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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A.Nos.2827 and 2831 of 2021

CMA.No.2827 of 2021

1.Chandra

2.Harish (Minor)

3.Yogeshwaran (Minor)

(2nd and 3rd Minor are represented by their grandmother
and natural guardian 1st appellant)

4.Gowri

5.Devi

6.Sasikala

7.Viji

... Appellants /Petitioners

Vs.

1.K.G.Sowrirajan

2.National Insurance Company Limited,

1st Floor, Aruvi Block,

St.Paul Complex,

Bharathi Salai,

Tiruchirapalli.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, before this Hon'ble Court against the judgment and decree dated 30.01.2019 and made in M.A.C.T.O.P.No.9102 of 2015, on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellants : Mr.A.G.F.Terry Chella Raja

For Respondents : Mr.S.Arunkumar for R2

CMA.No.2831 of 2021

1.Rose Mary



2.Dharson (Minor)

3.Rohit (Minor)

(Minors 2 and 3 are rep by their
mother and Natural guardian 1st Appellant)

4.Rajambal

5.Rajagopal

... Appellants/Petitioners

Vs.

1.K.G.Sowrirajan

2.National Insurance Company Limited,
1st Floor, Aruvi Block,
St.Paul Complex,
Bharathi Salai,
Tiruchirapalli.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, before this Hon'ble Court against the judgment and decree dated 30.01.2019 and made in M.A.C.T.O.P.No.9104 of 2015, on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellants : Mr.A.G.F.Terry Chella Raja

For Respondents : Mr.S.Arunkumar for R2

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

[Judgment of the Court was delivered V.SIVAGNANAM, J]

These appeals are heard through video conferencing.

2.These appeals arise out of the common judgment dated 30.01.2019 passed in MCOP Nos.9102 and 9104 of 2015 respectively.

3.Both these Civil Miscellaneous Appeals are filed by the claimants in MCOP Nos. 9102 and 9104 of 2015 respectively seeking enhancement of the compensation.

4.MCOP No.9102 of 2015 was filed by the claimants who are the legal heirs of the deceased Ramesh. He was riding pillion in the vehicle driven by the deceased Murugan on the fateful. Similarly, MCOP No.9104 of 2015 was filed by the legal heirs of the deceased rider of the two wheeler Murugan.



5.As per the common averments made in the claim petitions, on the fateful day on 08.11.2015 at about 1.30 am, the deceased Murugan was riding the two wheeler bearing Registration No.TN-03-A-3137 with the deceased Ramesh riding pillion, from Puducherry to Chennai. When the two wheeler was driven near a place called Thirthavari Iyyanar Statute, Marakkanam, ECR Road, the driver of the Omni bus bearing Registration No.TN 60 D 1599, which is coming from Chennai to Pondicherry, was driven in a rash and negligent manner and hit the two wheeler. In the impact, both the driver as well as the pillion driver were thrown away from the vehicle, sustained grievous injury and died on the spot.

6.According to the claimants, the deceased Ramesh (pillion driver) was aged 36 years while the driver of the two wheeler Murugan was aged 32 years. It is stated that both of them were working as carpenter and earning Rs.20,000/- each per month. For the loss of their income, the claimants have filed the MCOP Nos.9102 and 9104 of 2015 before the Tribunal claiming a sum of Rs.50 lakhs as compensation each.

7.The Original Petitions were resisted by the first respondent/owner of the omni bus by contending that the driver of the bus had driven the vehicle in a careful and responsible manner but it was the driver of the two wheeler who had recklessly driven it and caused the accident. In other words, it is the defence of the owner of the omni bus before the Tribunal in both the claim petitions that the driver of the two wheeler namely Murugan had contributed for the accident in entirety.

8.The Insurance Company filed separate counter affidavit in both the claim petitions. It is their defence that the claimants ought to have impleaded the owner as well as insurer of the two wheeler and their non-impleadment is fatal to the case of the claimants. It is also stated that the two wheeler driver was negligent in driving the vehicle and it has led to the accident. The Insurance Company also denied the age, avocation and other particulars furnished in the claim petition and prayed for dismissal of the claim petitions.

9.Before the Tribunal, common evidence was let in. The first claimant in MCOP No.9102 of 2015 examined herself as PW1. The first claimant in MCOP No.9104 of 2015 was examined as PW2 and one Rajaram, a Carpenter by avocation was examined as PW3. The claimants have marked Exs.P1 to P20 in support of the claim petition. On behalf of the respondents in the claim petition,



neither any witness was examined nor document was marked.

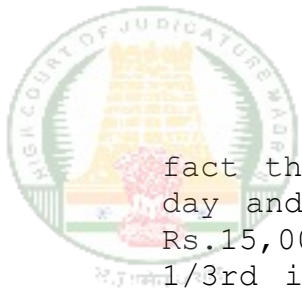
10.The Tribunal, on considering the oral and documentary evidence concluded that the claimants in MCOP No. 9104 of 2015 have not produced the driving licence of the deceased Murugan. It is also stated that the claimants have simply stated that the deceased was in possession of a driving licence but it was lost. The Tribunal therefore held that the claimants ought to have obtained certified copy of the driving licence and filed it as a document before the Tribunal to show that the deceased was in possession of a valid driving licence at the time of accident and for non-production of the same the Tribunal had taken an adverse inference and fixed 10% contributory negligence on the part of the deceased Murugan.

