IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

HONOURABLE MR.JUSTICE R.SUBBIAH
AND
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NOS.3408 & 4104 OF 2019
AND
C.M.P. NO.20020 OF 2019

M/s. United India Insurance Co. Ltd.,
No.52, General Muthia Street,
Sowcarpet, Chennai – 79.

..Appellant in CMA.No.3408 of 2019
& 2nd Respondent in CMA.No.4104 of 2019/2nd Respondent

Vs.

1. R.Meenakshi
W/o. R.Prabhakaran

2. R.Muralikrishnan
S/o. Late C.P.Ramachandran

.. 1 & 2 Respondents in CMA.No.3408 of 2019/
Appellants in CMA.No.4104 of 2019/Petitioners

3. A.P.Stores,
No.81, Ragavachari Street,
Ponneri District,
Thiruvallur,
Tamil Nadu – 601 204.

..3rd Respondent in CMA.No.3408 of 2019
& 1st Respondent in CMA.No.4104 of 2019/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2019 in M.C.O.P.No.2331 of 2014 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge – I, Chennai.

For Appellant in
CMA.No.3408/2019
For 2nd Respondent in
CMA.No.4104/2019 :: Mr.S.Arun Kumar

For Appellants in
CMA.No.4104/2019
For Respondents 1 & 2
in CMA.No.3408/2019 :: Mr.K.Varadakamaraj

COMMON JUDGMENT

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

These Civil Miscellaneous Appeals have been filed against the Judgment and Decree dated 21.01.2019 made in M.C.O.P.No.2331 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge – I, Chennai.

2.The appellant in CMA.No.3408 of 2019 is the second respondent in M.C.O.P.No.2331 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge – I, Chennai. The respondents 1 and 2 in CMA.No.3408/2019 have filed the said claim petition, claiming a sum of Rs.1,00,00,000/- as compensation for the death of one R.Kannan, who died in the accident that took place on 11.07.2012.

3.According to the respondents 1 and 2 in CMA.No.3408/2019, on 11.07.2012, at about 20.15 hours, the deceased Kannan was riding the motorcycle bearing Registration No.TN-20-AZ-8176 in GST Road from South to North. The first respondent in MCOP.No.2331 of 2014 is the owner of the Tata 407 Van bearing Registration No.TN-18-E 5486 and it was driven in a rash and negligent manner and it dashed against the deceased, as a result of which, he sustained multiple injuries. Thereafter, he died. Hence, the respondents 1 and 2 have filed the above claim petition in CMA.No.3408 of 2019 claiming compensation.

4. Mr. S.Arun Kumar, learned counsel appearing for the Appellant/Insurance Company in CMA.No.3408/2019 submitted his

arguments. Here in this case, the claimants are elder brother and elder sister of the deceased and the deceased was a Bachelor on the date of accident. The accident was a fatal accident. Therefore, the elder brother and the elder sister had filed the claim petition and sought compensation. There was no evidence that they are the dependents of the deceased and the deceased was the brother. During the cross examination, the claimants themselves admitted that they had been living separately from the deceased. The elder sister was married and living with her husband and children. The elder brother was married and living with his family. The deceased brother was not living either with the elder sister or elder brother. There is no evidence that the deceased brother was regularly contributing from his salary for the maintenance of the elder brother and elder sister. Therefore, the Motor Accidents Claims Tribunal had failed to appreciate the facts and the principles of the Motor Accident Claim Cases and had ignored those principles. The Motor Accident Claims Tribunal had calculated the compensation mechanically. Had the deceased been alive, whether he could have contributed anything from his monthly income to his elder brother and elder sister, itself is doubt. According to the learned counsel appearing for the appellant/Insurance Company, in any case, as per the reported Ruling of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, if the deceased is a Bachelor and parents are not alive on the date of death of the individual, then the claimants either be the brother or sister of the deceased are entitled to only claim under “no fault liability” i.e., Rs.25000/- only as mandatory claim and for the claim under the head loss of love and affection, Funeral Charges, Transport charges and not more than that. According to the learned counsel appearing for the appellant/Insurance Company, the Motor Accident Claims Tribunal had failed to appreciate the facts in the light of the principles governing the Motor Accident Claim Cases and Motor Vehicles Act and Rules regarding the compensation. Therefore, the Insurance Company/ Second Respondent in MCOP.No.2331 of 2014 had filed the appeal challenging the quantum arrived at by the Motor Accident Claims Tribunal. Therefore, the learned counsel for the appellant/Insurance Company had argued that the award amount had to be reduced in the light of the reported Ruling of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 regarding the claim made by brother and sister of the deceased in fatal cases.

