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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.3814 & 3868 of 2019
and C.M.P.No.22088 of 2019

C.M.A.No.3814 of 2019

1.Selvi

2.Minor Ananthi
(rep. By his next friend/guardian/mother,
1st respondent)

3.Marayee

.. Appellants/Claimant

Vs.

1.M.Karunanithi
Administrator,
Angammal Educational Trust,
Elayampalayam, Tiruchengode Taluk,
Namakkal District.

2.United India Insurance Co. Ltd.,
146 N, Kumar Complex,
Tiruchengode.

.. Respondents/Respondents

C.M.A.No.3868 of 2019

United India Insurance Co. Ltd.,
146 N, Kumar Complex,
Tiruchengode.

.. Appellant/2nd Respondent

Vs.

1.Selvi

2.Minor Anandhi
(rep. by his next friend/guardian/mother,
1st respondent)

3.Marayee

4.M.Karunanithi.. Respondents/Petitioners 1 to 3, 1st Respondents



Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.06.2018, made in M.C.O.P. No.261 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

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(In C.M.A.No.3814/2019)

For Appellants : M/s.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents : No appearance (For R1)
Mr.A.Dhiraviyanathan (For R2)

(In C.M.A.No.3868/2019)

For Appellant :Mr.A.Dhiraviyanathan

For Respondents :M/s.T.S.Arthanareeswaran (For R1 to R3)
for M/s.C.Paraneedharan
No appearance for R4

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

The matter is heard through "Video Conferencing".

C.M.A. No.3814 of 2019 is filed for enhancement of the compensation and C.M.A. No.3868 of 2019 is filed against the award dated 13.06.2018, made in M.C.O.P. No.261 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

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 claimant filed M.C.O.P. No.261 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari, claiming a sum of Rs.15,00,000/- as compensation for the death of one Moorthi who died in the accident that took place on 14.03.2018.

5.According to the claimants, on the date of accident, when the deceased Moorthy was standing on the left side of the Namakkal to Tiruchengodu road, near Unjanai bus stop, the driver of a Tanker Lorry bearing Registration No.TN-28-D-6769 belonging to the 1st respondent drove the same in a rash and negligent manner without observing traffic rules, hit against the deceased and caused the accident. In the accident, the deceased sustained fatal injuries. The accident occurred only due to rash and



negligent driving by the driver of the Tanker Lorry belonging to the 1st respondent and hence, the claimants filed the said claim petition, claiming compensation against the respondents as owner and insurer of the said vehicle respectively.

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

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant in the claim petition. According to the 2nd respondent, the Tanker Lorry bearing Registration No.TN-28-D-6769 was not involved in the accident and in the said place where the accident is alleged to have happened, many heavy goods vehicle used to ply and the claimants have failed to note the correct vehicle number which was involved in the accident. The Tiruchengode Rural Police after enquiry, has closed the case as unidentical and sent final report to the Judicial Magistrate, Tiruchengode. Since the accident did not occur due to rash and negligent driving by driver of the Tanker Lorry belonging to the 1st respondent, the claim petition is bad for non-joinder of driver of the said offending vehicle as necessary party. In any event, the claimants have to prove their legal heirship, age, avocation and income of the deceased to claim compensation. The total compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined herself as P.W.1, examined eye witnesses as P.W.2, co-worker of the deceased as P.W.3 and marked 11 documents as Exs.P1 to P11. The 2nd respondent examined their official as R.W.1, Police as R.W.2 and marked 3 documents as Exs.R1 to R3.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tanker Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.14,56,000/- as compensation to the claimants.

10.Against the said award dated 13.06.2018, made in M.C.O.P. No.261 of 2010, the 2nd respondent - Insurance Company has filed C.M.A. No.3868 of 2019 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A.No.3814 of 2019, for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erroneously relied on the FIR for fixing negligence on the driver of the Tanker Lorry belonging to the 1st respondent, when author of the complaint was not examined. The Police after investigation filed



charge sheet that Tanker Lorry belonging to the 1st respondent was not involved in the accident. The Tribunal failed to consider the charge sheet and exonerate the 2nd respondent-Insurance Company from its liability. The learned counsel appearing for the 2nd respondent further contended that in the claim petition itself, the claimants have stated that the deceased was earning only a sum of Rs.5,000/- per month as Power Loom worker. P.W.1, who is the wife of the deceased has also deposed that deceased was earning a sum of Rs.950/- per week. The Tribunal erroneously fixed a sum of Rs.6,000/- per month as notional income of the deceased and granted excessive amount towards loss of love and affection and hence, prayed for setting aside the award of the Tribunal and dismissing C.M.A.No.3814 of 2019 filed by the claimants for enhancement.

