IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.Nos.2815 of 2012 & 3613 of 2011

C.M.A.No.2815 of 2012

1.D.Rosemary
w/o late S.Doraikan

2.D.Noah Thavaseelan
S/o late S.Doraikan

3.D.Dharsina Thavakumari
D/o. late S.Doraikan ... Appellants

Vs.

1.M/S.Vishwas Sales Corporation
No.15/28, Karani Garden 1st Street,
Saidapet, Chennai -15.

2.The New India Assurance Co Ltd.,
No.46, Moore Street,
Chennai 01. ... Respondents

(the 1st respondent exparte before lower Court, hence notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2011, made in M.C.O.P. No.2730 of 2007, on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants : Mr.U.Chidambaram for
for M/S.V.Mohan Choudary

For Respondents: Ms.Saloni
for Mr.C.Rameshbabu - R2
Notice unserved - R1

C.M.A.No.3613 of 2011

The New India Assurance Co.Ltd.
No.46, Moore Street,
Chennai-600 001. ... Appellant /2nd respondent

Vs

1.D.Rosemary
W/o late S.Doraikan

2.D.Noah Thavaseelan
S/o late S.Doraikan

3.D.Dharsina Thavakumari
D/o. late S.Doraikan ... Respondents 1 to 3 /Petitioners 1 to 3

4.M/S.Vishwas Sales Corporation
No.15/28, Karani Garden 1st Street,
Saidapet, Chennai -15. ... 4th respondent / 1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 27.01.2011 made in M.C.O.P No.2730 of 2007 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes) at Chennai.

For Appellant : Ms.Saloni
for Mr.C.Rameshbabu

For R1 to R3 : Mr.U.Chidambaram for
for M/S.V.Mohan Choudary

For R4 : Notice unserved.

COMMON JUDGMENT

As the relief sought for in both the Civil Miscellaneous Appeals are interconnected, hence they are disposed of by this common Judgment.

2. Brief facts of the case:
On 16.06.2007 at about 4.15 p.m, the deceased Doraikan was walking along the western side of the Anna Salai at Saidapet

from South to North, at the time a load auto bearing Reg.No. TN-09-AE-1183 belonging to the first respondent driven by its driver in a rash and negligent manner and dashed against the deceased from behind due to which, the deceased sustained multiple injuries and later succumbed to the death. The claimants initially filed M.C.O.P. No.2730 of 2007, on the file of the Chief Court of Small Causes, Chennai, claiming a sum of Rs.7,00,000/- as compensation from the owner and insurer for the death of deceased S.Doraikan.

3.The Tribunal, on considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto bearing Reg.No. TN-09-AE-1183 belongs to the 1st respondent /owner of the vehicle, and directed the 2nd respondent insurer of the offending vehicle to pay a sum of Rs.2,25,000/- along with interest @ 7.5% per annum as compensation to the claimants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.01.2011, made in M.C.O.P. No.2730 of 2007, the claimants have preferred an appeal in C.M.A.No.2815/2012 for enhancing of compensation in C.M.A.No.2815/2012. Challenging the amount awarded by the tribunal in the above said M.C.O.P.No.2730 of 2007, the insurance company have come out with an appeal in C.M.A.No.3613 of 2011.

5.Grounds raised in C.M.A.No.2815/2012:

The learned counsel appearing for the claimants contended that at the time of accident, the deceased was aged about 63 years and he was self employed as painting sub contractor and earned Rs.10,000/-. The deceased is the only breadwinner of the claimants family, without his income, his family is suffering from heavy financial crisis. The learned counsel for the claimants further submitted that the tribunal without considering the above aspects, awarded only a sum of Rs.2,25,000/- as compensation against the claim of Rs.7,00,000/- which is erroneous. Further, he submitted that the deceased is the only breadwinner of his family, the tribunal has erroneously fixed the monthly income of deceased was Rs.3000/- per month, which is very meagre. In any event, the amounts awarded by the Tribunal under different heads, without considering the age and occupation of the deceased are meagre and prayed for enhancement of the compensation.

6.Grounds raised in C.M.A.No.3613/2011:

The learned counsel appearing for the 2nd respondent/ Insurance Company except the statement that the deceased was self employed as painting sub contractor and earned Rs.250/- per day and was earning Rs.400/- per day, no other documents to prove that the deceased was working as painting sub contractor and earned Rs. 10,000/- per month. Without considering the same, the tribunal has fixed the monthly income as Rs.3000/- per month and calculated the loss of income by adopting multiplier method at Rs.1,60,000/- and the compensation awarded by the tribunal under various heads are excessive and without any basis and the same is liable to be set aside and also prayed to set aside the liability fixed against the insurance company.

