IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM:

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.A. No. 2295 of 2019
and
C.M.A. No. 1682 of 2020

C.M.A.No.2295 of 2019:

1.Gnanamani
2.Sathishkumar
3.Mullaivana Nathan .. Appellants/Petitioners

Versus

1.Vimalanandhan

2.Royal Sundaram Alliance Insurance Co.Ltd.,
No.1500, E.V.Nanjappa Road,
Erode. .. Respondents/Respondents

C.M.A.No.1682 of 2020:

Royal Sundaram Alliance Insurance Co.Ltd.,
No.1500, E.V.Nanjappa Road,
Erode .. Appellant

Versus

1.Gnanamani
2.Sathishkumar
3.Mullaivana Nathan
4.Vimalanandhan .. Respondents

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the award and decree dated 31.01.2019 made in M.C.O.P. No. 404 of 2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode.

C.M.A.No.1682 of 2020

For Appellant : Mr. G. Vasudevan

For R1 to R3 : Mr. T.S. Arthanareeswaran
For R4 : Set Ex-parte

For Appellants 1 to 3 : Mr. T.S. Arthanareeswaran

For R2 : Mr. G. Vasudevan
For R1 : Set Ex-parte

COMMON JUDGMENT

(Judgment of the Court was delivered by
SATHI KUMAR SUKUMARA KURUP,J.)

These Civil Miscellaneous Appeals arise out of the common award dated 31.01.2019 passed in M.C.O.P. No. 404 of 2014 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Tiruchengode.

2. Both the appeals pertain to the same accident and award, hence they are taken up together and disposed of by this common judgment.

3. The parties hereinafter are referred to as per their respective ranks in the claim petition, for the sake of convenience.

4. The claimants in MCOP No. 404 of 2014 have filed the appeal in CMA No. 2295 of 2019 seeking enhancement of compensation, while the other appeal in CMA No. 1682 of 2020 has been filed by the Insurance Company questioning their liability to pay compensation to the claimant as also the quantum of compensation.

5. As per the averments in the claim petition, on 27.04.2014, at about 02.45 pm, the deceased Ashok KUmar was driving his two wheeler - Discover bearing Registration No. TN 34 P 7571 in the Tiruchendur to Sankagiri Main Road at a normal speed. When the deceased was nearing Classic Hotel in Tiruchendur, a lorry bearing Registration No. TN 33 BA 2224 came from the opposite direction being driven by its driver in a rash and negligent manner and hit the two wheeler. In the impact, the deceased was thrown away from the two wheeler, sustained grievous injuries on his head and died on the spot. The first claimant is the father and the claimant Nos. 2 and 3 are the brothers of the deceased. According to the claimant, the deceased was aged 24 years and working as a Computer Instructor in a firm and was earning Rs.15,000/- as his salary. Therefore, for the death of the deceased, the claim petition was filed claiming a sum of Rs.25 lakhs as compensation against the owner as well as insurer of the lorry.

6. Before the Tribunal, the 1st respondent, who was the owner of the lorry, remained ex-parte.

7. The appellant/Insurance Company contested the claim petition by filing a counter statement. The insurance company

denied the averments made by the claimants and contended that the accident occurred only due to rash and negligent driving by the deceased Ashok Kumar. According to the Insurance Company, at the time of accident, the deceased did not possess a valid driving license. Besides, the deceased was not wearing helmet and therefore, the deceased himself has contributed to the accident. It is further stated that the deceased had driven the two wheeler in a rash and negligent manner, hit another two wheeler which was also coming on the opposite direction. Due to the above said impact, the deceased lost his control, fell down on the road, sustained head injury and died on the spot. The Insurance Company also denied the age, income and other particulars furnished by the claimants and prayed for dismissal of the claim petition.

8. Before the Tribunal, in order to prove the averments in the claim petition, the 1st claimant/father of the deceased was examined as P.W.1 and one eyewitness namely Rajasekaran was examined as P.W.2, and eleven documents were marked as Ex.P-1 to Ex.P-11. On the side of the 2nd respondent/Insurance Company, one Vaitheeswaran was examined as R.W.1, Ragupathi was examined as R.W.2 three documents were marked as Ex.R-1 to Ex.R-3.

