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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2021

PRONOUNCED ON : 30.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NOS.1949 & 1950 OF 2020

AND

C.M.P.NOS.14418 & 14421 OF 2020

The Manager,
Cholamandalam MS General Insurance Co.Ltd.,
Dare House, 2nd floor,
NSC Bose Road,
Chennai 600 001.

... Appellant (in both CMA's)/
2nd Respondent

Versus

1. Rathnamma
2. Pushpa
3. Charankumar

... R1 to R3/Petitioners 1 to 3

4. Rajamani.T

... R4/R1 in CMA.1949/2020/
4th Respondent/1st Respondent

1. Thimmarayappa

... 1st Respondent/Petitioner

2. Rajamani.T

... 2nd Respondent/1st Petitioner
in CMA.1950/2020

CMA.1949/2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.07.2019 in MCOP.No.145 of 2018 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Hosur.

CMA.1950/2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.07.2019 in MCOP.No.149 of 2018 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Hosur.



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For Appellant : Mrs.R.Sreevidya (in both CMAs)

For Respondents : Mr.S.P.Yuvaraj,
for R1 to R3 in CMA.1949/2020
for R1 in CMA 1950/2020

COMMON JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid mode")

Both these Civil Miscellaneous Appeals are filed by the Appellant- Insurance Company questioning the correctness of the award dated 23.07.2019 passed in MCOP.Nos.145 and 149 of 2018 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Hosur.

2.The claimants in MCOP.No.145 of 2018 are the wife, daughter and son of the deceased Rathnachari, who drove the two wheeler - TVS Jupiter bearing Registration No.TN-70-U-3337 on the fateful day. The claimant in MCOP.No.149 of 2018 is the injured Thimmarayappa, who was a pillion rider in the motorcycle driven by the deceased Rathnachari and who also sustained injuries in the accident. Both Claim Petitions were filed by the respective claimant (s), claiming a sum of Rs.35 Lakhs respectively, as compensation.

3.As per the claim petitions, on 12.03.2017 at about 16.15 hours, the deceased Rathnachari was driving the two wheeler-TVS Jupiter bearing Registration No.TN-70-U-3337, in which, the injured Thimmarayappa travelled as Pillion rider from Uddanapalli to Hosur Road, when nearing Thuppuganapalli Bus Stop, the driver of the TATA 407, Pick up vehicle bearing Registration No.KA-51-C-5924, drove it in a rash and negligent manner from the opposite side and hit the vehicle driven by Rathnachari. In the impact, the driver of the two wheeler/Rathnachari sustained fatal injuries and died on the spot, while the pillion rider Thimmarayappa sustained fracture injuries. The injured was taken to Government Hospital, Hosur where, after providing first aid, he was referred to Kauvery Hospital, Hosur, for better management. The injured was hospitalised from 12.03.2017 to 24.03.2017 and thereafter, he was discharged.

4.According to the claimants in MCOP.No.145 of 2018, the deceased Rathnachari was aged 42 years, a Carpenter/ Agriculturist/Cattle merchant. It is their claim that the deceased was earning a sum of Rs.25,000/- per month and was contributing the entire earnings to the welfare and maintenance of his family.



5.The injured claimant has filed MCOP.No.149 of 2018, who was 42 years at the time of accident. It is his claim that he was engaged in cattle business, besides being an agriculturist and earning a sum of Rs.25,000/- per month. He also claimed that due to the injuries sustained, he could not discharge his duties, as before the accident and that the injuries have a bearing on his day to day normal chores. Due to the injuries sustained in his hip, the claimant is unable to pass urine normally and he finds it difficult to attend to his natural call. During the course of hospitalisation, he had underwent surgery and post-discharge from the hospital, he is unable to sit, stand or walk and is totally bed ridden.

6.The appellant - Insurance Company resisted the claim petitions by contending that the insurer of the two wheeler has not been impleaded as party to the claim petition and therefore, the claim petitions have to be dismissed on the ground of non-joinder of party. Further, the Insurance company denied the averments relating to the age, avocation and earnings of the deceased/injured and prayed for dismissal of the claim petitions.

7.Before the Tribunal, common evidence was let in to prove the averments in the respective claim petitions. The wife of the deceased Rathnachari namely Rathinamma, first claimant in MCOP.No.145 of 2018 was examined as PW1 and the injured Thimmarayappa, claimant in MCOP.No.149 of 2018 was examined as PW2. Besides Ex's. P1 to P15 were marked on the side of the claimants. On behalf of the respondent/Insurance Company, one Latha was examined as RW1 and Ex's. R1 to R5 were marked.

8.The Tribunal, on analysing the oral and documentary evidence, concluded that there is negligence on the part of the deceased in MCOP.No.145 of 2018 and therefore, contributory negligence has been fixed at 5%. The Tribunal ultimately awarded a total sum of Rs.16,49,930/- and after deducting 5% towards contributory negligence at Rs.82,497/- awarded a total sum of Rs.15,67,433/- as compensation to the claimants in MCOP.No.145 of 2018. In the case of MCOP.No.149 of 2018, the Tribunal awarded Rs.13,70,800/- towards compensation for the injuries sustained by the claimant and directed the said amount to be paid by the appellant-Insurance Company.

