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C.M.A.Nos.2539 of 2015 and 368 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2022

CORAM:

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

C.M.A.Nos.2539 of 2015 and 368 of 2017
and
M.P.No.1 of 2015

C.M.A.No.2539 of 2015

The Oriental Insurance Company Limited,
No.89, Sri Pankaj Complex,
Perambur Barracks Road,
Purasaiwalkam, Chennai – 7.

... Appellant

Vs.

1.D.B.Leela
2.G.Dilli Babu
3.E.Juno Jebaraj

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree dated 11.12.2014 made in MCOP No.632 of 2013 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Poonamallee.



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For Appellant : Mr.K.Vinod for
M/s S.Manohar

For Respondents : Mr.K.Varadhakamaraj for R1 and R2
No appearance for R3

C.M.A.No.368 of 2017

1.D.B.Leela
2.G.Dilli Babu

... Appellants

Vs.

1.E.Juna Jebaraj
2.The Oriental Insurance Company Limited,
No.89, Sri Pankaj Complex,
Perambur Barracks Road,
Purasaiwalkam, Chennai – 7.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the amount awarded in MCOP No.632 of 2013 dated 11.12.2014 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Poonamallee.

For Appellant : Mr.K.Varadhakamaraj
For Respondents : Mr.K.Vinod for R2
No appearance for R1



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C.M.A.Nos.2539 of 2015 and 368 of 2017

COMMON JUDGMENT

**(Common Judgment of the Court was made by
K.KALYANASUNDARAM.,J)**

C.M.A.No.2539 of 2015 has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Sub-Court, Poonamallee in MCOP No.632 of 2013. The claimants in the said O.P, have come up with C.M.A.No.368 of 2017 seeking enhancement of compensation. Since both the appeals arise out of the same order passed in the MCOP dated 11.12.2014, both are heard together and disposed of by this common Judgment. For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

2.The brief facts of the case are that one D.Rajendran, son of the claimants died in a road accident on 07.07.2013. According to them, he was a pillion rider in a two wheeler bearing Reg.No.TN-01-AL-0705, which was driven by one Rajesh S/o Dhandapani from Pondichery to Chennai on East Coast Road. When they were near Paniyur, the rider drove the vehicle in a rash and negligent manner



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and ran over the speed break and lost his control, in which, the deceased fell down and sustained grievous injuries and died on the spot. It is the further case of the claimants that the deceased was a Diploma holder and he was working as Supervisor in L & T Company and earning Rs.30,000/- per month.

3.The owner of the vehicle remained ex-parte before the Tribunal and the Insurance Company contested the claim petition stating that the two-wheeler was hit by unknown car as per the police records. Since necessary parties have not been impleaded, the claim petition is not maintainable.

4.The claimants examined one Rajasekaran as P.W.2, who is said to have witnessed the accident. He deposed in the light of the averments made in the claim petition. Ex.P.1-First Information Report was filed to show that the rider of the two-wheeler is the accused in the criminal case. No contra evidence was produced by the Insurance Company. Hence, the Tribunal, accepting the evidence of P.W.1 and Ex.P.1-First Information Report, held that the accident occurred due to the negligence of the rider of the two-wheeler. The said finding is confirmed.



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5.Insofar as the quantum is concerned, perusal of Ex.P.7-Conduct Certificate, Ex.P.8-Transfer Certificate and Ex.P.10-Course Completion Certificate issued by the Principal, Jaya Polytechnic College reveal that he completed EEE in the year 2004 and as per the evidence of P.W.3, the deceased was working at L & T Company more than 1-1/2 years before he met with an accident. The monthly income of the deceased was fixed at Rs.20,257/- based on the evidence of P.W.3 and Ex.P.22. The Tribunal, after deducting 50% towards personal expenses, applied multiplier '17' to determine the loss of income.

6.The learned counsel appearing for the claimants Mr.K.Varadhakamaraj would urge that admittedly, the deceased was a permanent employee in a private concern and hence, as per the decision of the Hon'ble Apex Court in the case of **National Insurance Company Ltd., vs. Pranay Sethi and others** reported in **2017(2) TNMAC 609 (SC)**, the claimants are entitled 40% towards future prospects and the conventional damages awarded by the Tribunal is not in accordance with the decision of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018 (1) TN MAC 452 (SC)**.



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7.The learned counsel appearing for the Insurance Company Mr.K.Vinod would state that the claimants are the parents of the deceased and the Tribunal has granted reasonable award and hence, they are not entitled any enhancement.

8.In the instant case, it is not in dispute that the deceased was permanent employee as a Supervisor in L & T Ship Building Limited and he was earning Rs.20,257/- per month. Hence, the claimants are entitled in addition towards future prospects as pointed out by the learned counsel appearing for the claimants. Hence, the income of the deceased is taken as Rs.20,000/- per month. As per the decision of the Hon'ble Apex Court in the case of **National Insurance Company Ltd., vs. Pranay Sethi and others** (supra), the claimants are entitled 40% towards future prospects. So, the total income comes to Rs.28,000/- (20000+8000). 50% is deducted towards his personal expenses and by applying multiplier '17', the loss of income is assessed as Rs.28,56,000/- (28000x12x17x1/2).



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9.As per the decision of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** (supra), the claimants are entitled to Rs.40,000/- each towards parental consortium, which comes to Rs.80,000/-. Hence, the amounts awarded by the Tribunal under the head of loss of love and affection and mental shock is set aside. The amount of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. This Court awards Rs.15,000/- towards loss of estate. The rate of interest fixed by the Tribunal as 7.5% is confirmed. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	20,66,112/-	28,56,000/-	enhanced
Loss of love and affection	2,00,000/-	Nil	set aside
Loss of parental consortium	Nil	80,000/-	granted
Funeral expenses	25,000/-	15,000/-	reduced
Loss of estate	Nil	15,000/-	granted
Total	22,91,112/-	29,66,000/-	enhanced

10. In such view of the matter, CMA No.368 of 2017 filed by the claimants is partly allowed and CMA No.2539 of 2015 filed by the Insurance Company is



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dismissed. The amount awarded by the Tribunal is enhanced to Rs.29,66,000/- from Rs.22,91,112/-. Out of which, the first claimant/mother of the deceased is entitled to Rs.20,00,000/- and the second claimant/father of the deceased is entitled to Rs.9.66,000/-. The Insurance Company is directed to deposit the modified award amount 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 Judgment. On such deposit, the claimants are permitted to withdraw their share, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

[M.K.K.S.,J.]

[V.S.G.,J.]

28.02.2022

skn

Index : Yes/No

Speaking Order: Yes/No

To

1.Motor Accident Claims Tribunal,
(Sub-Court), Poonamallee.

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

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C.M.A.Nos.2539 of 2015 and 368 of 2017

K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

skn

COMMON JUDGMENT MADE IN
C.M.A.Nos.2539 of 2015 and 368 of 2017
and
M.P.No.1 of 2015

28.02.2022