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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.1588 and 887 of 2021
and C.M.P.No.8249 of 2021

C.M.A.No.1588 of 2021

SBI General Insurance Company Limited,
New No.64, Old No.141, Groung &
Mexxanine Floor, Greams Road,
Chennai - 2. ... Appellant/2nd Respondent

Vs.

1.M.Nithya
2.M.Siddheshwar (Minor)
3.M.Yakshith (Minor) ...Respondents 1 to 3/Petitioners
(Minors 2 and 3 are represented by
their mother and next friend
the 1st Respondent herein M.Nithya)
4.Mohan Eswaran
5.N.Mahalakshmi ... Respondents 4 to 5/Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to set aside the award and decree dated 29.10.2020 made in M.C.O.P.No.501 of 2016 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Court) Tiruvallur @ Poonamallee.

For Appellant : Mr.Vinod K

For Respondents: Mr.M.Sivakumar
R1 to R3
R4 and R5 Not ready notice



In C.M.A.No.887 of 2021

1.M.Nithya

2.Minor M.Siddheshwar

3.Minor M.Yakshith

(Minor appellants are represented by
their mother and next friend
the 1st appellant herein M.Nithya)

... Appellants/Petitioners

Vs.

1.Mohan Eswaran

2.SBI General Insurance Company Limited,
New No.64, Old No.141, Ground &
Mexxanine Floor, Greams Road,
Chennai - 2.

3.N.Mahalakshmi

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award and decree dated 29.10.2020 made in M.C.O.P.No.501 of 2016 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Court) Tiruvallur @ Poonamallee.

For Appellants : Mr.C.Prabakaran

For Respondents: Mr.K.Vinod

for R2

R1 & R3 not ready notice

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

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

These appeals are directed against the award dated 29.10.2020 made in M.C.O.P.No.501 of 2016 by the learned III Additional District and Sessions Judge, Motor Accident Claims Tribunal, Tiruvallur @ Poonamallee.

2.For the purpose of convenience, the parties are described as per their ranking before the Tribunal.

3.The facts in nutshell are as follows :

On 02.11.2015 at 8.20 p.m when the deceased was riding a two wheeler bearing Reg.No.TN-20-AQ-5404 on Sholavaram Bye-



pass Road, a Lorry bearing Registration No.AP-26-TT-9939, which was coming on the same direction, driven by its driver in a rash and negligent manner with high speed, suddenly applied break, hence, the deceased hit the backside of the Lorry. Due to the impact, the deceased sustained multiple grievous injuries and he was admitted in the Sundaram Medical Foundation Hospital. However, he succumbed to the injuries on the same day. Hence, the legal heirs of the deceased filed M.C.O.P.No.501 of 2016 seeking compensation of Rs.1,08,25,000/- and the same was restricted to Rs.90,63,000/-.

4. According to the claimants, the accident had occurred due to the rash and negligent driving of the driver of the Lorry, hence the owner as well as the insurer of the offending vehicle are jointly and severally liable to pay compensation.

5. Resisting the claim petition, the Insurance Company filed their counter statement disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

6. To substantiate the case on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 13 documents were marked as Ex.P1 to Ex.P13. On the side of the respondents, RW1 and RW2 were examined and Exs.R1 to R10 were produced.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's vehicle and directed the Insurance Company to pay a compensation of Rs.72,20,000/- to the Legal Heirs of the deceased. The amounts awarded by the Tribunal under various heads are as follows:

S.No .	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
1.	Loss of Contribution to the family	67,50,000
2.	Loss of Love and Affection	4,00,000
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000



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S.No .	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
5.	Loss of Consortium	40,000
	Total	72,20,000

8. It is the contention of the learned counsel for the appellant/Insurance Company that the accident had occurred only due to the negligent driving of the deceased. On the date of the accident, the deceased drove the two wheeler without wearing helmet and hit behind the Lorry and sustained fatal injuries. In such circumstances, the Tribunal ought to have fixed contributory negligence on the part of the deceased, instead of doing so, the Tribunal fixed the entire liability on the part of the driver of the Lorry and passed an award in favour of the claimants.