9.The learned counsel for the appellants vehemently contend that the deceased, who drove the two wheeler at the time of accident did not possess a valid driving licence. It is also contended that the deceased had lost the balance and hit against the goods carriage lorry. While so, the Tribunal ought to have



fixed contributory negligence on the part of the deceased in MCOP.No.145 of 2018. It is also contended that the Tribunal without taking note of the fact that the income of the deceased has not been proved by any documentary evidence, ought not to have awarded a huge sum of Rs.15,67,433/- as compensation to the claimants in MCOP.No.145 of 2018. Accordingly, the learned counsel prayed for allowing CMA.No.1949 of 2020.

10.As far as CMA.No.1950 of 2020 is concerned, it is stated that the injured sustained Pelvic disthesis with Rt scro iliac joint dislocation with urethral injury with complete peritoneal tear and Rt bimolecular fracture. His disability has been assessed as partial permanent disability at 60%. According to the learned counsel for the appellant, the discharge summary, Ex.P11 produced by the injured claimant does not contain any remarks about his mobility or stability. The claimant has also did not produce any document to show that after his discharge, he had taken continuous treatment for the injuries he sustained in the accident. There is no loss suffered by the claimant to attend to his employment and therefore in the absence of any functional disability, the Tribunal is not justified in resorting to multiplier method to award a huge compensation of Rs.9,36,000/- by taking 60% disability as assessed. There is no loss of earning power and as per the investigation conducted by the appellant on 01.08.2018, the claimant has completely recovered from the injuries and attending to his regular work in the field. Therefore, the learned counsel for the appellant prayed for modification of the award passed by the Tribunal and to allow the CMA No.1950 of 2020.

11.On the above contention, this Court heard the submission of the respective counsel appearing for the respondents/claimants in these appeals and perused the materials placed on record.

12.At the outset, it has to be mentioned that the Appellant /Insurance Company has not questioned their liability to pay compensation. What is stated in the grounds of appeals is that the Tribunal ought to have fixed contributory negligence on the part of the deceased, who had driven the two wheeler on the fateful day. It is also contended that the quantum of compensation sought for by the claimant in MCOP.No.149 of 2018 is exaggerated, but without considering the same, the Tribunal has awarded exorbitant amount as compensation.

13.As far as CMA.No.1949 of 2020 is concerned, arising out of MCOP.No.145 of 2018, the claimants are the wife, daughter



and son of the deceased Rathnachari. The deceased was aged about 45 years at the time of accident. The deceased had driven the two wheeler at the time of accident. According to the claimants, the deceased was hale and healthy and was earning a sum of Rs.25,000/- per month as a Carpenter, Agriculturist and Cattle merchant. However, the claimants have not produced any document to prove the income of the deceased. Therefore, the Tribunal had taken a sum of Rs.11,000/- as notional income of the deceased. The fixation of Rs.11,000/- per month, in the opinion of this Court is reasonable taking note of the date of accident namely 12.03.2017. The Tribunal, after deducting 1/3 amount towards personal expenses, arrived at a sum of Rs.7,333/- as the actual loss of income. By applying the correct multiplier '14', the Tribunal awarded Rs.12,31,944/- as loss of income of the deceased. This Court is of the view that the sum of Rs.12,31,944/- fixed by the Tribunal is just and reasonable and there is no infirmity in fixing such sum.

14.The Tribunal also awarded compensation under the non-pecuniary heads such as loss of love and affection at Rs.30,000/-, Transportation charges at Rs.10,000/-, Funeral Expenses and Loss of Estate at Rs.15,000/- each and Loss of consortium to the first claimant at Rs.40,000/-. Absolutely, this Court finds no infirmity in awarding the aforesaid amount. The Tribunal also separately awarded a sum of Rs.3,07,986/- towards future prospects instead of adding such sum towards loss of dependency. In any event, this Court does not find any error in awarding Rs.3,07,986/- towards future prospectus considering the age of the deceased at the time of accident. Therefore, 95% of compensation of Rs.15,67,433/- awarded by the Tribunal is just and reasonable. In such view of the matter, the contentions raised on behalf of the appellant Insurance Company in CMA.No.1949 of 2020 are liable only to be rejected. Accordingly, CMA.No.1949 of 2020 is liable to be dismissed.