12.Per contra, the learned counsel appearing for the claimants contended that the accident occurred due to involvement of Lorry belonging to the 1st respondent. On the date of accident, when the deceased was standing in the bus stand, the driver of the Tanker Lorry drove the vehicle in a rash and negligent manner and dashed on the deceased Moorthy and caused the accident. Due to the injuries sustained in the accident, the said Moorthy died. The claimants examined P.W.2 eye witness to prove that the accident occurred only due to rash and negligent driving by driver of the Tanker Lorry. The 2nd respondent-Insurance Company has not examined the driver of the Lorry or any eye witness to prove their case. The Tribunal considering the materials on record, held that accident occurred only due to rash and negligent driving by driver of the Lorry. The deceased was a Power Loom worker. The claimants examined the co-worker of the deceased as P.W.3, who deposed that the deceased was getting a sum of Rs.11,000/- per month as income. The Tribunal erroneously fixed a meagre amount of Rs.6,000/- per month as notional income. The Tribunal ought to have granted more compensation and prayed for dismissal of C.M.A.No.3868 of 2019 filed by the 2nd respondent-Insurance Company and for enhancement of the compensation.

13.Heard the learned counsel appearing for the claimants as well as the 2nd respondent - Insurance Company and perused the materials available on record.

14.It is the case of the claimants that while the deceased was standing in the bus stand near a tea shop, the driver of the Tanker Lorry belonging to the 1st respondent drove the same in a rash and negligent manner and dashed on the deceased and caused the accident. Due to the injuries sustained in the accident, the said Moorthy died. In support of their case, they examined P.W.2 eye witness and marked FIR. On the other hand, it is the case of the 2nd respondent-Insurance Company that Tanker Lorry belonging



to the 1st respondent was not involved in the accident and the accident occurred involving some unidentified vehicle. The vehicle belonging to the 1st respondent was falsely implicated. To substantiate their case, the 2nd respondent examined Police as R.W.2 and relied on the charge sheet. R.W.2 in his evidence has admitted that driver of the Tanker Lorry belonging to the 1st respondent was arrested and subsequently, he was enlarged on bail and vehicle was sent for inspection by the Motor Vehicle Inspector. R.W.2 also admitted that in the FIR it was mentioned that the vehicle belonging to the 1st respondent was involved in the accident. The Tribunal considering the evidence of P.W.2 eye witness, the fact that nothing favourable was elicited by the counsel for the 2nd respondent in the cross examination, evidence of R.W.2 and that the 1st respondent did not contest and file any objection for FIR being registered against driver of the Lorry or their vehicle was not involved in the accident, held that accident has occurred due to involvement of Lorry belonging to the 1st respondent and due to negligence of the driver of the Lorry, the accident occurred. There is no error in the said finding of the Tribunal with regard to negligence fixed and involvement of the Lorry, warranting interference by this Court.

15.As far as the quantum of compensation is concerned, in the typed set of papers in the claim petition filed by the 2nd respondent-Insurance Company, the claimants have mentioned that the deceased was a Power Loom worker and was earning a sum of Rs.5,000/- per month. In the claim petition filed by the claimants it was mentioned that the deceased was an Agriculturist and was earning a sum of Rs.10,000/- per month. The claimants have not stated as to whether any amendment was carried out. When the claimants themselves have stated that the deceased was earning only Rs.5,000/- per month in the claim petition, the Tribunal erroneously fixed a sum of Rs.6,000/- per month as notional income of the deceased. In view of the same, the claimants are not entitled for any enhancement towards loss of dependency. The Tribunal granted excessive amount for loss of love and affection to all the claimants, in addition to granting a sum of Rs.40,000/- towards loss of consortium to the 1st claimant. The same is modified and the claimants 2 and 3 are only entitled to a sum of Rs.40,000/- towards loss of love and affection. The claimants are not entitled to compensation towards pain and suffering and hence, the same is hereby set aside. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	10,76,000/-	10,76,000/-	Confirmed
2.	Loss of consortium to 1 st claimant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to claimants 2 and 3	2,75,000/-	40,000/-	Reduced
4.	Pain and sufferings	25,000/-	-	Set aside
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
7.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	14,56,000/-	11,96,000/-	Reduced by Rs.2,60,000/-

16. In the result, C.M.A.No.3814 of 2019 is dismissed and C.M.A.No.3868 of 2019 is partly allowed. The amount awarded by the Tribunal at Rs.14,56,000/- is modified to Rs.11,96,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.261 of 2010. On such deposit, the claimants 1 and 3 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st claimant, mother of the minor 2nd claimant is permitted to withdraw the accrued interest, once in three months



for the welfare of the minor 2nd claimant. The 2nd respondent-Insurance Company is permitted to withdraw the amount, lying in the credit of M.C.O.P. No.261 of 2010, if the entire award amount has already been deposited by them. It is made clear that if the claimants have already withdrawn the entire award amount, the 2nd respondent/Insurance Company is not entitled to recover the same from the claimants. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankari.

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

+2cc to Mr.A.Dhiraviyanathan, Advocate SR.No.6623, 6624

+2cc to Mr.T.S.Arthanareeswaran, Advocate SR.No.6435

C.M.A.
Nos.3814 & 3868 of 2019

AK -I (CO)
GMY (09/09/2021)