9. The Tribunal, upon considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.21,95,000/- as compensation to the claimants. The Tribunal awarded the compensation under the following heads and they are:-

Loss of income		Rs. 21,60,000.00
Loss of love and affection		Rs. 20,000.00
Funeral expenses		Rs. 15,000.00
	Total	Rs. 21,95,000.00

10. On the other hand, the learned counsel for the claimants/appellants in CMA No. 2295 of 2019 would contend that the deceased was 24 years at the time of accident. he was a Post Graduate Decree holder in M.C.A. Earlier, he was working in Bharathiar University as a Computer Instructor and earning Rs.20,000/- per month. At the time, the deceased received a call letter from Tamil Nadu Mercantile Bank and he also successfully attended the interview. However, even before his appointment in the bank he died in the motor accident on 27.04.2014. In order to substantiate the age and income of the deceased, documents were marked before the Tribunal. Even though the Tribunal had taken the notional income of the deceased at Rs.20,000/- and deducted Rs.10,000/- thereof towards personal expenses, the Tribunal has not awarded any amount towards future prospects. Having regard to the educational qualification possessed by the deceased, the Tribunal ought to have awarded 40% of the monthly income towards future prospectus to the deceased, but the Tribunal

failed to award any amount thereof. Thus, the amount of Rs.21,95,000/- passed by the Tribunal has to be enhanced.

11. The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal failed to consider that the deceased, due to his rash and negligent driving, grazed the handle bar of another two wheeler, lost his balance and fell down. There is nothing to suggest that the two wheeler of the deceased was hit by the driver of the lorry, insured with the appellant. The Driver of the lorry was also examined as RW2 to establish that the accident occurred due to the own negligence of the deceased. However, the Tribunal ignored the testimony of the driver/RW2. In fact, the first information report was registered against the driver of the lorry. The complaint was given by none other than the father of the deceased, who did not witness the accident. The Police, after thorough investigation, had closed the case as mistake of fact by filing a final report under Ex.R1, which would only show that there was no negligence on the part of the driver of the lorry. In any event, the Tribunal ought to have atleast fixed some percentage of negligence on the part of the deceased, instead of concluding that the entire negligence is on the part of the driver of the lorry.

12. As regards the quantum of compensation, on the date of the accident, the deceased was not employed. The claimants have only filed the interview call letter under Ex.P10 issued by Tamil Nadu Mercandile Bank and it is not known as to whether the deceased has secured an employment in such Bank. Except Ex.P10, the claimants have not filed any other documents to show the earning capacity of the deceased. However, the Tribunal however fixed the monthly salary as Rs.20,000/- without there being no proof of income. Further, the learned counsel for the appellant/Insurance Company also stated that the respondents 2 and 3 are elder and younger brother of the deceased and therefore, they are not dependents of the deceased. Notwithstanding the above, the Tribunal erred in awarding Rs.21,60,000/- as compensation towards loss of income. On the other hand, in the claim petition, the claimants themselves have stated that the deceased was working as part time Computer Instructor and earning a sum of Rs.15,000/- per month. When the claimants have not proved the earnings of the deceased, the grounds raised by the claimants in CMA No. 2295 of 2019 for awarding future prospectus will not arise for consideration. Therefore, the learned counsel for the appellant prayed for setting aside the award passed by the Tribunal.

Points for consideration:
In CMA.No.1682 of 2020:

Whether the appeal preferred by the appellant/Insurance Company seeking to set aside the award is to be allowed?

In CMA.No.2295 of 2019:

Whether the appeal preferred by the claimants seeking enhancement is to be allowed?

13. Perused the award passed by the Tribunal in M.C.O.P. No. 404 of 2014 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Tiruchengode and counters filed by the 2nd respondent/Insurance Company.

14. Before the Tribunal, it was contended that the deceased alone contributed to the accident and therefore, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimants. The Tribunal, on examination of such defence raised by the Insurance Company concluded that the criminal case was registered as against the driver of the lorry. Even though the criminal complaint was closed as mistake of fact, it will not be a ground to conclude that the deceased was at fault. The Tribunal also disregarded the deposition of RW2, driver of the lorry on the ground that the driver of the lorry cannot be expected to admit his own negligence. Further, the Tribunal examined the deposition of PW2, an eye witness, who has deposed that it was the driver of the lorry who had hit the two wheeler driven by the deceased. Therefore, on consideration of the deposition of PW2, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry. We find no reason to take a different conclusion than the one arrived at by the Tribunal.