5. Mr.K.Varadakamaraj, learned counsel appearing for the respondents 1 &2/claimants in MCOP.No.2331 of 2014 submitted his arguments. As per his arguments, the award passed by the Tribunal is justified. As the deceased was a Bachelor, even though, the elder brother and elder sister were living separately in their houses, they had got financial help from the deceased. Therefore, based on the said human consideration, the Tribunal had rightly arrived at the compensation amount. The claim of the petitioners was Rs.1 Crore, whereas, the Tribunal had only awarded Rs.31,78,000/- and since the award was not in accordance with law, the claimants had preferred CMA.No.4041/2019 for enhancement of the award amount. The Tribunal ought to have awarded Rs.1 Crore, instead, it has reduced the monthly contribution of the deceased as half of the salary and thereby, the compensation awarded by the Tribunal was a meagre amount, which had caused miscarriage of justice to the claimants.

6. The Insurance Company has filed appeal in CMA.No.3408/2019 challenging the quantum, claiming that the award amount calculated by the Motor Accident Claim Tribunal was excessive, considering the fact that the deceased was not a bread winner of the family and the claimants were not dependents of the deceased.

7. The respondents 1 & 2 in CMA.No.3408/2019 are the elder brother and elder sister of the deceased who had filed the appeal in CMA.No.4104/2019 seeking enhancement stating that the Motor Accident Claims Tribunal mechanically deducted half of the salary instead of deducting 1/3 salary of the deceased towards the contribution of his family and 1/3 towards for his own expenses, thereby the award amount was reduced by the Tribunal.

8. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned Counsel appearing for the respondents 1&2 /claimants and perused the materials available on record.

9. Points For Consideration:

(i) Whether the Insurance Company/appellant in

CMA.No.3408/2019 is entitled to the relief of deduction of the award amount granted by the Tribunal, and

(ii) Whether the appellants in CMA.No.4104/2019 who are the claimants before the Motor Accident Claims Tribunal, is entitled to enhance the award amount.

10. On a perusal of the petition and counter in MCOP.No.2331/2014 and the impugned award passed by the Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge -I, Chennai and the grounds of appeals in CMA.No.3408/2019 and CMA.No.4104/2019 and on going through the facts from the available records, it is found that the elder brother viz., Murali Krishnan and elder sister viz., Meenakshi were not dependents of the income of the deceased/brother/Kannan. The learned Special Judge (Motor Accident Claims Tribunal), Small Causes Court, Chennai failed to appreciate the same and had misdirected herself by mechanically calculating the dependency and has assessed the loss of income also. It is borne out by records that the deceased was aged 41 years as on the date of accident. Therefore, the multiplier will be "14" and not 15. The Tribunal had taken "15" as the multiplier and since the elder brother and elder sister were not dependents of the deceased, there is no necessity for calculating future prospects. After calculating the dependency, the Tribunal had included future prospects also and that is why the award was arrived at Rs.31,78,000/-. While calculating the compensation, the income tax was to be deducted from the salary and for the assessment year 2012-2013, upto Rs.1,80,000 tax is nil and between Rs.1,80,000/- and Rs.5,00,000/- it is 10% and between Rs.5,00,000/- and Rs.8,00,000/- it is 20%. In this case, as per the claim petition, the monthly income of the deceased would have been at Rs.54,986/- and for the proof of the salary of deceased employee, HR Manager of the Capgemini Consulting India Pvt Ltd was examined. Therefore, the annual income of the deceased would be at Rs.6,59,832 (54986x12) and the income tax payable would be at Rs.63,966/-

