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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

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

C.M.A. Nos.2035 and 2178 of 2021
and C.M.P.No.11008 of 2021

C.M.A. No.2035 of 2021

The Manager,
Reliance General Insurance Co. Ltd.,
15A, PLA Kanagu Towers, 11th Cross,
II Floor, Thillai Nagar,
Trichy - 620 018.

...Appellant/2nd Respondent

Vs.

1.Vellaiyammal
W/o.Kumar

...1st Respondent/Petitioner

2.Rugmanarayani

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree passed in M.C.O.P.No.590 of 2018 dated 10.09.2020 on the file of the Motor Accident Claims Tribunal, Sessions Judge (FAC), Perambalur.

For Appellant : Ms.C.Bhuvanasundari

For Respondents: Mr.S.P.Yuaraj or R1
No appearance [R2]

C.M.A. No.2178 of 2021

Vellaiyammal
W/o.Kumar

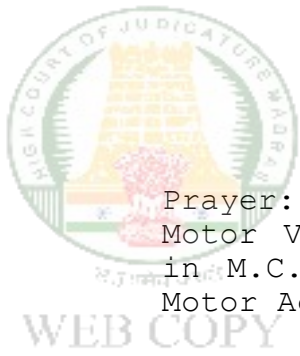
...Appellant/Petitioner

Vs.

1.Rugmanarayani

2.The Manager,
Reliance General Insurance Co. Ltd.,
15A, PLA Kanagu Towers, 11th Cross,
II Floor, Thillai Nagar,
Trichy - 620 018.

...Respondents/Respondents



Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree passed in M.C.O.P.No.590 of 2018 dated 10.09.2020 on the file of the Motor Accident Claims Tribunal, Sessions Judge (FAC), Perambalur.

For Appellant : Mr.S.P.Yuaraj

For Respondents: No appearance [R1]
Ms.C.Bhuvanasundari [R2]

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

These appeals are heard through video conferencing.

2. Challenging the award passed by Motor Accident Claims Tribunal, Sessions Judge (FAC), Perambalur. M.C.O.P.No.590 of 2018 dated 10.09.2020, the Insurance Company has filed C.M.A.No.2035 of 2021. Being not satisfied with the quantum of compensation awarded, the claimant has preferred C.M.A.No.2178 of 2021 seeking enhancement of compensation.

3. Since both the appeals arise out of the same judgment, they are heard together and disposed of by this common judgment.

4. The brief facts of the case are that, on 06.08.2018 at about 11.20 p.m., the deceased Karthick was proceeding in a two-wheeler bearing Registration No.TN-55-AT-1685 with a pillion on the Chennai to Trichy National Highways to see a patient, who was admitted in the Dhanalakshmi Srinivasan Hospital, Perambalur. At that time, a Hundai Car bearing Registration No.KL-23-N-8677 belonging to the first respondent in C.M.A.No.2178 of 2021 and second respondent in C.M.A.No.2035 of 2021, came in a rash and negligent manner and dashed against the two-wheeler. Due to the impact, the deceased sustained grievous injuries and died on the spot. The deceased's mother filed M.C.O.P.No.590 of 2018 seeking compensation of Rs.50,00,000/-.

5. According to the claimant, the accident had occurred due to the rash and negligent driving of the driver of the vehicle belonging to the first respondent in C.M.A.No.2178 of 2021 and second respondent in C.M.A.No.2035 of 2021 and hence, the owner as well as the insurer of the offending vehicle are liable to pay compensation. It is the case of the claimant that the deceased was working in a water service station and was earning a sum of Rs.20,000/- p.m.



6. The Insurance Company contested the case stating that the accident had occurred only due to the negligence of the deceased. The Insurance Company has also filed a counter, wherein the manner of accident, age, occupation and income of the deceased and their liability to pay the compensation were denied and disputed.

7. To substantiate the case on the side of the claimant, 3 witnesses were examined and 9 documents were marked. On the side of the insurance company, RW-1 was examined, but, no document was marked.

8. The Tribunal, after considering the oral and documentary evidence, held that the deceased had also contributed some portion of negligence for the accident and fixed 10% contributory negligence on the part of deceased and 90% on the part of the driver of the Car and directed the Insurance Company to pay the compensation of Rs.25,97,400/- to the claimant. Aggrieved over the same, the Insurance Company has filed C.M.A.No.2035 of 2021 as well as the claimant have come up with these appeals.

