IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.11 and 62 of 2017

C.M.A.No.11 of 2017:

1.Mohammed Ali
2.Hajeera Banu .. Appellants/Claimant

Vs.

1.Kanankavijayan

2.The Divisional Manager,
New India Assurance Company Ltd.,
Vellore.
(No relief sought against the first respondent
hence notice may be dispensed with).
.. Respondents/Respondents

C.M.A.No.62 of 2017:
The Divisional Manager,
M/s.New India Assurance Co.Ltd.,
Officer' Line, Vellore. .. Appellant/2nd Respondent

Vs.

1.Mohammed Ali
2.Hajeera Banu ..Respondents 1 & 2/Claimants
3.D.Kanagavijayan (owner) .. 3rd Respondent/1st Respondent

Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.06.2016 made in MCOP No.134 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellants in CMA 11/2017 and
R1 and R2 in CMA 62/2017 : Mr.C.Prabakaran

For R2 in CMA 11/2017 and
appellant in CMA 62/2017 : Mr.J.Chandran

R1 in CMA 11/17 : Exparte

For R3 in CMA 62/2017 : No appearance

COMMON JUDGMENT

The case in brief, is as follows:

On the fateful day, ie. on 14.01.2013 at about 23.10 hours, the deceased Habeek Ahammed was travelling as a passenger in the Ashok Leyland Bus bearing Reg.No.TN-23-AK-4758, belonging to the first respondent and insured with the second respondent Insurance Company in C.M.A.No.11 of 2017. The said bus was proceeding from Vellore to Thirupathur in the Chennai-Bangalore National Highway. When the bus reached opposite to Thayagi Petrol Bunk, due to the rash and negligent driving of its driver, the bus dashed on the sand load present on the road and turned turtle. Due to the said impact, the deceased sustained crush injuries and died on the spot. The parents of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.30,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.17,70,000/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal has directed the Insurance Company to pay compensation to the claimants and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions.

2.Challenging the same, the claimants have filed C.M.A.No.11 of 2017 for enhancement of compensation and the Insurance Company has filed C.M.A.No.62 of 2017.

3.The learned counsel for the appellants in C.M.A.No.11 of 2017 / claimants, has submitted that the deceased was a bachelor at the time of death and that in a case of death of a bachelor, the age of the deceased alone has to be taken into consideration for applying the multiplier and accordingly the compensation has to be calculated towards loss of dependency. It is also submitted that the multiplier adopted by the Tribunal is not correct. It is further submitted that the amounts awarded towards other heads are meagre. Stating so, the learned counsel prayed for enhancement of compensation.

4.The learned counsel for the appellant in C.M.A.No.62 of 2017 / Insurance Company, has submitted that the compensation of Rs.17,70,000/- awarded towards death of a 20-year male, is highly excessive, exorbitant and unsustainable in law. It is also submitted that the accident had occurred only due to the negligence on the part of the deceased. It is further submitted that the driver of the bus was under the influence of alcohol for his rash and negligent driving, which ended in the accident. Stating so, the learned counsel prayed for setting aside the judgment of the Tribunal.

5.Heard the learned counsel on either side and perused the records.

6.Even though P.W.1-father of the deceased had not seen the accident directly, P.W.2-Occurrence witness, deposed before the Tribunal that at the time of accident, he also travelled in the said bus and that the driver of the bus drove it in a rash and negligent manner and dashed against the sand load and consequently the bus got capsized and the deceased sustained injuries and died on the spot. The Tribunal has also taken note of the filing of charge sheet as against the driver of the bus. Taking note of P.W.2's evidence and filing of charge sheet, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the first respondent in C.M.A.No.11 of 2017. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7.With regard to quantum, the Tribunal has awarded a sum of Rs.16,38,000/- towards loss of income, taking the monthly income of the deceased at Rs.13,000/-, adding 50% of the said amount towards future prospects which works out to Rs.19,500/- and thereafter deducting 50% towards personal expenses of the deceased and adopting the multiplier of 14. In the claim petition, the income of the deceased has been stated as Rs.15,000/- per month, as Salesman. Relying upon the deposition of P.W.3-Manager of Vellore Silk House, where the deceased was employed and also Ex.P10-Salary Certificate, the Tribunal has fixed the monthly income of the deceased at Rs.13,000/-. This Court is of the considered view that the Tribunal has correctly relied upon the materials and evidence, and fixed the monthly salary of the deceased at Rs.13,000/-. The Tribunal has also correctly added 50% towards future prospects to the monthly salary for calculating loss of income. But, with regard to multiplier, the Tribunal has fixed 14 multiplier, taking note of the judgment of the Hon'ble Supreme Court in the case of Sarla Verma and others v. Delhi Transport Corporation and another, reported in (2009) 4 MLJ 997. It is the vehement submission of the learned counsel for the claimants that the correct multiplier that should be adopted is 18. Only this point has been raised in the grounds of the appeal filed by the claimants. Even though it is stated in the claim petition that the deceased was aged 20 years at the time of accident, since no proof was adduced before the Tribunal to prove the age, relying upon Ex.P7-Post Mortem Certificate, the Tribunal has fixed the age of the deceased as 23 years. As per Schedule-II of the Motor Vehicles Act, for a death of a 23-year old boy, the multiplier that should be adopted is 18. Hence, it would be appropriate to adopt 18 multiplier instead of 14 multiplier adopted by the Tribunal. If that is done, the loss of income works out to Rs.21,06,000/- (Rs.13,000/- + Rs.6,500/- x ½ x 12 x 18). Accordingly, the amount awarded towards loss of income stands modified from Rs.16,38,000/ - to Rs.21,06,000/-.

8.The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection at the rate of Rs.50,000/- to each of the parents. It would be appropriate to award Rs.40,000/- towards this head, to each of the parents and accordingly, the loss of love and affection stands modified from Rs.1,00,000/- to Rs.80,000/-.

9.The Tribunal has further awarded a sum of Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transport expenses and Rs.2,000/- towards damages to clothes and articles. The amounts awarded towards these heads are reasonable and hence the same are confirmed.

10.The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	21,06,000/-
Loss of love and affection	80,000/-
Funeral expenses	25,000/-
Transport expenses	5,000/-
Damages to clothes and articles	2,000/-
TOTAL...	22,18,000/-

Thus, the claimants are entitled to the modified compensation of Rs.22,18,000/-. It is made clear that only for the compensation of Rs.17,70,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.4,48,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

11.In the result, C.M.A.No.11 of 2017 filed by the claimants is partly allowed and C.M.A.No.62 of 2017 filed by the Insurance Company, is dismissed. No costs.

12.The second respondent Insurance Company in C.M.A.No.11 of 2017 / appellant in C.M.A.No.62 of 2017 is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the vehicle / the first respondent in C.M.A. No.11 of 2017 to recover the compensation, as ordered by the Tribunal.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

KM

To

1.The I Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Vellore.

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

+1cc to Mr.C.Prabakaran, Advocate SR.No.27234

C.M.A.Nos.11 and 62 of 2017

SV(CO)
GMY(23/04/2021)