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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2161 and 2987 of 2014
and M.P.Nos. 1 & 2 of 2014

C.M.A.No.2161 of 2014

The Oriental Insurance Company Limited,
No.115/216, Prakasam Salai,
Chennai 600 104.

.. Appellant

Vs.

1.F.Parveen
2.Hawama Aforze
3.Rihana Ferdoze
4.Katheeja Tul kubra
5.Mansur Alumkhan
(5th respondent set exparte in the lower
Court. Hence, notice is dispensed with)

.. Respondents

C.M.A.No.2987 of 2014

1.F.Parveen
2.Hawama Aforze
3.Rihana Ferdoze
4.Katheeja Tul kubra

.. Appellants

Vs.

1.Mansur Alumkhan

2.The Oriental Insurance Company Limited,
No.115/216, Prakasam Salai,
Chennai 600 104.

.. Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2014 made in M.C.O.P.No.911 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.



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In C.M.A.No.2161 of 2014

For Appellant : Mr.R.Sivakumar

For RR1 to 4 : Mr.K.Varadhakamaraj

In C.M.A.No.2987 of 2014

For Appellants : Mr.Varadhakamaraj

For R2 : Mr.R.Sivakumar

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

(This matter is heard through video conferencing/Hybrid mode)

C.M.A.No.2161 of 2014 is filed by the Insurance Company against the award dated 24.03.2014 made in M.C.O.P.No.911 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

C.M.A.No.2987 of 2014 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 24.03.2014 made in M.C.O.P.No.911 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

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.911 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, claiming a sum of Rs.20,00,000/- as compensation for the death of one F.Adam Basha, son of 1st claimant and brother of other claimants, who died in the accident that took place on 24.01.2012.

4.According to the claimants, on the date of accident i.e., on 24.01.2012 at about 12.30 hours, while the deceased was a pillion rider in the motorcycle and one Syed Shamiyullah Basha was riding the motorcycle bearing Registration No. TN-07 BF 8120 belonging to the 1st respondent on the North side of Gurusamy Bridge, near E.V.R.Salai from South to North direction, the rider of the motorcycle rode the same in a rash and negligent manner



and dashed on the center median line. Due to the said impact, the deceased thrown out, sustained grievous injuries and died on 28.01.2012. Therefore, the claimants filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of the said Adam Basha against the respondents, being the owner and insurer of the motorcycle bearing Registration No. TN-07 BF 8120 respectively.

5.The 1st respondent, owner of the motorcycle, remained exparte before the Tribunal.

6.The 2nd respondent Insurance Company, insurer of the motorcycle filed counter statement denying the averments made in the claim petition and stated that the accident has not occurred due to negligence on the part of the rider of the motorcycle. The rider of the motorcycle did not possess valid driving license at the time of 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, nature of injuries 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 was examined herself as P.W.1, one Stalin, eyewitness was examined as P.W.2 and the 4th claimant was examined as P.W.3 and six documents were marked as Exs.P1 to P6. The 2nd respondent/Insurance Company examined one K.Sampath, the Assistant of 2nd responden's Insurance Company and marked four documents as Exs.R1 to R4.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.14,75,000/- as compensation to the claimants at the first instance and recover the same from the 1st respondent, owner of the motorcycle.

9.Against the said award dated 24.03.2014 made in M.C.O.P.No.911 of 2012, the 2nd respondent/Insurance Company has come out with C.M.A.No.2161 of 2014 challenging the liability as well as quantum of compensation. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.2987 of 2014 seeking enhancement of compensation.



10. Though the learned counsel appearing for the 2nd respondent/Insurance Company raised grounds with regard to pay and recovery, at the time of arguments, he restricted his arguments only with regard to quantum of compensation granted by the Tribunal and contended that the deceased was a student and non-earning member at the time of accident. The Tribunal has erroneously fixed a sum of Rs.10,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal for loss of love and affection to the mother and three sisters of the deceased, loss of estate and funeral expenses are excessive. The claimants are not entitled any compensation towards loss of expectation of life and hence, he prayed for setting aside the award of the Tribunal.

11. Per contra, Mr.K.Varadhakamaraj, the learned counsel appearing for the claimants contended that the deceased was studying 2nd year B.U.M.S in Unani and after completing his study, he would have practised as a unani doctor and would earn considerable income. The deceased was aged 28 years at the time of accident. The Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal has failed to grant enhancement towards future prospects. The claimants are mother and sisters of the deceased. The Tribunal ought to have deducted 1/3rd instead of 50% towards personal expenses and prayed for enhancement of compensation.

12. The 1st respondent, owner of the motorcycle remained ex-parte before the Tribunal. Both the learned counsel appearing for the claimants and 2nd respondent have given up the 1st respondent, owner of the vehicle.

13. Heard the learned counsel appearing for the claimants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the materials available on record.

14. The issue to be decided in both the appeals is only with regard to the quantum of compensation.

15. From the materials available on record, it is seen that the deceased was studying 2nd year B.U.M.S in Unani at the time of accident. The deceased was non-earning member of his family, but he was studying to become a Unani Doctor. The Tribunal considering the said fact, fixed a notional income of the deceased at Rs.10,000/- per month. The accident is of the year 2012. Considering the nature of course of study and date of accident, a sum of Rs.10,000/- fixed by the Tribunal is neither meagre and nor excessive. The deceased was aged 28 years at the



time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. The contention of the learned counsel for the claimants that the Tribunal ought to have deducted 1/3rd instead of 50% towards personal expenses is not acceptable. The deceased was a bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses and applied multiplier '17'. By granting 40% enhancement towards future prospects, the amount granted by the Tribunal towards loss of dependency is modified to Rs.14,28,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 17 X 1/2}. The amounts granted by the Tribunal towards funeral expenses, loss of estate, loss of love and affection are excessive. As per the decision of the Hon'ble Apex Court, the claimants are entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of love and affection. The claimants are not entitled to any amount towards loss of expectation of life and hence, a sum of Rs.2,00,000/- awarded by the Tribunal towards loss of expectation of life is liable to be set aside and is hereby set aside. 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.	Loss of dependency	10,20,000	14,28,000	Enhanced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of love and affection	1,30,000	40,000	Reduced
4.	Loss of Expectation of life	2,00,000	-	Set aside
5.	Loss of estate	1,00,000	15,000	Reduced
	Total	14,75,000	14,98,000	Enhanced by Rs.23,000/-



16. In the result, C.M.A.No.2161 of 2014 filed by the Insurance Company is partly allowed in respect of the heads "loss of expectation of life, funeral expenses, loss of love and affection and loss of estate" and C.M.A.No.2987 of 2014 filed by the claimants is partly allowed and the compensation of Rs.14,75,000/- awarded by the Tribunal is hereby enhanced to Rs.14,98,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 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, at the first instance and recover the same from the 1st respondent, owner of the vehicle. 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, after adjusting the amount if any, already withdrawn. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

vkr

To

1.The II Small Causes Judge,
The Motor Accident Claims Tribunal
Chennai.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.58232
+1cc to Mr.R.Sivakumar, Advocate SR.No.58129

C.M.A.Nos.2161 and 2987 of 2014
and M.P.Nos. 1 & 2 of 2014

SS(CO)
CB(06/04/2022)