11.As regards quantum of compensation, the Tribunal awarded a total sum of Rs.23,36,000/- for the claimants in MCOP No.9102 of 2015 and Rs.22,57,200/- for the claimants in MCOP No.9102 of 2015, after deducting 10% towards contributory negligence.

12.As against the award passed by the Tribunal, neither the owner of the Omni bus nor the Insurer has filed any appeal. These appeals are filed only by the claimants seeking enhancement of the compensation amount inter alia to set aside the 10% contributory negligence fixed by the Tribunal as against the deceased in MCOP No.9104 of 2015.

13.The learned counsel for the appellants in CMA No.2831 of 2021 would vehemently contend that for non-production of driving licence of the deceased, the Tribunal ought not to have fixed 10% contributory negligence. When the respondents in the claim petition did not adduce any evidence to show the nature and extent of negligence on the part of the driver of the two wheeler or in the absence of any other evidence, the Tribunal ought not to have fixed 10% contributory negligence.

14.As far as the quantum of compensation is concerned, the learned counsel for the appellants contended that the claimants claimed Rs.50 lakhs each as compensation however, what was awarded by the Tribunal is meagre. The Tribunal failed to take note of the age of the deceased, their occupation and their ability to earn more. Even though the claimants claimed that the deceased are Carpenters by occupation and earned Rs.20,000/-, the Tribunal fixed a sum of Rs.12,000/- per month as monthly income. The Tribunal ought to have at least fixed Rs.15,000/- per month, as the monthly income even going by the



fact that a carpenter can earn at least a sum of Rs.700/- per day and for 20 days, the deceased could have earned more than Rs.15,000/- per month. Further, the Tribunal erred in deducting 1/3rd income towards personal expenses, when the deceased have their respective wife, children and parents and therefore, the Tribunal ought to have deducted 1/4th income towards personal expenses. It is also stated that the amount awarded under various heads are not proportionate to the evidence made available and therefore, the learned counsel prayed for appropriate enhancement.

15. On the above submission of the learned counsel for the appellant in these appeals, we have heard the learned counsel for the respondents/Insurance Company and perused the materials placed.

16. Before the Tribunal, the respondents did not adduce either oral or documentary evidence in support of their case. It is the definite case of the claimants that the accident occurred when the Omni Bus was driven by its driver in a rash and negligent manner. The case in Crime No.445 of 2015 on the file of Marakkanam Police Station was registered against the driver of the Omni bus, which is evident from Ex.P1. We also take note of the fact that in the accident, two young lives were lost. Thus, there is no evidence to conclude that it was the driver of the two wheeler who had driven the vehicle in a rash and negligent manner. In the absence of any such evidence, the Tribunal, in our opinion, ought not to have fixed 10% negligence on the part of the driver of the Two wheeler on the only ground that the claimants did not produce any documentary evidence to prove that the deceased driver of the two wheeler was in possession of a valid driving licence. Whether the deceased was in possession of a valid driving licence or not is not a ground for the Tribunal to conclude that the deceased would have contributed to the accident. Such a conclusion has been arrived at by the Tribunal on mere surmises without any valid evidence. Therefore, we are of the view that the Tribunal is not right in fixing 10% negligence on the driver of the two wheeler and we are inclined to set aside the same.

17. As far as quantum, admittedly, there was no documentary evidence produced to prove the income of the respective deceased. It is claimed by the claimants that the deceased were Carpenters by avocation and they earned Rs.20,000/- per month. In the absence of any documentary evidence, the Tribunal fixed Rs.12,000/- per month as monthly income of the deceased in both the claim petitions and awarded



the compensation amount. Out of this amount, the Tribunal had taken 40% thereof towards future prospects. The Tribunal also awarded a sum of Rs.40,000/- towards loss of love and affection proportionate to number of dependents in each case. That apart, the Tribunal awarded compensation under the head "loss of estate", "Transportation" and "funeral expenses". In effect, we find that the amount of compensation awarded by the Tribunal is fair and reasonable and therefore we decline to interfere with the same.

18. In the result,

(i) CMA No.2827 of 2021 is dismissed by confirming the judgment dated 30.01.2019 passed in MCOP No.9102 of 2015. The Insurance Company is directed to deposit the compensation amount as determined in this appeal with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The apportionment made by the Tribunal is hereby confirmed. On deposit being made by the appellants, the claimants 1, 4 and 5 are permitted to withdraw their respective shares, less the amount already withdrawn, if any, together with interest and costs. Insofar as the second and third claimants/ minors are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalized Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months. No costs.

(ii) CMA No.2831 of 2021 is partly allowed by setting aside the Judgment dated 30.01.2019 passed in MCOP No.9104 of 2015 in so far as it relates to fixation of 10% as contributory negligence fixed by the Tribunal on the deceased Murugan, driver of the two wheeler alone and consequently we hold that the claimants are entitled to a total sum of Rs.25,08,000/- as compensation in their favour and they shall apportion the said amount as directed by the Tribunal. The Insurance Company is directed to deposit the compensation amount as determined in this appeal with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The apportionment made by the Tribunal is hereby confirmed. On deposit being made by the appellants, the claimants 1, 4 and 5 are permitted to withdraw their respective shares, less the amount already withdrawn, if any, together with interest and costs. Insofar as the second and third claimants/ minors are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one



of the Nationalized Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months.
No costs.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.

Copy To

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

+2cc to Mr.Terry Chellaraja, Advocate SR.No.51649 & 51650

C.M.A.Nos.2827 and 2831 of 2021

MG(CO)
GN(07/02/2022)