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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1737 and 1809 of 2020
and C.M.P.No.12808 of 2020

C.M.A.No.1737 of 2020

The Manager
Cholamandalam MS General Insurance Company Ltd.
14, Theradi street
Old bus stand
Opp.to M.R.Hospital
Rasipuram Taluk, Namakkal District.
.. Appellant/2nd Respondent

Vs.

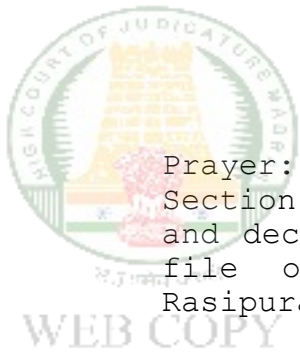
1.Nallaiyan
2.Rani .. Respondents 1&2/Petitioners 1,2
3.D.Raja .. 3rd Respondent/Ist Respondent

C.M.A.No.1809 of 2020

1.Nallaiyan
2.Rani .. Appellants/Petitioners

Vs.

1.D.Raja
2.The Manager
Cholamandalam MS General Insurance Company Ltd.
14, Theradi street
Old bus stand
Opp.to M.R.Hospital
Rasipuram Taluk, Namakkal District.
.. Respondents/Respondents



Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.07.2020 made in M.C.O.P.No.1 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

In C.M.A.No.1737 of 2020

For Appellant : Mrs.R.Sreevidhya
For R1 and R2 : Mr.R.Nalliyappan
For R3 : No appearance

In C.M.A.No.1809 of 2020

For Appellants : Mr.R.Nalliyappan
For R2 : Mrs.R.Sreevidhya

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

C.M.A.No.1737 of 2020 is filed by the Insurance Company to set aside the award dated 27.07.2020 made in M.C.O.P.No.1 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

C.M.A.No.1809 of 2020 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 27.07.2020 made in M.C.O.P.No.1 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed M.C.O.P.No.1 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram, claiming a sum of Rs.35,00,000/- as compensation for the death of their son viz., N.Eswaran, who died in the accident that took place on 09.11.2018.

4.According to the claimants, on the date of accident i.e., on 09.11.2018 at about 12.30 p.m., while their son Eswaran was riding in his new unregistered Hero Mastro motorcycle between Rasipuram to Attur Rasipuram Main Road in front of Government Boys Higher Secondary School, Namagiripet, the driver of the Omni car belonging to the 1st respondent drove the same in a rash



and negligent manner, hit against the said Eswaran and caused the accident. In the accident, the said Eswaran sustained fatal injuries and inspite of treatment given, died in the hospital on 29.11.2018. Therefore, the claimants have filed the above claim petition claiming compensation as against the respondents 1 and 2, who are owner and insurer of the omni car respectively.

5.The 1st respondent, owner of the omni car filed counter statement denying the averments made in the claim petition and stated that while the driver of the omni car was proceeding from Rasipuram to Attur Road, near Boys school, there was a speed break, the driver of the lorry, which was proceeding in front of the car, slowed down the lorry to cross the speed breaks, crossed the speed breaker and after that, the driver of the omni car slowly released Omni car in the speed breaker in the opposite direction. The deceased Eswaran who was driving his motorcycle in a rash and negligent manner, without noticing the speed breaker, lost his control and he himself dashed against the omni car and invited the accident. At the time of accident, the deceased did not wear helmet and therefore, he has also contributed to the accident. Therefore, the 1st respondent is not liable to pay any compensation to the claimants. The 1st respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6.The 2nd respondent/Insurance Company insurer of the omni car filed counter statement denying the averments made by the claimants and stated that the deceased was riding in his motorcycle on Rasipuram to Attur Main Road, in front of Government Boys Higher Secondary School, Namagiripet, while the driver of the omni car belonging to the 1st respondent was coming in the opposite direction. The deceased suddenly tried to cross the road from his left side to right side without noticing the nearby vehicles, fell on the car and invited the accident. The deceased Eswaran alone was the tort-feasor. The motorcycle of the deceased was not registered and he did not possess driving license at the time of the accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st claimant, father of the deceased examined himself as P.W.1, Govindarajan and Balachandran, eye-witness to the accident, were examined as P.W.2 and P.W.3 respectively and 13 documents were marked as



Exs.P1 to P13. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the omni car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.17,64,955/- as compensation to the claimants.

