IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.4542 & 4675 OF 2019
AND
C.M.P.NO.26444 OF 2019

C.M.A.No.4542 of 2019

1.M.Premavathy
2.M.Geetha Kumari
3.M.Karthikeyan .. Appellants/Petitioners

Vs.

1.S.Palani Kumar

2.The United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai 600 013. .. Respondents

C.M.A.No.4675 of 2019

The United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai 600 013. .. Appellant/R2

Vs.

1.M.Premavathy
2.M.Geetha Kumari
3.M.Karthikeyan ... RR1 to 3/Petitioners

4.S.Palani Kumar ... R4/R1

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.06.2018, made in M.C.O.P.No.1917 of 2014, on the file of the Special Sub Court No.1, Court of Small Causes (Motor Accident Claims Tribunal), Chennai.

(In C.M.A.No.4542 of 2019)

For Appellants : Ms.P.T.Saleem Fathima
For Respondents : Mr.D.Bhaskaran (For R2)

(In C.M.A.No.4675 of 2019)

For Appellant : Mr.D.Bhaskaran
For Respondents : Ms.P.T.Saleem Fathima (For R1 to R3)

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

C.M.A.No.4542 of 2019 is filed for enhancement of the compensation and C.M.A.No.4675 of 2019 is filed against the award dated 14.06.2018, made in M.C.O.P.No.1917 of 2014, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition for the sake of convenience.

4.The claimants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Murugesan, who died in the accident that took place on 23.03.2011.

5.According to the claimants, on the date of accident viz., 23.03.2011, when the deceased was riding his motorcycle bearing Registration No. TN-04-Y-3960, 1st respondent, driver-cum-owner of the van drove the same in a rash and negligent manner and dashed against the motorcycle and caused the accident. The deceased succumbed to injuries. The claimants, who are the legal heirs of the deceased, filed the present claim petition, claiming compensation against the 1st respondent as owner of the vehicle and 2nd respondent as insurer of the offending vehicle.

6.The 1st respondent remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments of the claimants. According to the 2nd respondent, the deceased came in wrong side of the road and hit against the Van belonging to the 1st respondent which was proceeding in correct pathway. The sketch also proves that the accident occurred due to negligence on the part of the deceased. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimants examined two witnesses as P.W.1 and P.W.2 and marked 15 documents as Exs.P1 to P15. The 2nd respondent did not let in any oral evidence and marked one document as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Van and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.18,91,000/- as compensation to the claimants.

10.Against the said award dated 14.06.2018, made in M.C.O.P. No. 1917 of 2014, the claimants have filed C.M.A. No. 4542 of 2019 for enhancement of the compensation and challenging the quantum of compensation, the 2nd respondent-Insurance Company filed C.M.A. No. 4675 of 2019.

11.Learned counsel appearing for the claimants contended that the deceased was running Provision Store and earning a sum of Rs.25,000/- per month. The claimants have produced necessary documents to prove the income. The Tribunal on erroneous reason, did not accept the documents produced by the claimants and fixed a meagre sum of Rs.15,000/- per month as notional income of the deceased. The amounts awarded under different heads are meagre and prayed for enhancement of the compensation and allowing C.M.A. No. 4542 of 2019.

12.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal failed to see that the Provisional Store licence was renewed periodically even after the death of the deceased. Hence, there is no loss of income to the claimants. The claimants have filed Income Tax returns for the years 2004-2005, 2005-2006, but the accident is of the year 2011 and no income tax returns were filed for the current period to prove the income of the deceased. Even in the Income Tax returns filed, a sum of Rs.61,062/- is shown as income for the assessment year 2005-2006 and for the assessment year 2004-2005, Rs.50,052/- is shown as the income. The claimants have not examined the Accountant who prepared the statement. The monthly income fixed by the Tribunal is excessive and prayed for allowing the appeal in C.M.A. No. 4675 of 2019.

13.Heard learned counsel appearing for the claimant as well as the 2nd respondent and perused the materials available on record.

14.From the materials on record, it is seen that it is the contention of the claimants that the deceased was running a Provisional Store and was earning a sum of Rs.25,000/- per month. To prove their contention, the claimants have marked the Income Tax returns for the assessment years 2004-2005 and 2005-2006. The Tribunal on perusal of the said documents, held that the claimants have not filed the Income Tax returns for the relevant period i.e., for the year 2011 and since the documents produced relates to earlier period, did not accept the said documents as proof of income. Considering the avocation of the deceased, the Tribunal fixed a sum of Rs.15,000/- per month as the notional income. The accident is of the year 2011. In the absence of any evidence to prove the income, the notional income fixed by the Tribunal is excessive and the same is reduced to Rs.13,000/- per month. The Tribunal taking note of the driving license of the deceased and the date of the accident, fixed the age of the deceased as 50 years and granted 10% enhancement towards future prospects of the deceased. The claimants are entitled to 25% enhancement towards future prospects. There are three dependents of the deceased. Hence, deducting 1/3rd towards the personal expenses of the deceased and applying the multiplier '13', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.16,90,000/- {[Rs.13,000/- + Rs.3,250/- (25% of Rs.13,000/-)] x 12 x 13 x 2/3}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Loss of dependency	17,16,000/-	16,90,000/-	Reduced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection	1,00,000/-	1,00,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Transport expenses	5,000/-	5,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	18,91,000/-	18,65,000/-	Reduced by Rs.26,000/-

15.In the result, C.M.A. No. 4542 of 2019 filed by the claimants is dismissed and C.M.A.No.4675 of 2019 filed by the 2nd respondent-Insurance Company is partly allowed and the amount awarded by the Tribunal at Rs.18,91,000/- is modified to Rs.18,65,000/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the modified 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, to the credit of M.C.O.P.No.1917 of 2014. On such deposit, the claimants are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P.No.1917 of 2014, if the entire award amount has already been deposited by them. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Section Officer,
   V.R Section,
   High Court, Madras.

2. The Special Subordinate Judge-I,
   (Motor Accident Claims Tribunal),
   Chennai.

+1cc to Ms.P.T.Saleem Fathima, Advocate, S.R.No.1416
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.1384

C.M.A.Nos.4542 & 4675 of 2019

RV(CO)
CS/09/02/2021