IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.2945 & 2950 of 2019
and C.M.P.No.15637 of 2019

C.M.A.No.2945 of 2019

M/s.New India Assurance Co. Ltd.,
A.K.C. Complex,
Near State Bank,
Tiruchengode Road,
Sankari, Salem District. .. Appellant/2nd Respondent

Vs.

1.Chinna Ponnu .. 1st Respondent/1st Petitioner

2.Kunjammal .. 2nd Respondent/2nd Petitioner

3.John Paul .. 3rd Respondent/1st Respondent

4.Ramesh .. 4th Respondent/3rd Respondent

5.M/s.Iffco Tokio General Insurance Co. Ltd.,
Tulsi Chambers III Floor, 195,
T.V.Swamy Road, R.S.Puram,
Coimbatore. .. 5th Respondent/ 4th Respondent

C.M.A.No.2950 of 2019

1.Chinna Ponnu

2.Kunjammal .. Appellants / Petitioners

Vs.

1.John Paul

2.New India Assurance Co. Ltd.,
A.K.C. Complex, Near State Bank,
Tiruchengode Road,
Sankari, Salem District.

3.Ramesh

4.M/s.Iffco Tokio General Insurance Co. Ltd.,
Tulsi Chambers III Floor, 195,
T.V.Swamy Road, R.S.Puram,
Coimbatore. .. Respondents / Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 28.02.2019, made in M.C.O.P. No.315 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

(In C.M.A.No.2945/2019)

For Appellants : Mr.J.Michael Visuvasam

For Respondents : M/s.T.S.Arthanareeswaran (For R1 & R2)
for M/s.C.Paraneedharan

No appearance (For R3 & R4)

Mr.S. Arunkumar (For R5)

(In C.M.A.No.2950/2019)

For Appellants : M/s.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents : Mr.J.Michael Visuvasam (For R2)

Mrs.K.Saraswathi (For R4)
for M/s.C.R.Krishnamoorthy

No Appearance (For R1 & 3)

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

C.M.A. No.2950 of 2019 is filed for enhancement of the compensation and C.M.A. No.2945 of 2019 is filed to set aside the award dated 28.02.2019, made in M.C.O.P. No.315 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

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

4.The claimants filed M.C.O.P. No.315 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari, claiming a sum of Rs.25,00,000/- as compensation for the death of one Muthusamy who died in the accident that took place on 26.04.2015.

5.According to the claimants, on the date of accident, when the deceased Muthusamy was traveling as a pillion rider in the TVS XL bearing Registration No.TN-90-3425 belonging to the 3rd respondent and rode by the 3rd respondent in Trichengode to Salem main road, near Morimedu Mallasamudiram, the rider of the Honda Splendor Bike bearing Registration No.TN-34-M-3453 belonging to the 1st respondent rode the same in a rash and negligent manner and hit against the TVS XL and caused the accident. In the accident, the deceased Muthusamy sustained fatal injuries. The accident occurred due to rash and negligent riding by rider of the Honda Splendor Bike belonging to the 1st respondent and hence, the claimants filed the claim petition, claiming compensation against the respondents 1 and 2 as owner and insurer of Honda Splendor Bike and respondents 3 and 4 as owner and insurer of the TVS XL.

6.The respondents 1 and 3 remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company, insurer of Honda Splendor Bike, filed counter statement and denied all the averments made by the claimants in the claim petition. According to the 2nd respondent, the accident occurred only due to rash and negligent riding by the 3rd respondent, owner-cum-rider of the TVS XL. FIR was registered against the 3rd respondent in Crime No.67/2015 under Sections 279, 337 and 304 (A) of I.P.C. and the Mallasamudiram Police also filed charge sheet against the 3rd respondent before the Judicial Magistrate, Trichengode. The 3rd respondent violated the policy conditions by riding the Motorcycle without wearing helmet and without possessing valid driving license and caused the accident. Hence, the respondents 3 and 4 as owner-cum-rider and insurer of the TVS XL are liable to pay compensation to the claimants. The claimants have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition as against the respondents 1 and 2.