15.As far as CMA.No.1950 of 2020 (MCOP.No.149 of 2018) is concerned, it pertains to injury sustained by the claimant, who travelled as a pillion rider at the time of accident. The claimant was aged 45 at the time of accident. He claims to be earning a sum of Rs.25,000/- per month as a Cattle Businessman and as an agriculturist. The claimant has not produced any documentary evidence to substantiate his claim of income. Under Ex.P15, disability certificate issued by the District Medical Board, Krishnagiri, the disability of the claimant was assessed at 60%. Though the claimant has stated that he was 45 years at the time of accident, in Ex.P11, discharge summary issued by the hospital, his age was mentioned as 50. The discharge summary

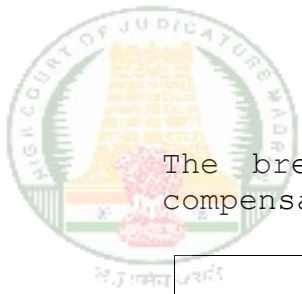


indicates that the claimant was admitted in hospital from 12.03.2017 to 24.03.2017 for 12 days. As rightly pointed out by the counsel for the appellant Insurance Company, there is nothing to show that the claimant continuously taken treatment for the injuries he sustained in the accident. There is nothing to indicate that the claimant suffered functional disability warranting the Tribunal to adopt multiplier method to award compensation. In fact, the counsel for the appellant submitted that on 01.08.2018, the investigator of the Insurance Company noticed the claimant working in the field and that he has fully recovered from the injuries. Even though such an averment is not substantiated by any documentary evidence, taking note of the period of treatment and the nature of injuries suffered by the claimant, this Court is inclined to interfere with the quantum of compensation awarded by the Tribunal.

16.The Tribunal has taken the notional income of the injured claimant at Rs.10,000/- and there is no infirmity in it. The percentage of disability assessed is 60%. Even if a sum of Rs.5,000/- is awarded per percentage of disability, a sum of Rs.3,00,000/- could be awarded as against the sum of Rs.9,36,000/- awarded by the Tribunal, which will be the fair and reasonable compensation payable to the claimant. Accordingly, this Court award a sum of Rs.3,00,000/- towards compensation for permanent disability to the claimant.

17.The Tribunal awarded a sum of Rs.2,79,080/- which are based on medical records. Therefore, the amount of Rs.2,79,080/- stands confirmed.

18.The Tribunal awarded various amount under the non-pecuniary heads such as Future Medical expenses at Rs.20,000/-, Transportation at Rs.15,000/-, Nutritional charges at Rs.25,000/-, Attender charges at Rs.20,000/-. Since the appellants are entitled for loss of amenities, the amount of Rs.25,000/- awarded by the Tribunal under the head of Discomfort, frustration and loss of social enjoyment is modified as Loss of Amenities. Considering the nature of the injuries, the amount awarded Rs.50,000/- towards Pain and suffering is meager and this Court is inclined to enhance the award amount to Rs.75,000/-, which is reasonable. Absolutely, this Court finds no reason to interfere with the amount awarded under the other heads as they are just and reasonable. Accordingly, the award passed by the Tribunal in MCOP.No.149 of 2018 corresponding to CMA.No.1950 of 2020 is modified and a total sum of Rs.7,59,500/- is hereby awarded as compensation to the claimant as against Rs.13,70,080/- awarded by the Tribunal, which would meet the ends of justice.



The break up details of the modified and enhanced award of compensation are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
60% loss of earning power (10,000 x 12 x 60/100 x13)	Rs.9,36,000/-	Rs.3,00,000/- (Permanent disability)
Medical expenses	Rs.2,79,080/-	Rs.2,79,080/-
Future medical expenses	Rs.20,000/-	Rs.20,000/-
Transportation charges	Rs.15,000/-	Rs.15,000/-
Nutrition charges	Rs.25,000/-	Rs.25,000/-
Attender charges	Rs.20,000/-	Rs.20,000/-
Pain and Sufferings	Rs.50,000/-	Rs.75,000/-
Loss of Amenities	Rs.25,000/-	Rs.25,000/-
Total	Rs.13,70,080/-	Rs.7,59,080/-

19. In the result,

(i) CMA.No.1949 of 2020 is dismissed, confirming the award passed by the Tribunal in MCOP.No.145 of 2018.

(ii) CMA.No.1950 of 2020 is partly allowed, by modifying the award passed by the Tribunal in MCOP.No.149 of 2018 and awarding a sum of Rs.13,70,800/- to Rs.7,59,080/-.

(iii) The appellant/Insurance Company is directed to deposit the amount determined in the aforesaid appeals, to the credit of respective Original Petitions before the Tribunal, after adjusting the amount, if any, already deposited or withdrawing the excess amount, as the case may be, with interest at the rate of 7.5% per annum from the date of deposit till the date of payment, within a period of eight weeks from the date of receipt of the copy of this Judgment.

(iv) No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

klt



To

1. The Motor Accidents Claims Tribunal,
Additional District Judge, Hosur.

2. The Section Officer,
V.R.Section, High Court, Madras - 104.

+2cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.50805 & 50806

+1cc to Mrs.R.Sreevidya, Advocate, S.R.No.50925

CMA Nos.1949 & 1950 of 2020

PP (CO)
CS/26/11/2021