IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

Coram:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.Nos.3113 of 2017 & 199 of 2018

C.M.A.No.3113 of 2017:

1.Smt.U.Kanchan @ Kanchan Kumari

2.U.Vishal

3.U.Saloni

4.Smt.Suraj Bala

5.B.Rikhab Chand ...Petitioners/Appellants

Versus

1.S.Sani Kommu Rami Reddy

2.National Insurance Co. Ltd.,
Third Party Legal Cell,
No.751, Anna Salai,
Chennai - 600 002. ...Respondents/Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2017 made in MACT.O.P.No.2968 of 2014 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondent - 1 : No Appearance

Respondent - 2: Mr.S.Arun Kumar

C.M.A.No.199 of 2018:

National Insurance Co. Ltd.,
Third Party Legal Cell,
No.751, Anna Salai,
Chennai - 600 002.

...2nd Respondent/Appellant

Versus

1.U.Kanchan @ Kanchankumari ...Petitioners/Respondents
2.U.Vishal
3.U.Saloni
4.Suraj Bala
5.B.Rikhab Chand
6.Sani Kommu Rami Reddy ...Ist Respondent/6th Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2017 made in M.C.O.P.No.2968 of 2014 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents - 1 to 5 : Mr.K.Suryanarayanan

Respondent - 6 : Tapal not yet returned either served or unserved

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

(Judgment of the Court was delivered by
KRISHNAN RAMASAMY, J.,)

The Civil Miscellaneous Appeal in C.M.A.No.3113 of 2017 has been filed by the claimants against the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai vide judgment and decree dated 28.02.2017 in M.C.O.P.No.2968 of 2014.

The Civil Miscellaneous Appeal in C.M.A.No.199 of 2018 has been filed by the Insurance Company challenging the liability fixed and quantum of compensation awarded by the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai vide judgement and decree dated 28.02.2017 in M.C.O.P.No.2968 of 2014.

2. The brief facts of the case are as follows:

On 19.02.2014, at about 4.30 a.m, one Mr.Uttam Chand was travelling in a Auto bearing Registration No.TN 01 AQ 0492 at Madhavaram High Road from East to West. When the said Auto was proceeding near RD Foundation, a Lorry bearing Registration No.AP 07 TB 7459 came from the opposite direction and hit the Auto. Due to the accident, the said Uttam Chand and the auto driver sustained multiple grievous injuries. The said Uttam Chand died on the spot. Hence, the family members viz., wife, son, daughter, mother & father of the deceased Uttam Chand filed a Claim Petition in M.C.O.P.No.2968 of 2014 as against the owner and insurer of the Lorry claiming a sum of Rs.4,00,00,000/- as compensation for the death of Mr.P.Uttam Chand.

3. The above two Appeals are taken up for final disposal together since they arise out of the same accident and judgment.

4. Mr.Sani Kommu Rami Reddy (owner of the Lorry) remained ex-parte before the Tribunal.

5. Before the Tribunal, the insurer of the Lorry filed the counter statement in M.C.O.P.No.2968 of 2014 denying all the averments made by the claimants in the Claim Petition.

6. When M.C.O.P.No.117 of 2013 came up before the Tribunal, on the side of petitioners/claimants, 3 witnesses were examined viz., P.W.1 to P.W.3 and 30 documents were marked as exhibits viz., Ex.P1 to Ex.P30 and on the side of the respondents, 2 witnesses were examined viz., R.W.1 & R.W.2 and 2 documents were marked as exhibits viz., Ex.R1 & Ex.R2.

