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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

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

C.M.A.Nos.2519, 3399 and 3400 of 2021
and
C.M.P.Nos.19608 and 19618 of 2021

C.M.A.No.2519 of 2021

S.Devaraj @ Devendra
(Minor Declared as Major as per order
in M.P.No.822/2018 dated 06.03.2018) ...Appellant/Petitioner

Vs.

1.A.Saravanan ...1st Respondent/2nd Respondent

2.D.Chengazhani ...2nd Respondent/3rd Respondent

3.Reliance General Insurance Company Limited,
Rai Towers, 2nd Floor,
Plot No.2054,
II Avenue, Anna Nagar,
Chennai - 600 040. ...3rd Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation awarded in the Judgment and decree dated 29.10.2020 passed in MCOP No.1119 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub-Court No.1, Motor Accidents Claims Petitions), Small Causes Court, at Chennai.

For Appellant : Mr.Amar D Pandiya

For Respondents : Ms.Harini for
M/s M.B.Gopalan Associates(for R3)

R1-Notice not ready
No appearance for R2



C.M.A.No.3399 of 2021

M/s Reliance General Insurance Company Limited,
Rai Towers, II Floor, Plot No.2054,
II Avenue, Anna Nagar,
Chennai - 600 040.

...Appellant/3rd Respondent

Vs.

1.S.Devaraj Devendra

...1st Respondent/Petitioner

2.A.Saravanan

3.D.chengazhani

...2nd & 3rd Respondent/1 & 2 Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.1119 of 2014 dated 29.10.2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

For Appellant : Ms.Harini for
M/s M.B.Gopalan Associates

For Respondents : Mr.Amar D Pandiya (for R1)

C.M.A.No.3400 of 2021

M/s Reliance General Insurance Company Limited,
Rai Towers, II Floor, Plot No.2054,
II Avenue, Anna Nagar,
Chennai - 600 040.

...Appellant/3rd Respondent

Vs.

1.P.Vedavalli

2.R.Parthasarathy

3.Minor P.Ragothaman
(Minor/3rd respondent rep. by his Father
& Natural Guardian Mr.R.Parthasarathy)

...Respondents 1 to 3/Petitioners

4.A.Saravanan

5.D.chengazhani

...Respondents 4 & 5/ Respondents 1 & 2



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.2229 of 2014 dated 29.10.2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

For Appellant : Ms.Harini for
M/s M.B.Gopalan Associates

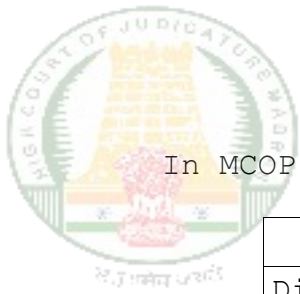
For Respondents : Mr.R.Thirugnanam(for R1)

COMMON JUDGMENT

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

Challenge in C.M.A.Nos.3399 and 3400 of 2021 filed by the Insurance Company is to the common award passed by the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai. in MCOP Nos.1119 and 2229 of 2014. Dissatisfied with the quantum, the claimant in MCOP No.1119 of 2014 alone has come up with another appeal CMA No.2519 of 2021 for enhancement of compensation.

2.This is the case of the fatal accident and injury. The case of the claimants is that on 29.12.2013 at 15.30 hours, the deceased in MCOP No.2229 of 2014, namely, Harshavardhanan was riding a motorcycle bearing Reg.No.TN-09-BT-4839 along with the minor claimant in MCOP No.1119 of 2014 as pillion rider. When they were proceeding on the Kancheepuram to Chennai road at Devariyaambakkam near Chandiran House, a Tractor bearing Reg.No.TN-19-F-2335, which came from the opposite direction driven by its driver with a terrific speed in a rash and negligent manner endangering the public safety, hit against the said motorcycle. In the impact, the deceased in MCOP No.2229 of 2014 sustained fatal injuries resulting to his death and the claimant in MCOP No.1119 of 2014 sustained grievous injuries. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the Tractor, the parents and brother of the deceased filed the claim petition in MCOP No.2229 of 2014 and the injured claimant filed the claim petition in MCOP No.1119 of 2014. Though they claimed Rs.1,00,00,000/- and Rs.17,00,000/- respectively, the Tribunal has awarded as follows:-



In MCOP No.1119 of 2014:-

Heads	Rs.
Disability	90,000/-
Pain and Suffering	25,000/-
Transportation	5,000/-
Extra Nourishment	15,000/-
Attender Charges	7,000/-
Loss of Studies	20,000/-
Loss of future prospectus	30,000/-
Total	1 ,92,000/-

In MCOP No.2229 of 2014:-

Heads	Rs.
Total Loss of dependency	24,57,000/-
Loss of Love and Affection	1,00,000/-
Loss of Estate	15,000/-
Transport Charges	5,000/-
Funeral Expenses	15,000/-
Total	25,92,000/-