15. To prove the income of the deceased, the claimants have filed Ex.P10, interview call letter sent by Tamil Nadu Mercantile Bank. Even in the claim petition, the claimants have stated that the deceased is earning Rs.15,000/- as a Computer Instructor. It is also seen that the deceased is a Post Graduate Decree Holder (M.C.A.). Therefore, it is evident that the deceased is having the potentiality to earn which could be revealed from Ex.P10, interview call letter. Even though there is no evidence to conclude that the deceased was employed by the bank pursuant to the interview, in our opinion, Ex.P10, interview call letter can be taken note of to determine the potentiality of the deceased to earn. The Tribunal, taking note of the above has rightly fixed the income of the deceased at Rs.20,000/-, which in our opinion is not unreasonable. In such circumstances, for the purpose of mandatorily awarding of compensation to the claimants, the sum of Rs.20,000/- taken by the Tribunal is proper and it does not call for any interference by this Court. By taking Rs.20,000/- per month as notional income of the deceased and by deducting 50% thereof, the Tribunal , arrived at a sum of Rs.1,20,000/- as yearly income. By applying multiplier '18' a sum of Rs.21,60,000/- was awarded towards loss of income. We are in agreement with such a compensation awarded by the Tribunal towards loss of income.

16. At the same time, as rightly pointed out by the learned counsel for the claimants, the Tribunal ought to have awarded future prospectus to the claimants for the death of the deceased at a young age. Even if 40% of the amount of Rs.10,000/- is added, a sum of Rs.48,000/- could be awarded as yearly loss of future prospectus (Rs.4,000 X 12). If multiplier '18' is applied a sum of Rs.8,64,000/- will be a reasonable amount to be awarded towards future prospectus. Accordingly, we re-determine the loss of income of the deceased at Rs.30,24,000/- (Rs.21,60,000 + Rs.8,64,000).

17. The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection to the claimants, which, in our opinion is meager. The first claimant is the father and the claimants 2 and 3 are brothers. They have lost the deceased at his prime age. Having regard to the above and taking note of the oft-quoted decision of the Honourable Supreme Court in National Insurance Company Limited vs Pranay Sethi and others 2017 (16) Supreme Court Cases 680, we enhance the compensation payable to the claimants at Rs.40,000/- each and a total sum of Rs.1,20,000/- is hereby awarded towards loss of love and affection.

18. The Tribunal has awarded Rs.15,000/- towards funeral expenses, which is meager and the same is hereby enhanced to Rs.25,000/-.

19. The Tribunal has not awarded any amounts towards Transportation. Having regard to the totality of the facts and circumstances of the case, we are inclined to award a sum of Rs.10,000/- towards Transportation.

20. Accordingly, we enhance the compensation amount payable to the claimants at Rs.31,79,000/- as mentioned below:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	21,60,000/-	30,24,000	Enhanced
2.	Loss of love & affection	20,000/-	1,20,000/-	Enhanced
3.	Funeral expenses	15,000/-	25,000/-	Enhanced
4.	Transportation	-	10,000/-	Granted
	Total	Rs.21,95,000 /-	Rs.31,79,000	Enhanced by Rs.9,84,000/-

21. In the result, C.M.A.No.2295 of 2019 filed by the claimants is allowed and the total compensation of Rs.21,95,000/- awarded by the Tribunal is hereby enhanced to Rs.31,79,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. C.M.A.No.1682 of 2020 filed by the appellant/Insurance Company

is dismissed. The appellant-Insurance Company is directed to deposit the modified 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.404 of 2014. On such deposit, the first claimant/father is permitted to withdraw Rs.16,79,000/- and the claimants 2 and 3 are permitted to withdraw a sum of Rs.7,50,000/-along with proportionate interest and costs, after adjusting the amount already withdrawn if any. The claimants are directed to pay necessary Court fee proportionate to the enhanced compensation amount now determined in this appeal. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gbi/rsh

To

1. The Subordinate Judge
   Motor Accidents Claims Tribunal,
   Thiruchengode

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

+1cc to Mr.G.Vasudevan, Advocate SR. No. 10669

CMA Nos.2295 of 2019
and
CMA No. 1682 of 2020

JPL (CO)
PR (21/06/2022)