9.Challenging the quantum of compensation awarded by the Tribunal in the award dated 27.07.2020 made in M.C.O.P.No.1 of 2019, the 2nd respondent/Insurance Company has come out with C.M.A.No.1737 of 2020. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.1809 of 2020 seeking enhancement of compensation.

10.The learned counsel appearing for the claimants contended that the deceased was aged 22 years at the time of accident. He was working as a Salesman in ESSAR petrol bunk, Rasipuram and was earning a sum of Rs.20,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.7,500/- per month as notional income of the deceased. The Tribunal granted only 40% enhancement towards future prospects instead of 50%. The Tribunal has not awarded any compensation towards loss of love and affection to the claimants. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and for dismissal of the appeal filed by the Insurance Company

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was a bachelor at the time of accident. The Tribunal erred in deducting 1/3rd instead of 50% towards personal expenses. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and for allowing the appeal filed by the 2nd respondent/Insurance Company.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

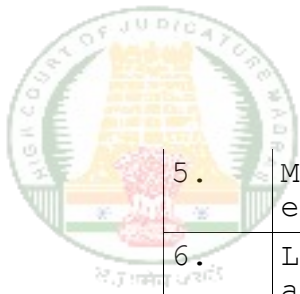
13.Heard through "Video-conferencing" the learned counsel appearing for the claimants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.



14.It is the case of the claimants that at the time of accident, the deceased was working as a Salesman in ESSAR petrol bunk, Rasipuram and was earning a sum of Rs.20,000/- per month. The claimants failed to substantiate the same. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased, which is meagre. The accident is of the year 2018 and hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The deceased was bachelor at the time of accident. The Tribunal erroneously deducted $1/3^{\text{rd}}$ instead of $1/2$ towards personal expenses of the deceased. The Tribunal granted 40% enhancement towards future prospects and applied multiplier '18', which are proper. Thus, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.21,16,800/- (Rs.14,000/- + 5600 [Rs.14,000/- X 40%] X 12 X 18 X $1/2$). The Tribunal has not awarded any compensation towards loss of love and affection to the claimants, who are parents of the deceased. Hence, a sum of Rs.40,000/- each is awarded towards loss of love and affection to the claimants. In view of the same, a sum of Rs.40,000/- awarded by the Tribunal towards loss of consortium is liable to be set aside and is hereby set aside. The Tribunal has not awarded any compensation towards transportation. The claimants would have spent some amount towards transportation during the treatment period of the deceased. Hence, a sum of Rs.10,000/- is awarded towards transportation. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

15.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pecuniary loss	15,12,000	21,16,800	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of consortium	40,000	-	Set aside
4.	Loss of estate	15,000	15,000	Confirmed



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5.	Medical expenses	1,82,955	1,82,955	Confirmed
6.	Loss of love and affection	-	80,000	Granted
7.	Transportation	-	10,000	Granted
	Total	17,64,955	24,19,755	Enhanced by Rs.6,54,800/-

16. In the result, C.M.A.No.1737 of 2020 filed by the Insurance Company is partly allowed and C.M.A.No.1809 of 2020 filed by the claimants is allowed and the compensation awarded by the Tribunal at Rs.17,64,955/- is hereby enhanced to Rs.24,19,755/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the claimants are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge
The Motor Accident Claims Tribunal, Rasipuram.

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

+1cc to M/s.R.Sree Vidhya, Advocate Sr No.7167

C.M.A.Nos.1737 and 1809 of 2020
and C.M.P.No.12808 of 2020

RR (CO)
PR (12/11/2021)