



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA. Nos.3098 & 3337 of 2012

C.M.A.No.3098 of 2012

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.42, Big Street,
Tiruvannamalai.

... Appellant/1st Respondent

..Vs..

1. Vijaya
2. Sekar

... Respondents 1&2/Petitioner

3. Sivaraman

... 3rd Respondents/1st Respondent

C.M.A.No.3337 of 2012

1. Vijaya
2. Sekar

... Appellants/Petitioners

..Vs..

1. Sivaraman
2. The Divisional Manager,
The New India Assurance Co. Ltd.,
No.42, Big Street,
Tiruvannamalai.

... Respondents/Respondents

Common Prayer: These Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 12.06.2012 made in M.C.O.P.No.560 of 2007 on the file of District Court (Motor Accidents Claims Tribunal), Tiruvannamalai.

For Appellant in CMA.3098/12
and 2nd respondent in CMA. 3337/12 : Mr. A.Dhiravianathan



For Respondent No. 1 & 2 in CMA.3098/12
and appellants 1 & 2 in CMA.3337/12 : Mr.V.Venkatesan

WEB COPY

COMMON JUDGMENT

The matter is heard through "Video Conferencing".

Since both the appeals filed against the common award of Motor Accidents Claims Tribunal, they are also disposed of by a common judgment.

Brief facts:

2.1 On 29.03.2007 at about 11.45 p.m, the deceased Saravanan was proceedings in his Motorcylce bearing Reg.No. TN-25-2477 near Raja Saw Mill at Tindivanam Road, while one lorry was coming from opposite side, he turned the vehicle, his vehicle dashed against the back side of the stationed bus bearing Reg.no. TN-25-V-4545. Due to that impact, the deceased Saravanan was thrown out from his vehicle and sustained severe injuries all over the body and died on the spot. The parents of the deceased filed petition before the tribunal, claiming a sum of Rs.10,00,000/- as compensation from the owner and insurer of the bus bearing Reg.No. TN-25-V-4545.

2.2. The Tribunal, on considering the oral and documentary evidence, has held that the accident had occurred only due to the negligence on the part of the driver of the 1st respondent bus, who stationed the bus without any signal or caution and being insurer of the said vehilce, directed the insurance company to pay the compensation amount of sum of Rs.3,43,000/- along with interest at the rate of 7.5% p.a from the date of petition till realization. Being aggrieved by the said award, the claimants have preferred an appeal in CMA.No.3337 of 2012 for enhancement of compensation, challenging the quantum and liability, the insurance company has preferred a appeal in CMA.No. 3098 of 2012 before this Court.

Grounds raised by the appellants/claimants in CMA.No.3337 of 2012:

3. The learned counsel for the appellants submitted that the tribunal without considering the income and occupation of the deceased, who was earning a sum of Rs.10,000/- per month as painter and contractor, has fixed only a sum of Rs.3000/- as monthly income and calculated the loss of income , which is very less. The learned counsel for the appellants submitted that the compensation awarded by the tribunal under other heads are also very meagre and required to be enhanced.



Grounds raised by the appellants/insurance company in CMA.No.3098 of 2012:

4. The learned counsel appearing of the appellant/insurance company submitted that the deceased himself hit against a stationary bus and invited the accident, there was no rash and negligence on the part of the driver of the bus. The evidence of PW2 /eye witness is highly unreliable and he did not even witness the occurrence, he went and saw the occurrence place only after the impact. In view of the above, the tribunal ought to have rejected the evidence of PW2. The learned counsel further submitted that in any event, the tribunal, ought to have found that there was gross and total contributory negligence on the part of the deceased in causing the accident. Therefore, it is contended by the learned counsel for the appellant/insurance company that the negligence and liability fixed by the tribunal is liable to be set aside.

5. Heard the detailed submissions made by the learned counsel appearing for the appellants and the learned counsel appearing for the respondents in both the appeals and perused the documents available on record.

6. Before the tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to P6 were marked whereas on the side of the respondents, no witnesses were examined and no documents were marked.