7. The Tribunal after hearing both the parties, fixed the entire negligence on the driver of the Lorry and fastened the liability jointly and severally against the owner as well as insurer of the Lorry. The Tribunal awarded a sum of Rs.75,98,694/- as compensation to the claimants as against their claim of Rs.4,00,00,000/-. The break-up details of the compensation awarded by the Tribunal in M.C.O.P.No.2968 of 2014 are mentioned hereinbelow:

(i) Loss of Pecuniary Benefits	-	Rs.69,73,694/-
(ii) Loss of Love & Affection	-	Rs. 4,00,000/-
(iii) Loss of Estate	-	Rs. 1,00,000/-
(iv) Consortium	-	Rs. 1,00,000/-
(v) Funeral Expenses	-	Rs. 25,000/-
Total Compensation	-	Rs. 75,98,694/-

Liability:

8. Though the learned counsel appearing for the Insurance Company strongly contended against the quantum of compensation awarded by the Tribunal in M.C.O.P.No.2968 of 2014, formally opposed the liabilities fixed by the Tribunal against the owner as well as the insurer of the Lorry.

8.1 He would further contend that the accident occurred due to the negligence of the driver of the Auto. There is no fault on the part of the driver of the Lorry who drove the vehicle with due care. However, the Tribunal wrongly fixed 100% negligence against the driver of the Lorry and therefore, the same is liable to be set aside.

9. On the other hand, the learned counsel appearing for the claimants would contend that the Tribunal rightly fixed the negligence on the driver of the Lorry who drove the vehicle in a rash and negligent manner and dashed against the Auto.

9.1 He would further contend that Ex.P1, FIR was registered against the driver of the Lorry. R.W.2, Ilango, eyewitness of the accident deposed that the accident occurred due to the negligence of the driver of the Lorry. Also, the driver of the Lorry did not come to the witness box and deposed his evidence. He therefore would contend that in the absence of any controverting evidence, the Tribunal correctly fixed the liability on the owner and the insurer of the Lorry.

10. We have also gone through the materials available on record including the judgment and decree passed by the Tribunal in M.C.O.P.No.2968 of 2014. On a perusal of Ex.P1, FIR, it is crystal clear that the accident occurred due to the rash and negligent driving of the driver of the Lorry. It is also clear that the driver of the Lorry never come to the witness box and deposed his evidence, in order to prove that he is not responsible for the accident. In the absence of any contra evidence, on the basis of Ex.P1, FIR marked on the side of the claimants and the oral evidence of R.W.2, the Tribunal rightly fixed the entire negligence on the the driver of the Lorry. We do not find any error in the fixation of negligence as well as the liability by the Tribunal. Therefore, we uphold the finding of the Tribunal with regard to the negligence as well as the liability fixed by it.

Quantum:

11. So far as the quantum of compensation is concerned, the learned counsel appearing for the claimants would submit that although the claimants filed a Claim Petition in M.C.O.P.No.2968 of 2014 as against the owner and insurer of the offending

vehicle Lorry claiming a sum of Rs.4,00,00,000/- as compensation for the death of Uttam Chand, the Tribunal awarded a sum of Rs.75,98,694/- as compensation to the claimants. According to the claimants, the deceased Uttam Chand was the Founder and Managing Director of M/s.Varsiddi Enterprises Pvt. Ltd. and he was earning a sum of Rs.18,00,000/- per annum. In this regard, the Income Tax Return (ITR) of the deceased for the assessment years 2009-10, 2011-12, 2012-13, 2013-14 and 2014-15 were filed by the claimants and the same were marked as Ex.P7 to Ex.P11.

11.1 The counsel would also submit that as per Ex.P7 to Ex.P11 marked on the side of the claimants and the latest ITR of the deceased which was available before the Tribunal, the income of the deceased Uttam Chand was Rs.18,00,000/- per annum. The Honourable Supreme Court has also held in number of cases that only the last drawn income should be taken as the income of the deceased for determining the compensation. However, in the present case, the Tribunal without considering all these aspects calculated the annual income of the deceased as Rs.15,00,000/- and deducted a sum of Rs.3,25,000/- towards Income Tax. The Tribunal also deducted a sum of Rs.6,00,000/- towards the salary of the 2nd petitioner, son of the deceased who was appointed as the Director of M/s.Varsiddi Enterprises Pvt. Ltd., in the place of his deceased father Uttam Chand.

