IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.1462 & 3388 of 2021 and
C.M.P.No.19549 of 2021

C.M.A.No.1462 of 2021:

S.Elamathi .. Appellant

Vs.

1.Paleeswaran

2.Reliance General Insurance Co. Ltd.,
Reliance Tower,
Haddows Road,
Chennai – 600 006. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.Amar D.Pandiya

For R2 : Ms.C.Bhuvanasundari

C.M.A.No.3388 of 2021:

The Branch Manager,
Reliance General Ins.Co.Ltd.,
Reliance Tower, Haddows Road,
Chennai – 600 006. .. Appellant

Vs.

1.S.Elamathi

2.Paleeswaran .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Ms.C.Bhuvanasundari
For R1 : Mr.Amar D.Pandiya

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

C.M.A.No.1462 of 2021 has been filed by the appellant-claimant seeking enhancement of compensation granted by the Tribunal in the award dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2.C.M.A.No.3388 of 2021 has been filed by the appellant – Insurance Company against the award dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

3.Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment.

4.The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

5.The claimant filed M.C.O.P.No.7382 of 2018, claiming a sum of Rs.45,00,000/- as compensation for the death of her mother viz., Laila Lakshmi, who died in the accident that took place on 24.06.2018.

6.According to the claimant, on 24.06.2018 at about 15.30 hours, while her mother Laila Lakshmi was travelling as pillion rider in the motorcycle bearing Registration No.TN 18 AZ 5475 from Kooingiyadi Kuppam to Elavoor at a slow speed on the extreme left side of the road from South to North near GNT Road, Puduvoyal Junction, the driver of the Mahindra van bearing Registration No.TN 20 CW 7340, who was driving the van on the same direction in a rash and negligent manner, hit the backside of the motorcycle in which the said Laila Lakshmi was travelling as pillion rider and caused the accident. Due to the said impact, the rider and pillion rider of the motorcycle fell down from the motorcycle and sustained injuries all over the body. Immediately after the accident, the said Laila Lakshmi was taken to Ponneri Government Hospital and thereafter shifted to Stanley Medical College and Hospital, Chennai. However, the Doctors informed that the said Laila Lakshmi was brought dead. Hence, the claimant-daughter of the deceased filed the said claim petition claiming a sum of Rs.45,00,000/- as compensation against the respondents who are the owner and insurer of the van respectively.

7.The 1st respondent – owner of the van remained exparte before the Tribunal.

8.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. According to 2nd respondent, the rider of the motorcycle only drove the same in a rash and negligent manner without following the traffic rules and dashed against the Mahindra van belonging to 1st respondent and invited the accident. FIR is not the conclusive proof to fix the negligence on the driver of the van belonging to 1st respondent. The accident has occurred only due to negligence on the part of the rider of the motorcycle. The claimant has to prove that the vehicle belonging to 1st respondent was having valid insurance policy on the date of accident and also the driver of the van was possessing valid driving license to drive the van on the date of accident. Further, the claimant has to prove that the van belonging to 1st respondent was having valid documents on the date of accident. The claimant has to prove that she is the only legal heir of the deceased and also the age of the deceased by producing valid documents. The claimant is not entitled to any interest for the delay period caused by the claimant in furnishing the medical documents. The 2nd respondent denied the avocation and income of the deceased. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

9.Before the Tribunal, the claimant examined herself as P.W.1 & P.W.2, husband of the claimant viz., Siva was examined as P.W.3 and one Suresh, eyewitness to the accident was examined as P.W.4 and 26 documents were marked as Exs.P1 to P26. The 2nd respondent – Insurance Company did not let in any oral and documentary evidence.

10.The Tribunal considering the pleadings, oral and documentary evidence let in by claimant, held that the accident occurred due to rash and negligent driving by the driver of the Mahindra van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, the insurer of Mahindra van to pay a sum of Rs.31,31,800/- as compensation to the claimant.

11.Challenging the liability fastened on them as well as quantum of compensation granted by the Tribunal in the award dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, the 2nd respondent-Insurance Company has come out with present appeal in C.M.A.No.3388 of 2021.

12.Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.09.2020, made in M.C.O.P.No.7382 of 2018, the claimant has come out with appeal in C.M.A.No.1462 of 2021.

13.Though the 2nd respondent-Insurance Company has raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the 2nd respondent restricted her arguments only with regard to quantum of compensation and contended that in the claim petition, it was stated that at the time of accident, the deceased Laila Lakshmi was aged 53 years, working as Office Assistant in District Police Office, Tiruvallur. The Tribunal based on Ex.P5/Aadhar card, has taken the age of the deceased as 47 years. The claimant, who is the daughter of the deceased Laila Lakshmi, was aged 28 years at the time of accident. Therefore, it could not be possible that the deceased was aged 47 years at the time of accident. The claimant is a married daughter of the deceased and therefore, she cannot be considered as a dependant and she is not eligible to receive the pension benefits of the deceased. Further, the Tribunal has not deducted Income Tax to be paid by the deceased and prayed for allowing the appeal filed by the Insurance Company and dismissing the appeal filed by the claimant.

