IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.Nos.2084 and 390 of 2013

C.M.A.No.2084 of 2013

M/s.ICICI Lombard General
Insurance Company Limited,
No.1, Cenotaph Road,
Chennai 600 018. ...appellant

Vs.

1. S.Devi
2. Mageshwar
3. S.Sujitha Sree
(Minors 2 & 3 are rep. by their mother
and next friend Mrs.S.Devi)
4. J.Manimegalai ...respondents
(R4 set exparte in Lower Court)

For Appellant	:	Mrs.R.Sree Vidhya
For Respondents		
for RR1 to 3	:	Mr.K.Varadhakamaraj
for R4	:	No Appearance

C.M.A.No.390 of 2013

1. S.Devi
2. Mageshwar
3. S.Sujitha Sree
(Minors 2 & 3 are rep. by their mother
and next friend Mrs.S.Devi) ...petitioners

vs.

1. J.Manimegalai
2. M/s.ICICI Lombard General
Insurance Company Limited,
No.1, Cenotaph Road,
Chennai 600 018. ...respondents

For Appellants : Mr.K.Varadhakamaraj

For Respondent

for R1 : Ex-parte

for R2 : Mrs.R.Sree Vidhya

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2012 made in MCOP.No.1450 of 2010 on the file of the Motor Accident Claims Tribunal/XVI Additional Court, Chennai

COMMON JUDGMENT

[Judgment of the Court was delivered S.S.SUNDAR, J]

These appeals arise out of the common award dated 30.10.2012 made in MCOP.No.1450 of 2010 on the file of the Motor Accident Claims Tribunal/XVI Additional Court, Chennai. While CMA.No.2084 of 2013 is filed by the Insurance Company and CMA.No.390 of 2013 is filed by the claimants.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The claimants are the legal heirs of the deceased Sundarrajan. While the deceased Sundarrajan was riding his motorcycle near SRM University on the GST Road from South to North direction, he met with an accident and died. It is the case of the claimants that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's vehicle and hence, they claimed a sum of Rs.50,00,000/- as compensation.

4. A counter affidavit was filed by the Insurance Company denying the averments made in the claim petition.

5. The first claimant, who is the wife of the deceased was examined as PW1 and one Srinivasan, who is the eyewitness to the accident, was examined as PW2 and one Premkumar, who is the employer of the deceased, was examined as PW3 and Exs.P1 to P13 were marked to prove the cause of death and the income of the deceased at the time of the accident. On the side of the Insurance Company, a record clerk and a legal manager of the Insurance Company were examined as RW1 and RW2, respectively and Exs.R1 to R6 were marked.

6. The Tribunal after framing issues specifically with regard to the negligence found that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's vehicle. The Tribunal on the basis of the evidence of PW3 and the documents produced, fixed the monthly income of the deceased at Rs.31,000/- per month. After deducting 1/3 towards personal expenses of the deceased, the Tribunal arrived the annual income of the deceased at Rs.2,48,000/- [31,000 x 12 x 2/3]. As per the

judgment of the Supreme Court in ***Sarala Varma and others vs. Delhi Transport Corporation and another [(2009) 6 SCC 121]***, the multiplier 14 was adopted and the Loss of Dependency was arrived at Rs.34,72,000/- [31,000 x 12 x 2/3 x 14]. Further, a sum of Rs.50,000/- was awarded each towards Loss of Consortium and Loss of Love and Affection and also added Rs.10,000/- towards Funeral and Transportation Expense. Thus, the total compensation of the claimant has been arrived at Rs.35,82,000/-, out of which, Rs.10,82,000/- was awarded to the wife of the deceased and Rs.12,50,000/- was awarded to each of the children of the deceased.

7. Aggrieved by the quantum and liability, the Insurance Company filed the appeal in CMA.No.2084 of 2013 and the Claimants filed the appeal in CMA.No.390 of 2013 mainly on the ground that the Tribunal has not taken into consideration of the future prospects while calculating the Loss of Dependency of the claimants.

