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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A.Nos.861, 1041 and 1042 of 2017

CMA.No.861 of 2017

1.Tmt.Jayasudha
2.Minor.Laurson Sujith
represented by next friend mother Jayasudha
3.Anitha

... Appellants/Petitioners

Versus

1.Ravikumar
2.M/s.Royal Sundaram Alliance Insurance Company Limited,
B.O.I.Mangalam Buildings, Omalur Main Road,
Near Four Roads,
Salem 636 009.
3.Anbunesan

... Respondents/Respondents

... 3rd Respondent/4th petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2015, made in MCOP.No.104 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, insofar as it is against the appellant.

For Appellants :M/s.K.Kuppusamy

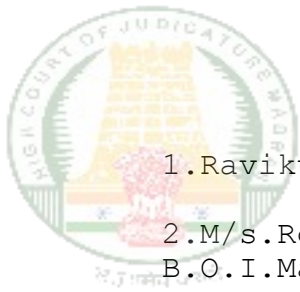
For Respondents :M/s.Rathna Thara
for Mr.Srinivasa Ramalingam

(ii) CMA.No.1041 of 2017

Tmt.Jayasudha

... Appellant/Petitioner

Versus



1.Ravikumar

2.M/s.Royal Sundaram Alliance Insurance Company Limited,
B.O.I.Mangalam Buildings, Omalur Main Road,
Near Four Roads,
Salem 636 009.

... Respondents/Respondents

(The first respondent set ex-parte)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2015, made in MCOP.No.105 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, insofar as it is against the appellant.

For Appellant :M/s.K.Kuppusamy

For Respondents :M/s.Rathna Thara
for Mr.Srinivasa Ramalingam

R1 : Exparte

(iii) CMA.No.1042 of 2017

Minor.Larson Sujith
Rep by Next Friend Guardian
mother Jayasudha

... Appellant/Petitioner

Versus

1.Ravikumar

2.M/s.Royal Sundaram Alliance Insurance Company Limited,
B.O.I.Mangalam Buildings, Omalur Main Road,
Near Four Roads,
Salem 636 009.

... Respondents/Respondents

(The first respondent set ex-parte)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2015, made in MCOP.No.1473 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, insofar as it is against the appellant.

For Appellant :M/s.K.Kuppusamy

For Respondents :M/s.Rathna Thara
for Mr.Srinivasa Ramalingam



COMMON JUDGMENT

All these appeals are preferred by the respective claimants in M.C.O.P.Nos.104, 105 and 1473 of 2013.

2. In CMA.No.861 of 2017, the appellants are the claimants, who are the legal heirs of the deceased husband of the first appellant, who died due to the accident. It is stated that the husband of the first appellant in CMA.No.861 of 2017, while travelling in a motorcycle along with appellants 1 and 2 was hit by the mini lorry belonged to the first respondent and insured with the second respondent. The Tribunal after holding that the accident was due to the rash and negligent driving of the driver of the mini lorry belonged to the first respondent awarded a sum of Rs.11,61,800/- in all as compensation.

3. The appellant in CMA.No.1041 of 2017 is the first appellant in CMA.No.861 of 2017. She is also the claimant in MCOP No.105 of 2013. she filed an independent claim petition claiming compensation for the injuries suffered by her.

4. Similarly, CMA.No.1042 of 2017, is preferred by the minor son of the deceased by name Ashok kumar, who also suffered injury and he filed the claim petition in M.C.O.P.No.1473 of 2013.

5. The Motor Accident Claims Tribunal namely Special District Judge, Salem has awarded compensation to the tune of Rs.11,61,800/- in M.C.O.P.No.104 of 2013 and a sum of Rs.5,92,200/- in MCOP.No.105 of 2013 and again a sum of Rs.70,080/- in MCOP.No.1473 of 2013.

6. Aggrieved by the quantum, the legal representatives of the deceased who are also the claimants in the other claim petitions have preferred the above appeals.

7. The learned counsel appearing for the appellants in all the cases submitted that the Tribunal has failed to award future prospects and therefore, the compensation that was awarded for the death of the first appellant's husband should be increased.

8. The learned counsel appearing for the respondent fairly agreed that 40% of the income can be added towards future prospects and that the compensation can be suitably modified. Hence, a sum of Rs.4,14,720/- has to be added to the total compensation that is awarded in M.C.O.P.No.104 of 2013.



9. Accordingly, the award of the Motor Accident Claims Tribunal, Special District Judge, Salem, is modified by directing the respondents to pay a sum of Rs.15,76,520/- along with interest at 7.5% per annum from the date of petition. It is also to be noted that the claimants/appellants will not be entitled to interest if there is any delay in filing the appeal beyond the period permitted in law. Accordingly, this appeal is allowed and the award of judgment and decree is modified to the extent indicated above.

10. The learned counsel appearing for the appellant in C.M.A.No.1041 of 2017 submitted that the Tribunal failed to grant a sum of Rs.1,00,000/- towards loss of income, even though the claimant/appellant suffered severe fracture in hip and that she is entitled to at least a sum of Rs.2,00,000/- towards loss of income. It is not in dispute that the appellant/claimant was working as a teacher in school.

11. The learned counsel appearing for the respondent submitted that there is no loss of income inasmuch as, she is working even after the accident.

12. This Court is unable to agree with the submissions of counsel for the respondent that there is no loss of income as the injured is able to continue in the job and drawing the same salary. The appellant is a teacher. She can draw salary from the institution in which she is employed and can usefully be engaged in many other jobs if she is hale and healthy without any disability. It is admitted that the Tribunal has assessed the disability at 15%. In such circumstances, this Court is inclined to enhance the loss of income from Rs.1,00,000/- to Rs.2,00,000/-. Accordingly, the appellant is entitled to a sum of Rs.6,92,220/-, in all, by way of compensation on account of the personal injury suffered by her due to the accident. The appellant is not entitled to interest for a period of delay, if any, in filing the appeal. Accordingly, the Appeal in CMA.No.1041 of 2017 is also allowed and the award of the Tribunal in M.C.O.P.No.105 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, is modified to the extent indicated above.

13. The appellant in CMA No.1042 of 2017 is a minor represented by his mother, who is the appellant in CMA.No.1041 of 2017. The claimant was just a three month old baby, when the accident took place. The Tribunal awarded a sum of Rs.70,080/- by accepting 20% disability and calculating the quantum by applying percentage method. In other words, Rs.2,000/- is awarded for each percentage of disability. This Court is unable to accept the calculation. The appellant has suffered a small



injury in his forehead and there is nothing to indicate that the small cut injury in the forehead would cause permanent disability. The quantum of compensation is on the higher side. Hence, this appeal is dismissed. No costs.

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Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special District Judge, Salem.

+1cc to Mr.Srinivasa Ramalingam, Advocate SR.No.42141

C.M.A.Nos.861, 1041 and 1042 of 2017

KJ (CO)
GMY (01/11/2021)