9. The learned counsel for the insurance company submitted that the accident had taken place in the year 2018 and except the oral evidence of PW-1, no documentary evidence was produced to show that the deceased was earning Rs.20,000/- p.m. However, the Tribunal, without considering the said fact, has fixed Rs.15,000/- as the notional monthly income of the deceased. The next submission of the learned counsel is that the deceased was a bachelor and hence, 50% of the monthly income has to be deducted towards personal expenses, but, the Tribunal has deducted only 1/3. Hence, the learned counsel submitted that the amount awarded by the Tribunal is on the higher side and prayed this Court to reduce the same.

10. Per contra, Mr.S.P.Yuaraj, the learned counsel appearing for the claimant, submitted that the claimant has proved the avocation and income of the deceased. Further, the claimant is a widow and she lost her only son, who was the sole bread winner of the family, hence, the Tribunal has deducted 1/3 towards personal expenses. The learned counsel submitted that the award passed by the Tribunal is on the lower side and prayed to dismiss the appeal preferred by the insurance company and sought enhancement of the award.

11. We have carefully considered the rival submissions and perused the materials available on record.

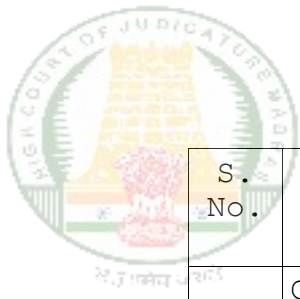


12. The Tribunal considering the fact that the deceased attempted to take U-turn at the place of accident, has rightly fixed negligence on the part of the deceased at 10% and 90% on the part of the driver of the offending vehicle. Hence, the contributory negligence fixed by the Tribunal is hereby confirmed.

13. It is an admitted fact that the deceased was a bachelor and died at the age of 26 and the claimant is the only legal heir of the deceased. The claimant examined herself as PW-1 and deposed that the deceased was working in a service station and was earning Rs.20,000/- per month, however, no document was produced to prove the same. In the light of the facts of this case, Rs.11,000/- is fixed as monthly income of the deceased and 40% is added towards future prospects and the total monthly income is arrived at Rs.15,400/- [11,000 + 4,400]. Since the deceased was a bachelor, 50% is deducted towards personal expenses and the loss of income would be Rs.7,700/- [15,400 - 7,700]. As the deceased was aged 26 at the time of the accident, multiplier '17' is applied and the loss of dependency is assessed as Rs.15,70,800/- [7700*12*17]. Thus, the sum of Rs.28,56,000/- awarded by the Tribunal under the head 'Loss of dependency' is reduced to Rs.15,70,800/-.

14. The Tribunal has not awarded any amount under the head 'parental consortium' and hence, a sum of Rs.40,000/- is awarded. Further, the amount awarded by the Tribunal under other heads viz., Rs.15,000/- towards Loss of Estate and Rs.15,000/- towards Funeral Expenses are confirmed. In total, the claimant is entitled to Rs.14,76,720/- [after deduction 10% towards contributory negligence] along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under amount awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	28,56,000/-	15,70,800/-
2.	Loss of parental consortium	-	40,000/-
3.	Loss of Estate	15,000/-	15,000/-
4.	Funeral Expenses	15,000/-	15,000/-
	Total	28,86,000/-	16,40,800/-
	Less: Contributory negligence (10%)	2,88,600/-	1,64,080/-



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S. No.	Heads under amount awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
	Compensation payable	25,97,400/-	14,76,720/-

In the result,

(i) C.M.A.No.2035 of 2021 is partly allowed.

(ii) C.M.A.No.2178 of 2021 is dismissed.

(iii) The compensation of Rs.25,97,400/- awarded by the Tribunal is reduced to Rs.14,76,720/-. The Insurance Company is directed to deposit the modified award amount of Rs.14,76,720/- [Rupees Fourteen Lakhs Seventy Six Thousand Seven Hundred and Twenty only] 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. On such deposit, the claimant is permitted to withdraw the modified award amount, less the amount already withdrawn, if any, together with proportionate interest and costs.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

gm

To

1.The Sessions Judge (FAC),
Motor Accident Claims Tribunal,
Perambalur.

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

+1cc to Mr.S.P.Yuaraj, Advocate SR.No.8888

C.M.A. Nos.2035 and 2178 of 2021

RP(CO)

GMV(25/04/2022)