11.2 The main contention of the claimants is that the Tribunal erroneously calculated the annual income of the deceased as Rs.15,00,000/- instead of Rs.18,00,000/-. Their further contention is that a sum of Rs.6,00,000/- would not be deducted towards the salary of the son of the deceased. He therefore would contend that as per the ITR of the deceased Uttam Chand, the compensation to be awarded by calculating the annual income of the deceased as Rs.18,00,000/-, without deducting any amount towards the salary of the son of the deceased. In support of his contention, he relied on the following judgments:

- Helen C.Rebello (Mrs) and Others Vs. Maharashtra State Road Transport Corporation and Another reported in 1999 1 SCC 90
- Vimal Kanwar and Others Vs. Kishore Dan and Others reported in 2013 7 SCC 476

11.3 In the case of Vimal Kanwar and Others Vs. Kishore Dan and Others reported in 2013 7 SCC 476, the Honourable Apex Court held as follows:

> "21. ....
> .... An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot

be termed as "pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

He therefore prayed that the award passed by the Tribunal in M.C.O.P.No.2968 of 2014 requires reconsideration.

12. On the other hand, the learned counsel appearing for the Insurance Company would contend that the Tribunal calculated the annual income of the deceased as Rs.15,00,000/- which is on the higher side. Though the Tribunal rightly deducted a sum of Rs.3,25,245/- towards Income Tax and a sum of Rs.6,00,000/- towards the salary of the 2nd petitioner, son of the deceased who was appointed as Managing Director in the place of the deceased Uttam Chand, however, the compensation awarded by the Tribunal is too high. He also comes forward with a Calculation Memo which is mentioned hereinbelow:

(i) Loss of Income (Rs.5,00,000/- + 30% x 1/4 x 14)	-	Rs.68,25,000/-
(ii) Consortium	-	Rs. 40,000/-
(iii) Loss of Love & Affection	-	Rs. 50,000/-
(iv) Loss of Estate	-	Rs. 15,000/-
(v) Funeral Expenses	-	Rs. 15,000/-
Total	-	Rs.69,45,000/-

13. While calculating the Loss of Income, the Insurance Company has assessed the annual income of the deceased as Rs.5,00,000/-; added 30% of the monthly income towards Future Prospectus and deducted 1/4th amount towards the personal expenses of the deceased and applied the multiplier, '14'.

14. The learned counsel appearing for the Insurance Company submitted that the reason for calculating the annual income of the deceased as Rs.5,00,000/- by the Insurance Company is that there are variation in the annual remunerations of the deceased starting from the year 2008-2009 to 2013-2014. The deceased drawn a sum of Rs.1,75,000/- as annual income for the financial year 2008-2009 and the same was increased by almost 900% to a sum of Rs.18,00,000/- in the financial year 2013-2014.

14.1 Apart from that, in order to prove that the deceased was drawing a sum of Rs.18,00,000/- per annum, the claimants have not yet produced any Bank Pass Book or Bank Account Statement in the individual name of the deceased Uttam Chand, before the Tribunal. Therefore, based on the guesswork, the Tribunal determined a sum of Rs.15,00,000/- as annual income of the deceased Uttam Chand, however, the guesswork is also not in accordance with law. He therefore contended that without any supporting document, the Tribunal ought not to have fixed such a huge sum as annual income of the deceased.

14.2 Further, he would contend that as per ITR, the deceased drawn a sum of Rs.18,00,000/- as annual income from the Company in a capacity as a Managing Director. There are two Directors in the said Company since it is a Private Limited Company and there is no limit for drawing a salary. Most of the time, the Directors of the Company drawn the entire profit in the form of salary. Therefore, it would not be appropriate to calculate the entire salary of the Director in a Pvt. Ltd., Company for the purpose of determining the compensation for the dependent. He therefore submitted that considering all these aspects, the Insurance Company calculated the annual income of the deceased as Rs.5,00,000/-. In support of his contention, he referred the following judgments:

- Rani Gupta and others Vs. United India Insurance Company Ltd., and Others reported in 2009 ACJ 1605
- New India Assurance Company Limited Vs. Yogesh Devi and Others reported in 2012 3 SCC 163

15. Heard both sides and perused the materials available on record.

16. Upon a perusal of the Ex.P7 to Ex.P11, ITR of the deceased for the assessment years 2009-10, 2011-12, 2012-13, 2013-14 and 2014-15, it is seen that the annual income of the deceased jumped by almost 900% i.e., from Rs.1,75,000/- to Rs.18,00,000/-.