CMA Nos.2519 and 3399 of 2021

3.The learned counsel appearing for the appellant/claimant would submit that the Tribunal erred in awarding compensation on the basis of the Rs.3000/- per percentage and the same is wrong as the medical board assessed the disability of 30% in permanent in nature as the appellant sustained head injury and because of the same, he was hospitalized for more than 30 days and till date, he is getting fits in regular intervals. He would further submit that the Tribunal has not considered the evidence of the injured/P.W.2, who deposed that he is not able to do his work because of the injuries sustained in the accident and the same was corroborated with Disability Certificate (Ex.C1). He would further submit that the Tribunal erred in awarding meager amount on all other heads i.e., pain and suffering, extra nourishment, transportation, attender charges etc., which are also not sustainable and has to be enhanced.

4.Per contra, the learned counsel appearing for the Insurance Company submitted that the Tribunal erred in fastening liability on the insurer when the insured Tractor was used in



violation of policy terms for commercial purpose was connected to uninsured trailer. He would further submit that the Tribunal ought to have exonerated the insurer for violation of policy terms, but erred in awarding pay and recovery as against the insurance company and therefore, this Civil Miscellaneous Appeal filed by the claimant is liable to be dismissed and the Civil Miscellaneous Appeal filed by the Insurance Company is liable to be allowed.

5.This Court carefully considered the submissions of the learned counsel for the claimant and the learned counsel appearing for the Insurance Company and perused the materials available on record.

6.A perusal of the Policy Copy (Ex.R.12) would indicate that the Tractor is insured, but, it was used with unregistered Trailer for commercial purpose. The accident had happened due to the negligent driving of the driver of the Tractor, which was proved by the oral evidence of P.W.1, P.W.2 and the documents, viz., First Information Report (Ex.P.1) and Charge Sheet (Ex.P.2). Therefore, we are of the considered view that the Tribunal rightly fixed the liability and ordered pay and recovery. Hence, no interference is required in this regard.

7.With regard to the quantum, according to the counsel for the claimant, the claimant is a student and suffered fracture, brain and facial injuries, but Tribunal without considering the same, awarded only Rs.1,92,000/- as compensation.

8.A perusal of the records would show that the claimant suffered fracture in frontal bone, brain injury and other injuries in head, facial injuries. Further, the claimant is taking continuous treatment till date. It is seen from the evidence of the claimant/P.W.2, he is not able to do his work because of the injuries sustained in accident, which was corroborated with Disability Certificate (Ex.C1). Further, a perusal of the records would show that the Tribunal, considering the evidence of Ex.R3-Investigation Report and Ex.P12-Insurance Policy, found that the offending tractor violated the police condition and hence, ordered pay and recovery. Therefore, this Court, while confirms the order of pay and recovery, considering the nature of injuries sustained by the claimant and period of treatment, enhances the award amount as follows:-

Heads	Rs.
Disability Rs.4000 x 30%	1,20,000/-
Pain and Suffering	50,000/-
Transportation	35,000/-



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Heads	Rs.
Extra Nourishment	35,000/-
Attender Charges	35,000/-
Loss of Studies	20,000/-
Loss of future prospectus	2,00,000/-
Loss of Amenities	50,000/-
Future Medical Expenses	50,000/-
Total	5,95,000/-

CMA No.3400 of 2021

9.Though the learned counsel appearing for the appellant/Insurance Company has contended that the award is on the higher side and it requires reduction, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence Income Tax Return Verification Form ITR-V (Ex.P.10) has fixed the monthly income and adopting correct multiplier awarded a just and reasonable compensation. The rate of interest fixed by the Tribunal as 7.5% per annum is confirmed. We find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit. Hence, this appeal is liable to be dismissed.

10.In the result, this CMA No.3400 of 2021 is dismissed. The appellant/Insurance Company is directed to deposit the award amount with accrued 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 order and thereafter, recover the same from the owner of the Tractor. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor attains the age of major and the second claimant, who is the father and the guardian of the minor claimant, is permitted to withdraw interest once in six months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

CMA Nos.2519 and 3399 of 2021

11.In the result, CMA No.2519 of 2021 is partly allowed and CMA No.3399 of 2021 is dismissed. The Insurance Company is directed to deposit the modified award amount with accrued



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 order and thereafter, recover the same from the owner of the Tractor. On such deposit, the claimant is permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

skn

To

1.The Motor Accidents Claims Tribunal,
Special Sub-Court No.1,
Motor Accidents Claims Petitions,
Small Causes Court, Chennai.

Copy to:

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

+2cc to Mr.Amar D.Pandiya, Advocate, S.R.No.67371, 67370

+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.67319

C.M.A.Nos.2519, 3399 and 3400 of 2021
and
C.M.P.Nos.19608 and 19618 of 2021

RP(CO)
RN(05/04/2022)