8.The 4th respondent-Insurance Company, insurer of TVS XL, filed counter statement and denied all the averments made by the claimants in the claim petition. According to the 4th respondent, the 3rd respondent rode the TVS XL without wearing helmet and without possessing valid driving license and hence, violated policy conditions. Thus, for violation of policy conditions, the 4th respondent is not liable to indemnify the 3rd respondent. In any event, the claimants have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition as against the 4th respondent.

9.Before the Tribunal, the 1st claimant examined herself as P.W.1, examined one Dharmalingam as P.W.2, eye-witness Gopal as P.W.3 and marked 9 documents as Exs.P1 to P9. The respondents examined five witnesses as R.W.1 to R.W.5 and marked 8 documents as Exs.R1 to R8.

10.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by rider of Honda Splendor Bike belonging to the 1st respondent and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.10,60,000/- as compensation to the claimants. The Tribunal dismissed the claim petition as against the respondents 3 and 4.

11.To set aside the award dated 28.02.2019, made in M.C.O.P. No.315 of 2015, the 2nd respondent- Insurance Company has filed C.M.A. No.2945 of 2019 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed

C.M.A.No.2950 of 2019, for enhancement of compensation.

12.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has occurred only due to rash and negligent riding by 3rd respondent, rider-cum-owner of TVS XL bearing Registration No.TN-90-3425, who suddenly turned to the left side and dashed against the Honda Splendor Bike bearing Registration No.TN-34-M-3453 belonging to the 1st respondent and caused the accident. The Tribunal completely ignored this fact. The Tribunal erroneously rejected the evidence of R.W.3, rider of the Honda Splendor Bike as interested witness and failed to consider the Motor Vehicle Inspector's report which clearly mentioned the damages caused to the vehicle. The claimants themselves relied on the FIR registered against the 3rd respondent, rider-cum-owner of the TVS XL. The Tribunal erroneously found fault with rough sketch when the accident was intimated to the 2nd respondent only at 7.00 pm. The Tribunal erroneously relied on the evidence of P.W.3, eye-witness to fix negligence on the rider of Honda Splendor Bike/R.W.3, when there is no proof to show that P.W.3 was present at the time of accident in the place of occurrence. In any event, the Tribunal ought to have granted compensation to the claimants only under 'no fault liability', since there was no dependency on the deceased. The claimants failed to prove the avocation and income of the deceased. The Tribunal erroneously fixed the notional income of the deceased as Rs.23,000/- per month, who was aged 69 years, when there is no evidence on the side of the claimants with regard to avocation and income of the deceased. The compensation granted by the Tribunal for loss of dependency and other heads are excessive and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.2950 of 2019 filed by the claimants for enhancement of the compensation.

13.Per contra, the learned counsel appearing for the claimants contended that the accident occurred due to the rider of the Honda Splendor Bike belonging to the 1st respondent who rode the same in a rash and negligent manner and dashed against the TVS XL rode by the 3rd respondent, in which the deceased traveled as pillion rider. The Tribunal considering the evidence of 1st claimant as P.W.1, eye witness as P.W.3 and Ex.P1 – FIR registered against the 3rd respondent/rider of the Honda Splendor Bike, rightly held that the accident occurred only due to rash and negligent riding by 3rd respondent. It is the contention of the claimants that the deceased was working as a Mason and was earning a sum of Rs.25,000/- per month. At the time of accident, the deceased was aged 69 years, hale and healthy and he was the sole bread winner of the entire family. The claimants who are the daughters, lost their loving father. The amounts awarded by the Tribunal towards transportation and funeral expenses are meagre and prayed for enhancement of the compensation and dismissal of C.M.A.No.2945 of 2019, filed by the 2nd respondent-Insurance Company.

14.Heard through video conference, the learned counsel appearing for the claimants as well as the 2nd respondent – Insurance Company and perused the materials available on record.