7.Heard learned counsel appearing for the claimants as well as the learned counsel appearing for the Insurance Company and perused the materials available on record. Even though these appeals were admitted way back in the year 2011, no steps have been taken by the appellant / Insurance Company to serve papers to the 4th respondent in C.M.A.No. 3613/2011.

8. A perusal of the oral evidence reveals that the accident was occurred due to the rash and negligent of the fourth respondent's driver in C.M.A.No.3613/2011 and the same was duly insured with the Insurance company at the time of accident. On considering the evidence, it is proved that the negligence on the part of the offending Insured vehicle. Therefore the contention of the Insurance company that the denial of negligence on the part of the driver of the insured vehicle is rejected. The Tribunal has rightly came to the conclusion that the appellant/ Insurance company is liable to pay the compensation. The said decision of the tribunal does not require any interference and the same is confirmed by this Court.

9. Secondly challenged the quantum of compensation awarded by the tribunal is concerned, Ex.P1/F.I.R, Ex.P3/death report, Ex.P6/ death certificate and Ex.P8 / postmortem certificate would reveal that the deceased died due to the injuries sustained by him in the accident. With regard to the age of the of the deceased, in the petition it is stated as 63 years,however in the death report/Ex.P3 and Ex.P6 death certificate the age of the deceased is mentioned as 66 years, whereas in Ex.P8 postmortem certificate, Ex.P9 and Ex.P.10/ Accident register copies, shows the age of the deceased is mentioned as 65 years. Hence this Court considering the age of the deceased, period of accident and other family circumstances, finds it proper to fix the income of the deceased at Rs.4000/- per month and Rs.48,000/- per annum and after deducting 1/3rd towards the personal and living expenses of the deceased, adopting the multiplier 5 the loss of income of the deceased is calculated Rs.1,60,000/-[(Rs.4000 x 12x 5)-1/3]. The sum awarded

by the tribunal under the head 'Medical Expenses' is very much proved by Ex.P4, hence the same is confirmed. It is also seen that the amount awarded under the heads of loss of consortium and love and affection are very meagre, hence this Court is inclined to enhance amount under the said head. Accordingly, the sum granted to the wife of the deceased under the head for Loss of Consortium is enhanced from Rs.10,000/- to Rs.30,000/-. The sum granted to the children for Loss of Love and Affection is enhanced to Rs.40,000/- (Rs.20,000/- each). It is seen from the award that the tribunal has not granted any amount for loss of estate and transport expenses, hence this Court is inclined to award some amount, accordingly a sum of Rs.15,000/-and Rs.5,000/- is granted respectively under the said heads. The sum granted for Funeral Expenses is also enhanced to Rs.10,000/- Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Compensation awarded by Tribunal (Rs)	compensation enhanced /awarded by this Court (Rs)
1.	Loss of Income to the petitioners	1,20,000	1,60,000
2.	Loss of consortium to the wife of the deceased	10,000	30,000
3.	Love and affection to the children	10,000	40,000 (Rs.20,000/- each)
4.	Medial Expenses	76,400	76,400
5.	Funeral Expenses	8,600	10,000
6.	Loss of Estate		15,000
7.	Transport expenses	..	5,000
	Total	2,25,000/-	3,36,400/-

10.In the result, the appeal filed by the claimants in C.M.A.No.2815/2012, is partly allowed and the amount awarded by the Tribunal is enhanced from Rs.2,25,000/- to Rs.3,36,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The C.M.A.No.3613/2011 filed by the New India Assurance co. Ltd is dismissed.

11.The Insurance Company is directed to deposit the enhanced award amount, now determined by this Court along with interest and costs, less the amount already deposited, 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.2730 of 2007. On such deposit, the claimants/ appellants in C.M.A.No.2815/2012 are permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The Claimants/appellants are directed to pay the additional court fee for the enhanced amount of compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs
To

The Small causes Court,
(Motor Accident Claims Tribunal)
Chennai.

Copy to

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

+2ccs to M/s.C.Ramesh Babu, Advocate Sr.8206, 8207
+2ccs to M/s.V.Mohan Choudhary, Advocate Sr.8087

C.M.A.Nos.2815 of 2012 & 3613 of 2011

srg 30/07/2021