17. It is to be noted that though the claimants filed the ITR of the deceased for the assessment years 2009-10, 2011-12, 2012-13, 2013-14 and 2014-15 in the form of Ex.P7 to Ex.P11, to prove that the deceased Uttam Chand was getting a sum of Rs.1,50,000/- as monthly income, however, no Bank Pass Book or Bank Account Statement has been produced by them, before the Tribunal. It clearly shows that the deceased drew his entire salary in lump-sum.

18. We also agree with the contention of the counsel appearing for the claimants that the amount received by the dependent as salary on compassionate appointment is not liable to be deducted for determination of compensation under the Motor Vehicles Act as held by the Honourable Supreme Court in Vimal Kanwar and Others Vs. Kishore Dan and Others reported in 2013 7 SCC 476. No doubt, the Tribunal can do the guesswork and determine the compensation but the said guesswork has to be done on the basis of certain evidence. In the present case, the

annual income of the deceased varies from Rs.1,75,000/- per annum in the year 2009 to Rs.18,00,000/- per annum in the year 2014.

19. It is also to be noted that the deceased Uttam Chand and his brother, Mr.Pawan Kumar were the two Directors of M/s.Varsiddhi Enterprises Pvt. Ltd. It is an admitted fact that in a Private Limited Company, there is no limit to draw a salary in terms of the provision of the Companies Act. When such being the position, in order to reduce the tax liabilities in the Company, the Directors who are being the 100% share holders of the Company taking advantages of the position that there is no limit for fixation of the remuneration for the Directors, drawing the major part of the company's profit as salary. Therefore, it would not be appropriate to take the salary of a Director in a Private Limited Company as his income for the purpose of determining the compensation. The claimant should have examined the next person who is under the rank of Director in hierarchy to find out the real salary who is entitled for in the Company. For example, if the annual income of the General Manager in a Company is Rs.3,00,000/- or Rs.4,00,000/-, then obviously, the real annual income of the Managing Director would be Rs.4,00,000/- or Rs.5,00,000/-. The Tribunal should have carried out a test to find out a salary of an independent person who has no share in the company has appointed in the position of the deceased Uttam Chand. However, obviously, no such exercise was carried out by the Tribunal. Therefore, we are not in a position to accept the guesswork done by the Tribunal for fixing the annual income of the deceased as Rs.15,00,000/- and also, the plea of the claimants to fix the annual income of the deceased as Rs.18,00,000/-.

20. If anybody is appointed as Director or Managing Director in a Private Limited Company independently, without holding any shares in the Company, then we have no hesitation to take Rs.18,00,000/- as annual income of the said person. However, in the present case, the deceased was the Managing Director and his brother was also a Director holding 100% shares in the Company. When both the directors hold 100% shares in the Company and in which, if both the Directors drawn the salary, there is always a possibility for the inclusion of element of profit of the company in the salary of the Directors. Therefore, we are not in a position to accept the annual income of the deceased fixed by the Tribunal as well as the claim made by the claimants. Therefore, the appropriate way for determining the income of the deceased is by way of fixation of notional income. Hence, we are in a position to fix the notional income of the deceased. At this point of time, the Insurance Company has come forward with a Calculation Memo by

taking Rs.5,00,000/- as annual income of the deceased i.e., Rs.41,667/- per month. Though the said amount is on the higher side, however, since the Insurance Company has come forward with the above Calculation Memo we incline to fix the notional income of the deceased as Rs.41,667/- per month i.e., Rs.5,00,000/- per annum. Therefore, we re-determine the notional income of the deceased as Rs.5,00,000/- per annum.