7. It is seen from the records, PW2/Sankar had deposed in his evidence that on 29.03.2007 at 11.45 pm when he was standing near the Raja Saw Mills at Regional Transport Office, Tindivanam Salai, he witnessed that the deceased Saravanan was going in his two wheeler bearing Registration No.TN25-F-2477 in a slow manner, at that time a lorry came from the opposite side, on seeing the lorry, the deceased turned his vehicle and dashed against the stationed bus, which was stationed without any signal and without any caution. Due to the impact, the deceased thrown out of his vehicle and sustained crushed injuries all over his body and died on the spot. The accident had occurred only due to negligence act of the driver of the bus. There is nothing in the cross examination to discredit the evidence of PW2. The tribunal has also rightly considered the said evidence of PW2 and Ex.P1/FIR, Ex.P2/Postmortem Certificate and Ex.P3/Motor Vehicle Inspector's Report came to the conclusion that the accident had taken place only due to the negligent act of the driver of the insured bus.

8. In view of the clear evidence of PW2 and considering the fact that there is no contra evidence to disprove the evidence of PW2, this Court cannot consider the contention of the learned counsel for the insurance company for fixing contributory



negligence on the part of the deceased as there is no merits. Hence, this Court confirms the liability fixed on the insurance company.

9. Insofar as quantum of compensation is concerned, it is contended by the claimants that the tribunal has wrongly fixed the monthly income at Rs.3000/- as against the claim of Rs.10,000/- and deducted 1/3 towards the personal and living expenses and calculated the loss of earning at Rs.3,12,000/- which is very less.

10. It is seen from the records, the claimants have not produced any proof for salary, the tribunal in the absence of any proof, has fixed the monthly income at Rs.3000/- by considering the age of the deceased who was 27 years at the time of the accident as per Ex.P2/Postmortem Certificate. This Court confirms the monthly income fixed by the tribunal. But the tribunal deducted 1/3 towards personal and living expenses and not added future prospects. As per the decision of the Hon'ble Supreme Court in Sarala Verma's Case, the deceased being a bachelor 50% of the income has to be deducted towards personal and living expenses. As per the evidence of PW1 the deceased was self employed, working as painter and contractor, therefore, 40% of the total income has to be added towards future prospects. Further it is seen that the tribunal has wrongly applied 13 years multiplier by considering the age of the deceased. As per the principles laid down by the Hon'ble Supreme in Sarala Verma's case, age of the deceased has to be taken for adopting multiplier. Accordingly, for the age group of the deceased between 26 to 30 years, the proper multiplier is to be adopted as 17 years. Hence by following the above principles, the compensation awarded by the tribunal under the head loss of earnings of the deceased is modified as follows;

1500 (50% of the monthly income) +600 (40% of the income)
 $\times 12 \times 17 = 4,28,400/-$.

11. The further contention of the claimants that the tribunal has not awarded adequate compensation for love and affection. Though the loss of children to the parents cannot be compensated in terms of money, this court finds it proper to enhance the compensation from Rs.20000/- to Rs.40,000/- (Rs.20,000/- each). The tribunal has not awarded any amount towards 'loss of estate' hence a sum of Rs.15,000/- is granted under the said head. The sum awarded under other heads viz., Funeral and Transport expenses and Damage to cloth are reasonable and the same is confirmed.

12. Thus, the total compensation awarded by the tribunal



under various heads is modified as follows:

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Loss of dependancy	3,12,000/-	4,28,400
Loss of Love and affection	20,000/-	40,000 (Rs.20,000/- each)
Loss of Estate		15,000
Funeral expenses & Transport Charges	10,000/-	10,000
Damage to cloth and articles	1,000/-	1,000
Total	3,43,000/-	4,94,400/-

13. The compensation awarded by the tribunal is enhanced from Rs.3,43,000/- to Rs.4,94,400/- along with interest at the rate 7.5% per annum from the date of deposit till the date of realisation.

14. The Insurance Company is directed to deposit the entire compensation amount as modified by this Court along with interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants in CMA.No.3337 of 2012/claimants are permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

15. In fine, the Civil Miscellaneous Appeal No. 3337 of 2012 filed by the claimants is partly allowed to the aforesaid extent and the Civil Miscellaneous Appeal No. 3098 of 2012 filed by the Insurance Company is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ak



To:

1. The District Court,
Motor Accident Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

CMA. Nos.3098 & 3337 of 2012

RSI (CO)
SU (29/09/2021)