8. It is the submission of the learned counsel appearing for the Insurance Company that the Tribunal has given a finding regarding negligence only on the basis of the FIR, but failed to consider the other evidence. However, it is seen that the Tribunal, in addition to the FIR,

considering the independent eye witness PW2 has given a specific finding that the accident had occurred due to the negligent driving of the driver of the first respondent. Even though the learned counsel appearing for the Insurance Company wants to rely upon a plan, she failed to produce the same and also unable to demonstrate before this Court that the accident had occurred due the negligence of the deceased. Therefore, this Court is unable to interfere with the findings of the Tribunal with regard to liability as no other documents were produced before this Court to show that the accident had occurred due to the negligence of the deceased.

9. With regard to quantum, it is the submission of the learned counsel for the Insurance Company that the Tribunal failed to deduct income-tax while calculating Loss of Dependency. On the other hand, it is the submission of the learned counsel for the claimants that the Tribunal failed to add future prospects towards the income of the deceased.

10. It is an admitted fact that the deceased was drawing a monthly salary of Rs.31,000/- per month and as per the ***Sarala Varma case*** (referred to supra), 30% of his income should be added towards future prospects.

Therefore, the actual monthly salary of the deceased would be Rs.40,300/- [31,000 + 9,300] and the annual income comes to Rs.4,83,600/-.

11. The income tax deduction for the annual income of the deceased for the financial year 2010-2011 is:

Income		**Percentage of tax**		**Amount of Tax**
Upto 1,60,000	-	No tax	-	0
1,60,000 – 3,00,000	-	10%	-	14,000
3,00,000 – 4,83,600	-	20%	-	36,720

Total Tax				**50,720**

Therefore, the total tax payable is Rs.50,720/-. Thus, the actual annual income of the deceased is Rs.4,32,880/- [4,83,600 – 50,720]. Considering the age of the deceased and the number of dependents of the deceased, if 1/3 of the amount is deducted towards personal expenses of the deceased and multiplier 14 is applied, the Loss of Dependency would be **Rs.40,40,213/-** [4,32,880 x 14 x 2/3].

12. Considering the fact that the claimants being the wife and 2 minor children of the deceased, this Court is of the view that the amounts awarded by the Tribunal under the other heads viz., **Rs.50,000/-** towards

Loss of Consortium and **Rs.50,000/-** towards Loss of Love and Affection and **Rs.10,000/-** towards funeral and transportation expenses are just, fair and reasonable, and hence, they are confirmed. In total, the claimants are entitled for a sum of **Rs.41,50,213/-** along with interest at the rate of 7.5% from the date of claim petition till the date of realisation.

13. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	***Heads under which the compensation is awarded***	***Amounts awarded by the Tribunal in Rs.***	***Amounts awarded by this Court in Rs.***
1.	Loss of Dependency	34,72,000	40,40,213
2.	Loss of Consortium	50,000	50,000
3.	Loss of Love and Affection	50,000	50,000
4.	Towards Funeral and Transportation Expense	10,000	10,000
	Total	**35,82,000**	**41,50,213**

14. At this juncture, it is represented by the learned counsel appearing for the Insurance Company that the Insurance Company had already deposited the entire compensation amount as awarded by the Tribunal.

15. In fine, the total sum of Rs.35,82,000/- awarded by the Tribunal towards compensation is hereby enhanced to **Rs.41,50,213/-**, which shall

carry interest at 7.5% from the date of claim petition till the date of realisation. The claimants shall pay necessary Court fee, on the enhanced compensation. The second respondent / Insurance Company is directed to deposit the enhanced compensation, before the Tribunal together with interest and costs, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw her proportionate share. Insofar as the minor claimants 2 and 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed.

16. Accordingly, the appeal filed by the claimants in CMA.No.390 of 2013 is partly allowed and the appeal filed by the Insurance Company in CMA.No.2084 of 2013 is dismissed. No costs.

(S.S.S.R.J.,) (N.M.J.,)
26.09.2022

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The XVI Additional Judge,
   Motor Accident Claims Tribunal, Chennai
2. The Section Officer, VR Section High Court, Madras.

S.S.SUNDAR, J.
and
N.MALA, J.

pvs

C.M.A.Nos.2084 and 390 of 2013

26.09.2022