9. It is further contended that the Tribunal failed to deduct income tax from the salary of the deceased. He further added that the Tribunal has not followed the legal precedents of the Apex Court while arriving at the quantum. Hence, he prays for setting aside the award passed by the Tribunal.

10. Per contra, the learned counsel for the claimants argued that the accident had occurred only due to the negligence of the driver of the lorry and, First Information Report/Ex.P1 was also registered against the driver of Lorry, not against the deceased. The claimants examined an eye-witness to the accident as P.W.2 and proved the manner of the accident and also the negligence on the part of the driver of the Lorry. He further argued that there was no evidence to prove that the deceased drove the vehicle without wearing helmet. The evidence of R.W.1 also supports the pleadings of the claimants. Hence, the Tribunal had rightly come to the conclusion that the accident had occurred only due to the negligent driving of the driver of the Lorry and passed an award in favour of the claimants.

11. He further argued that at time of accident, the deceased was earning a sum of Rs.5,17,937/- per annum and to substantiate the same, the claimants examined P.W.3, who is the the Human Resource Manager of the company in which deceased worked, and through him they marked Ex.P12/Pay Bills and Ex.P13/Income tax returns. However, the Tribunal without taking note of the same fixed Rs.4,00,000/- as annual income



of the deceased is fixed at 40%, the claimants are entitled for Rs.36,04,500/- [60,07,500 - 24,03,000] under the head Loss of contribution to the family.

16. As rightly pointed out by the learned counsel for the Insurance Company that in the present case, the Tribunal awarded Rs.4,00,000/- towards Loss of Love and affection apart from awarding amount under the head Loss of Consortium. Hence, this Court by relying upon the decision of the Apex Court in Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others reported in (2018)2 TN MAC 452 (SC), set asides the amount awarded under the head Loss of Love and Affection and awards Rs.40,000/- towards Filial Consortium to the 3rd respondent/mother of the deceased; and Rs.80,000/- towards Parental Consortium to the claimants 2 and 3/minor children of the deceased. In addition to that, the amounts awarded by the Tribunal viz., Rs.15,000/- towards Loss of Estate; Rs.15,000/- towards Funeral Expenses; and Rs.40,000/- towards Loss of Consortium are confirmed.

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

S.No.	Heads under which amounts are awarded	Amount in Rs.	Amount in Rs.
1.	Loss of Contribution to the Family	67,50,000	36,04,500
2.	Loss of Love and Affection	4,00,000	-
3.	Loss of Estate	15,000	15,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Consortium	40,000	40,000
5.	Filial Consortium	-	40,000
6.	Parental Consortium	-	80,000
	Total	72,20,000	37,94,500 (rounded off Rs.37,95,000)

18. The total compensation of Rs.72,20,000 awarded by the Tribunal is hereby reduced to Rs.37,94,500/- (rounded off Rs.37,95,000/-) which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance



Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant/wife of the deceased is entitled for a sum of Rs.12,95,000/- and the 3rd respondent/mother of the deceased is entitled for a sum of Rs.5,00,000/- and they are permitted to withdraw the award amount, less the amount already withdrawn, if any. Insofar as the claimants 2 and 3/minor children of the deceased are concerned they are entitled for a sum of Rs.10,00,000/- each, and their share amount shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attains majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months. The appellant is entitled to withdraw excess compensation, if any, already deposited before the Tribunal.

19. In view of the above modification, the Civil Miscellaneous Appeal in C.M.A.No.1588 of 2021 is partly allowed and Civil Miscellaneous Appeal in C.M.A.No.887 of 2021 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruvallur @ Poonamallee.

Copy to

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

+1cc to Mr.C.Prabakaran, Advocate Sr.13113

+1cc to Mr.K.Vinod, Advocate Sr.13153

C.M.A.Nos.1588 and 887 of 2021

jp[co]

srg 09/06/2022