15.From the materials on record, it is seen that it is the case of the claimants that while the deceased was travelling as pillion rider in TVS XL bearing Registration No.TN-90-3425 rode by the 3rd respondent, the rider of the Honda Splendor Bike belonging to the 1st respondent rode the same in a rash and negligent manner and dashed on the TVS XL and caused the accident. In the accident, the said Muthusamy sustained injuries and died. In support of their case, they examined the 1st claimant as P.W.1 and examined P.W.3 eye witness and marked FIR registered against the 3rd respondent, rider of the Honda Splendor Bike as Ex.P1. On the other hand, it is the case of the 2nd respondent that the 3rd respondent, in a rash and negligent manner, drove the TVS XL without following traffic rules and hit against the Honda Splendor Bike and invited the accident. The rider of the Honda Splendor Bike rode the vehicle in a careful manner, following traffic rules and regulations and 3rd respondent was only responsible for the accident. To substantiate their case, the 2nd respondent examined rider of the Honda Splendor Bike as R.W.3, Investigating Officer as R.W.5 and marked copy of the case file as Ex.R8. From the materials on record, it is seen that apart from examining R.W.3, rider of the Honda Splendor Bike, the 2nd respondent has not examined any independent eye-witness in support of their case. The Tribunal rejected the evidence of R.W.3 as he is an interested witness. As far as the evidence of R.W.5 – Investigating Officer is concerned, he admitted in his cross examination that he received information from the Hospital where the 3rd respondent, rider of the TVS XL was taking treatment. R.W.5 admitted about the accident at 19 hrs on 26.04.2015. No records were in file about the complaint given by the 3rd respondent, rider of the TVS XL. From this materials, it is seen that R.W.5 did not visit the Hospital, did not enquire the 3rd respondent and record his statement or record the complaint of 3rd respondent. In such circumstances, the Tribunal held that final report prepared by R.W.5 and connected records which was filed and marked as Ex.R8 are biased, not genuine and rejected the evidence of R.W.5. The Tribunal has given valid reason for rejecting the evidence of R.W.3, R.W.5 and Ex.R8. The Tribunal considering the evidence of P.W.3/ eye-witness, held that accident occurred only due to rash and negligent riding by R.W.3/rider of Honda Splendor Bike. There is no error in such finding of the Tribunal, warranting interference by this Court.

16.As far as the quantum of compensation is concerned, the claimants claimed that the deceased was a Mason and was earning a sum of Rs.25,000/- per month. They failed to prove the avocation and income of the deceased. The Tribunal fixed a sum of Rs.23,000/- per month as notional income of the deceased. In the absence of material evidence with regard to avocation and income, the notional income fixed by the Tribunal is excessive and the same is reduced to Rs.13,000/- per month. The deceased was aged 60 years at the time of accident and there are two dependants of the deceased. Hence, applying the multiplier '5', deducting 1/3rd towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.5,20,000/- [Rs.13,000/- x 12 x 5 x 2/3]. The Tribunal in addition to the amounts granted for loss of dependency, granted a sum of Rs.1,00,000/- for loss of love and affection to the claimants. The same is excessive and hence, reduced to Rs.40,000/-. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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
1.	Loss of dependency	9,20,000/-	5,20,000/-	Reduced

2.	Loss of love and affection	1,00,000/-	40,000/-	Reduced
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	10,60,000/-	6,00,000/-	Reduced by Rs.4,60,000/-

17.In view of the judgment in C.M.A.No.2945 of 2019 reducing the amounts granted by the Tribunal, C.M.A.No.2950 of 2019 filed by the claimants seeking enhancement is dismissed.

18.In the result, C.M.A.No.2945 of 2019 is partly allowed and the amount awarded by the Tribunal at Rs.10,60,000/- is modified to Rs.6,00,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The C.M.A.No.2950 of 2019 is dismissed. 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, to the credit of M.C.O.P.No.315 of 2015. On such deposit, the claimants are permitted to withdraw their share of the award amount, now determined by this Court along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.315 of 2015, if any already deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankari.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.6154
+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.6266
+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.6775

C.M.A. Nos.2945 & 2950 of 2019

PA(CO)
SB(21/09/2021)