Income Tax upto Rs.1,80,000 – Nil

Rs.1,80,000 to Rs.5,00,000 _ 10%

Rs.5,00,000 to Rs.80,00,000 _ 20%

Actual Income Rs.54986 x12 = Rs.6,59,832
Less Income Tax Payable
= 5,00,000-1,80,000 = 3,20,000x10%=32,000
= 6,59,832-5,00,000 = 1,59,832x20%=31,966
= 32000+31966=63,966
Annual income for computation = 6,59,832-63,966 = 5,95,866

11. In the light of the above submissions and in the light of the above discussion, this Court is of the considered view that the award granted by the Tribunal is reduced under the following head, the monthly income is given as Rs.54,926/- as per the salary certificate proof of income furnished before the Tribunal under Ex.P.25. The annual income will be Rs.6,59,832/-. In this case, income tax was to be deducted from the salary and for the assessment year 2012-2013 upto Rs.1,80,000 tax is nil and between Rs.1,80,000/- and Rs.5,00,000/- it is 10% and between Rs.5,00,000/- and Rs.8,00,000/- it is 20%. Therefore, the annual income would be at Rs.6,59,832 (54986x12) less 63,966 (IT)=5,95,866, which is the actual income of the deceased and to this amount ¼ is deducted for actual contribution of the deceased to the family, the resultant amount of loss of dependency would be at Rs.20,85,531 (i.e., 5,95,866x1/4x14=20,85,531).

11 (a) As per the submissions of the learned counsel for the appellant in CMA.No.3108/2019, the relatives who are not dependent on the deceased and they are entitled to only a nominal amount of Rs.25,000/- under the head “No fault liability” regarding the same cannot be accepted and hence rejected.

12. Since the amount awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of dependency	30,92,962.50	20,85,531
2	Loss of Love and Affection	50,000	50,000

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
3	Loss of Estate	15,000	15,000
4	For Transport Charges	5,000	5,000
5	For Funeral Expenses	15,000	15,000
	Total	31,77,962	21,70,531

13. The Points for consideration in CMA.No.3408/2019 is answered favour of the appellant/Insurance Company against the respondents/claimants.

14. In the light of the above discussion, the points for the consideration in Civil Miscellaneous Appeal in CMA.No.4104/2019 filed by the elder brother and elder sister who are the claimants before the Tribunal in MCOP.No.2331/2014 seeking enhancement has no merit, wherein they are not dependants of the deceased as per the evidence available before the Motor Accident Claims Tribunal, is answered against the appellants/claimants and the appeal is dismissed having no merits.

15. In the result, C.M.A.No.3408 of 2019 preferred by the United India Insurance Company is partly allowed. CMA.No.4104/2019 preferred by the claimants is dismissed and the award of the Tribunal at Rs.31,77,962/- is hereby reduced to Rs.21,70,531/-.

16. The second respondent/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.C.O.P.No.2331 of 2014, on the file of the Motor Accident Claims Tribunal, Special Sub Judge-I (MCOP), Small Causes Court, Chennai, with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit along with costs if any as awarded by the Tribunal, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. The proportion of allocation of shares adopted by the Tribunal shall stand

confirmed. On such deposit, the claimants 1 & 2 shall be entitled to withdraw a sum of Rs.10,85,265/- each with accrued interest. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar(Accounts)

// True Copy //

Sub Assistant Registrar

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To

1. The Special Sub Judge – I,
   Motor Accident Claims Tribunal,
   Small Causes Court,
   Chennai.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.5114

+2ccs to Mr.V.Mohan Choudary, Advocate, S.R.No.5141

C.M.A.Nos.3408 & 4104 of 2019
and
C.M.P. No.20020 of 2019

SSD(CO)
RLP(21/10/2021)