IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.21.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3600 of 2014 & 1869 of 2012 &
M.P.No.1 of 2012

In CMA.No.3600 of 2014
1.Saraswathi
2.Mookkaiya ... Appellants/Petitioners

vs.

1.Jayapal
2.National Insurance Company Limited,
Divisional Office- 2,
Ramakrishna Road,
Salem - 7 ...Respondents/Respondents
(1st respondent set exparte)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 08.02.2011 made in MCOP.No.1781 of 2008 on the file of the Motor Accident claims Tribunal, Principal District Judge, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents : R1 - exparte
Mrs.N.B.Surekha for R2

In CMA.No.1869 of 2012

National Insurance Company Limited,
Divisional Office- 2,
Ramakrishna Road,
Salem - 7 ... Appellants/2nd Respondent

vs.

1.Saraswathi
2.Mookkaiya ...Respondents 1 and 2/Petitioners
3.Jayapal ...3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 08.02.2011 made in MCOP.No.1781 of 2008 on the file of the Motor Accident claims Tribunal, Principal District Judge, Salem.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.K.Kuppusamy for R1 & R2
R3 - exparte

COMMON JUDGMENT

[These Appeals have been taken up for hearing through Video Conferencing]

These appeals have been filed challenging the award dated 08.02.2011 passed by the Motor Accident Claims Tribunal (Principal District Judge, Salem) in MCOP.No.1781 of 2008. CMA.No.1869 of 2012 has been filed by the Insurance company and CMA.No.3600 of 2014 has been filed by the claimants seeking for enhancement.

2. The Insurance company has filed the appeal CMA.No.1869 of 2012 on the ground that the Tribunal ought to have fixed some amount of contributory negligence on the part of the deceased also, since he was also responsible for the cause of the accident. They have also challenged the quantum of compensation awarded by the Tribunal.

3. The Tribunal under the impugned award has directed the Insurance company to pay the claimants a compensation of Rs.1,74,000/- together with interest and costs.

4. Before the Tribunal, the claimants have filed three documents which were marked as Ex.P1 to Ex.P3 and only one witness was examined namely Mr.Mookkaiya, the second claimant as PW1. On the side of the Insurance Company, two documents were filed which were marked as Ex.R1 to Ex.R2 and one witness was examined namely Mr.M.Ponnusamy as RW1.

5. Heard Mrs.N.B.Surekha, learned counsel for the Insurance company and Mr.K.Kuppusamy, learned counsel for the claimants. The owner of the vehicle has remained exparte both before the Tribunal as well as this Court.

6. According to the insurance company, the claim having been filed under Section 163-A of the Motor Vehicles Act, the compensation awarded by the Tribunal under various heads is excessive and not in accordance with Schedule - II of the Motor

Vehicles Act. They have also contended in the Appeal CMA.No.1869 of 2012 that the Tribunal ought to have fixed some amount of contributory negligence on the part of the deceased also who was the rider of the motorcycle which collided with the lorry insured with the Appellant. According to them, Ex.P1, FIR has been registered only against the rider of the motorcycle (deceased) and hence, the Tribunal has erroneously not fixed any contributory negligence on the part of the deceased.

7. However, it is the contention of the claimants that the quantum of compensation awarded by the Tribunal is not a just compensation and it has to be enhanced by this Court.

8. This Court has perused and examined the impugned award. The deceased Suresh kumar was aged 22 years at the time of the accident. In the claim petition, the claimants had pleaded that the deceased Suresh Kumar was an employee in a Garment manufacturing Concern at Tiruppur and was earning Rs.4,000/- per month at the time of the accident. The accident happened in the year 2007. However, the Tribunal under the impugned award, fixed the notional monthly income of the deceased at Rs.2,000/-. The Tribunal has erroneously not deducted any amount towards personal expenses of the deceased. The Tribunal has also adopted wrong multiplier of 11 for the purpose of calculating the loss of dependency. Whereas the Tribunal ought to have adopted 18 multiplier, since the deceased was aged 22 years at the time of the accident.

9. The contention raised by the Insurance company is that the Tribunal ought to have fixed some amount of contributory negligence on the part of the deceased also and they have also raised the contention that the compensation awarded by the Tribunal under the impugned award is not in accordance with the structured formulae basis as prescribed under Schedule - II of the Motor vehicles Act. However, as observed earlier, the Tribunal has erroneously adopted 11 multiplier instead of 18 multiplier which is the correct multiplier to be adopted for a person aged 22 years 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. The notional monthly income of the deceased fixed by the Tribunal at Rs.2,000/- is low and is not in accordance with the settled practice for an accident that happened in the year 2007. If the monthly income was enhanced by this Court and the correct multiplier of 18 was adopted by this Court, the overall compensation awarded by the Tribunal to the claimants under the impugned award, even if some amount of contributory negligence was fixed on the part of the accident victim, cannot be considered to be excessive as alleged by the Insurance company.

10. The contention of the claimants seeking for enhancement also cannot be accepted by this court in view of the fact that the evidence available on record namely FIR Ex.P1, Charge Sheet Ex.P2, Rough Sketch issued by the police Ex.B1 are take into consideration by this Court.

Conclusion:

11. For the foregoing reasons, there is no merit in both these appeals. Accordingly, both the appeals are dismissed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The Insurance company who is the Appellant in CMA.No.1869 of 2012 is directed to deposit the compensation amount along with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.1781 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount lying to the credit of MCOP.No.1781 of 2008 to the bank account of the respective claimants who are the Appellants in CMA.No.3600 of 2014 through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Principal District Judge,
Salem.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+2ccs to Ms.N.B.Surekha, Advocate Sr.30867 and 30868

C.M.A.Nos.3600 of 2014 & 1869 of 2012

gj[co]
srg 30/04/2021