21. The Tribunal awarded a sum of Rs.4,00,000/- towards Loss of Love & Affection; Rs.1,00,000/- towards Loss of Estate; Rs.1,00,000/- towards Consortium and Rs.25,000/- towards Funeral Expenses. However, in our considered point of view, the amount awarded by the Tribunal under these heads are on the higher side and the same are not in accordance with the principle laid down by the Honourable Apex Court. Hence, we decide to re-determine the compensation awarded by the Tribunal. Accordingly, we award a sum of Rs.40,000/- towards Consortium; Rs.15,000/- towards Loss of Estate and Rs.15,000/- towards Funeral Expenses. In the present case, there are totally 5 claimants including the wife of the deceased. We have already awarded a sum of Rs.40,000/- towards Consortium to the wife of the deceased and therefore, the son, daughter, mother & father of the deceased are entitled to a sum of Rs.40,000/- each towards Loss of Love & Affection. Therefore, a sum of Rs.1,60,000/- has to be awarded towards the head, Loss of Love & Affection.

22. Though we have accepted the Calculation Memo filed by the Insurance Company with regard to the four heads viz., Loss of Income, Consortium, Loss of Estate and Funeral Expenses, however, we are not in a position to accept Rs.50,000/- suggested by the Insurance Company towards Loss of Love & Affection for the four persons viz., son, daughter, mother & father of the deceased. Hence, a sum of Rs.4,00,000/- awarded by the Tribunal towards Loss of Love & Affection is re-determined as Rs.1,60,000/- by this Court.

23. Considering the facts and circumstances of the case, we are inclined to re-determine the award of the Tribunal. Accordingly, a sum of Rs.75,99,000/- (Rupees Seventy Five Lakhs Ninety Nine Thousand) awarded by the Tribunal in M.C.O.P.No.2968 of 2014 is re-determined as Rs.69,45,000/- (Rupees Sixty Nine Lakhs Forty Five Thousand) by this Court. The break-up details of the re-determined compensation are as follows:

(i) Loss of Income (Rs.5,00,000/- + 30% x 1/4 x 14)	-	Rs.68,25,000/-
(ii) Consortium	-	Rs. 40,000/-
(iii) Loss of Love & Affection	-	Rs. 1,60,000/-
(iv) Loss of Estate	-	Rs. 15,000/-

(v) Funeral Expenses - Rs. 15,000/-

Total - Rs.70,55,000/-

24. Considering the facts and circumstances of the case, we are of the opinion that there is no merit in the contention of the claimants and therefore, the Appeal filed by the claimants is liable to be dismissed since the same is unsustainable in law.

25. In the result,

(i) C.M.A.No.3113 of 2017 is dismissed.

(ii) C.M.A.No.199 of 2018 is partly allowed and a sum of Rs.75,99,000/- (Rupees Seventy Five Lakhs Ninety Nine Thousand) awarded by the Tribunal in M.C.O.P.No.2968 of 2014 is re-determined as Rs.70,55,000/- (Rupees Seventy Lakhs Fifty Five Thousand) by this Court. Out of the award amount as re-determined by this Court, wife of the deceased is entitled to Rs.50,00,000/-; son of the deceased is entitled to Rs.4,55,000/-; daughter of the deceased is entitled to Rs.10,00,000/-; and the mother & father of the deceased are entitled to 3,00,000/- each. The Insurance Company is directed to deposit the award amount modified by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.2968 of 2014 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank account of the claimants viz., wife, son, daughter, mother and father of the deceased, as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of three weeks thereafter. Necessary Court fee, if any, shall be paid by the claimants herein before receiving the copy of the judgment. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

Copy to

The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mr.S.Arunkumar, Advocate Sr.12513
+1cc to Mr.K.Suryanarayanan, Advocate Sr.129194

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