and other expenses of the deceased and prayed for dismissal of the claim petition.

8. Before the Tribunal, daughter of the deceased/3rd claimant examined herself as P.W.1, one Mahesh, eyewitness was examined as P.W.2, and examined one Doctor as P.W.3 and ten documents were marked as Exs.P1 to P10. The respondents did not let in any oral and documentary evidence.

9. The learned counsel appearing for the second respondent/Insurance Company contended that the claimants and first respondent colluded together and filed claim petition to get compensation. The alleged F.I.R. was filed belatedly after the death of the said Vasantha. It was stated that deceased fell down from the Motorcycle, no negligence was attributed to the driver-cum-owner of the offending vehicle. P.W.1 admitted that the claimants and 1st respondent are living in the same house. The claimants have not examined Investigating Officer to prove the accident and involvement of the vehicle belonging to the 1st respondent insured with the 2nd respondent. The person, who gave the complaint was not examined by the claimants. No criminal case was initiated against the driver-cum-owner of the Motorcycle and the alleged vehicle was not sent for inspection by the Motor Vehicle's Inspector. Hence the 2nd respondent is not liable to pay any compensation to the claimants. In any event, the total compensation awarded by the Tribunal is excessive and the claimants are not entitled for any enhancement and prayed for dismissal of the appeal filed by the claimants and allow the appeal.

10. Per contra, the learned counsel appearing for the claimants contended that the first respondent drove the vehicle in a rash and negligent manner, due to which the deceased fell down from the motorcycle and sustained head injuries and died. In the Post Mortem Report, it has been stated that the deceased died due to the brain injuries. The claimants proved the involvement of the motorcycle belonging to the first respondent

and the manner of the accident and the reason for death. The second respondent has not examined any witness to substantiate their contention that the deceased fell down from the motor cycle. The deceased was aged about 49 years at the time of accident and she was working as a tailor and was earning a sum of Rs. 10,000/- per month. The Tribunal has fixed only a meager sum of Rs.5,000/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects and loss of estate. The amount granted by the Tribunal under different heads are meagre and prayed for dismissal of the appeal filed by the Insurance Company and prayed for enhancement of compensation.

11. Heard the learned counsel appearing for the claimants as well as the second respondent-Insurance Company and perused the entire materials on record.

12.It is contention of the claimants that while the deceased was travelling as a pillion rider in the motorcycle belonging to the 1st respondent, who drove the motorcycle in a rash and negligent manner, due to which, the deceased fell down from the motorcycle and sustained head injuries and died. To substantiate the said contention, the claimants have examined P.W.2/eye witness. They also filed the First Information Report, which has been marked as E.x.P.1. In the F.I.R/Ex.P.1, it has been stated that the deceased fell down from the motorcycle. The second respondent has not examined any eye witness to disprove the evidence of P.W.2 and contention of claimants. The contention of the learned counsel for the second respondent/Insurance Company that F.I.R has been registered belatedly and it has not been stated that 1st respondent drove the motorcycle in a rash and negligent manner and therefore, the accident has not occurred as alleged by the claimants. The accident occurred on 04.12.2010. The deceased took treatment as in-patient in the hospital Kamachi Hospital and died on 12.12.2010. After her death, the complaint was given by the first claimant, giving reason for the delay in lodging the complaint. The delay in lodging the complaint is not fatal to the claim of the claimants in the present case. The Tribunal after considering all the above materials, held that the accident has occurred only due to rash and negligent riding by rider of the motorcycle. The Tribunal has given valid reason for such conclusion and there is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as a quantum of compensation is concerned, the claimants have contended that the deceased was working as a tailor and was earning a sum of Rs. 10,000/- per month. The claimants have failed to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal has fixed the notional income at Rs.5,000/- per month and the same is meagre. The accident is of the year 2010. A sum of Rs.7,500/- per month is fixed as notional income of the deceaesd. The Tribunal having fixed the age of the deceased as 49 years based on Exs.P3 and P4 - Post Mortem Certificate and Death Certificate, has not awarded any enhancement towards future prospects. The claimants are entitled to 25% enhancement towards future prospects. After deducting 1/3rd towards personal expenses of the deceased and applying multiplier '13', the amount awarded by the Tribunal towards pecuniary loss is modified to Rs.9,75,000/- {[Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-)] x 12 x 13 x 2/3}. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of love & affection is just and reasonable and hence the same is hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary Loss	5,20,000/-	9,75,000/-	Enhanced
2.	Funeral expenses	25,000/-	15,000/-	Reduced
3.	Loss of estate	-	15,000/-	Granted
4.	Love and affection (each Rs.25,000/-)	75,000	75,000/-	Confirmed
	Total	Rs.6,20,000/-	Rs.10,80,000/-	enhanced by Rs.4,60,000/-

14.In the result, C.M.A.No.2341 of 2014 filed by the Insurance Company is dismissed and C.M.A.No.767 of 2017 filed by the claimants is partly allowed and the compensation of Rs.6,20,000/- awarded by the Tribunal is hereby enhanced to Rs.10,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance

Company is directed to 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 the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

To

1.The III Judge, III Small causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.Malar , Advocate SR.No. 8535
+1cc to Mr.D.Bhaskaran , Advocate SR.No. 8020

A.SK(04/08/2020)