14.The learned counsel appearing for the claimant contended that the claimant, married daughter can claim compensation for the death of her mother and she is the only dependant of the deceased. At the time of accident, the deceased was earning a sum of Rs.25,577- per month. To prove the same, the claimant marked appointment order, promotion order, service regularisation, ID card, salary slip and bank passbook of the deceased as Exs.P10 to P15. The Tribunal considering the same, has rightly fixed a sum of Rs.25,600/- as monthly income of the deceased. Based on the Aadhar card of the deceased, the Tribunal rightly fixed the age of the deceased as 47 years at the time of accident. But the Tribunal ought to have granted 25% instead of 10% enhancement towards future prospects of the deceased. The compensation granted by the Tribunal towards loss of estate is meagre and prayed for enhancement of compensation and dismissal of the appeal filed by the Insurance Company.

15.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

16.From the materials on record, it is seen that is the case of the claimant that at the time of accident, the deceased was working as Office Assistant in the District Police Office, Thiruvallur and was earning a sum of Rs.25,577/- per month and also receiving a sum of Rs.8,000/- as her husband's retirement pension. To prove the same, the claimant marked appointment order, promotion order, service regularisation, ID card, salary slip and bank passbook of the deceased as Exs.P10 to P15. The Tribunal considering Ex.P14 / salary slip of the deceased, fixed a sum of Rs.25,600/- as monthly income of the deceased and the same is in order. The Tribunal considering Ex.P5 / Aadhar card of the deceased, has fixed the age of the deceased at 47 years. The age of the deceased fixed by the Tribunal at 47 years is not correct. In the PAN card of the deceased, the date of birth of the deceased is mentioned as 10.06.1966 and hence, she was aged 53 years at the time of accident. The Tribunal taking into consideration the age of the deceased as 47 years, granted 10% enhancement towards future prospects and applied multiplier '13' and the same are not correct. The deceased was in a permanent job at the time of accident and as per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]***, the claimant is entitled to 15% enhancement towards future prospects. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]*** is '11'. The claimant, who is the daughter of the deceased is the only dependant of the deceased and the Tribunal erroneously deducted 1/3rd towards personal expenses instead of deducting 50% towards personal expenses. The Tribunal has not deducted any amount towards income tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.25,600.00
ADD: 15% enhancement towards future prospects	...	Rs.3,840.00
		Rs.29,440.00
Annual income (29,440/- X 12)	...	Rs.3,53,280/-

The accident has occurred on 24.06.2018. During the assessment year 2019-2020, upto Rs.2,50,000/-, there is nil tax.

Income Tax Slab for Assessment Year 2019-2020

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,000/- to Rs.5,00,000/- (5%) [Rs.3,53,280/- - Rs.2,50,000/- = Rs.1,03,280/- =Rs.1,03,280/- X 5%]	-	Rs.5,164.00
		Rs.5,164.00

Annual income after deducting income tax
(Rs.3,53,280/- – Rs.5,164/-) - Rs.3,48,116/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,14,638/- (Rs.3,48,116/- X 11 X 1/2).

16(ii).The learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimant is a married daughter of the deceased and therefore, she cannot be considered as a dependant and she is not eligible to receive the pension benefits of the deceased. It is well settled that even a married daughter is entitled to get compensation for the death of her parents. Hence, the contention of the learned counsel appearing for the 2nd respondent that the claimant cannot be considered as a dependant is not acceptable. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection to the claimant, which is not correct and the same is liable to be set aside and it is hereby set aside. The claimant, who is the daughter of the deceased is entitled to a sum of Rs.40,000/- towards parental consortium. The Tribunal has awarded a meagre sum of Rs.5,000/- towards loss of estate and the same is enhanced to Rs.15,000/-. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is hereby confirmed. 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
1.	Loss of dependency	30,61,812/-	19,14,638/-	Reduced
2.	Loss of Estate	5,000/-	15,000/-	Enhanced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection	50,000/-	-	Set aside
5.	Parental consortium	-	40,000/-	Granted
	Total	**Rs.31,31,812/-** Rounded off to **Rs.31,31,800/-**	**Rs.19,84,638/-** Rounded off to **Rs.19,84,700/-**	**Reduced by Rs.11,47,100/-**

17.In the result, C.M.A.No.1462 of 2021 filed by the claimant is partly allowed with regard to future prospects, parental consortium and loss of estate. C.M.A.No.3388 of 2021 filed by the Insurance Company is partly allowed reducing the compensation awarded by the Tribunal at Rs.31,31,800/- to Rs.19,84,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2[nd] respondent-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, to the credit of

M.C.O.P.No.7382 of 2018, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.7382 of 2018, if the entire award amount has been already deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S., J)
23.09.2022

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Index : Yes / No
Internet : Yes / No

To
1.The VI Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

V.M.VELUMANI, J.

and

T.V.THAMILSELVI, J.

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C.M.A.Nos.1462 & 3388 of 2021

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