IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

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

C.M.A. Nos.2071 of 2018 and 1268 of 2021
and CMP.No.16108 of 2018

National Insurance Company Ltd.,
Branch Office 910, Niresh Complex
Upstairs, Cuddalore Main Road
Attur Post, Salem District.
...Appellant in C.M.A.No.2071 of 2018/
2nd Respondent

Vs.

1.V.Pushpa
2.V.Mekala
3.R.Geetha
4.K.Ammakannu
5.V.Kaliyamurthy
6.K.Venkatesan ...Respondents 1 to 5/Petitioners
in CMA No.2071/18/6th Respondents
in CMA.No.2071 of 2018/6th Respondent

1.V.Pushpa
2.V.Mekala
3.R.Geetha
4.K.Ammakannu
5.V.Kaliyamurthy ...Appellants in CMA.No.1268 of 2021/
Petitioner

Vs.

1.K.Venkatesan ...1st Respondents in CMA 1268/21/
1st Respondent

2.National Insurance Company Ltd.,
Branch Office 910, Niresh Complex
Upstairs, Cuddalore Main Road
Attur Post, Salem District. ...2nd Respondents in
C.M.A.No.1268 of 2021/2nd Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and decree dated 15.12.2017 made in M.C.O.P.No.1252 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

In CMA.No.2071 of 2018
For Appellant : Mr.S.Vadivel
For Respondents
for R1 to R5 : Mrs.Ramya V.Rao
for R6 : Notice served-No appearance

In CMA.No.1268 of 2021
For Appellants : Mrs.Ramya V.Rao
For Respondents
for R2 : Mr.S.Vadivel

COMMON JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J]

Both the claimants as well as the Insurance Company have preferred these appeals challenging the award passed by the Special District Judge, Motor Accident Claims Tribunal, Salem, in M.C.O.P.No.1252 of 2014 dated 15.12.2017.

2.The brief facts of the case are that on 27.05.2014, the husband of the 1st claimant, viz., K.Varatharajan was driving his motorcycle bearing Registration No.TN 30 Q 2203 from his residence to Malliyakarai. When he was nearing Attur to Rasipuram main road, driver of the 1st respondent was driving the Leyland lorry bearing Registration No.TN 32 Z 6999 in a rash and negligent manner dashed against the deceased's vehicle, which is coming on the opposite direction. Due to the accident, the deceased was thrown out from the motorcycle and he died on the spot. In this regard Malliyakarai police registered a case against the driver of the 1st respondent in Crime No.102 of 2014 under Sections 279 and 304 (A) IPC. Legal heirs of the deceased - K.Varatharajan filed a claim petition MCOP.No.1252 of 2014 claiming a compensation of Rs.One Crore.

3. The appellant in C.M.A.No.2071 of 2018, who is the insurer of the Leyland lorry, had contested the claim petition by filing counter stating that the accident had occurred due to the negligent driving of the deceased. It is also disputed that the age, income and quantum claimed in the claim petition are stated to be excessive.

4. In order to establish the claimants' case, 3 witnesses were examined as P.Ws.1 to 3; 23 documents were marked as Exs.P1 to P.23 and apart from this 6 documents were marked as X1 to X6. On behalf of the Insurance Company, 2 witnesses were examined as R.Ws.1 & 2 and 4 documents were marked as Exs.R1 to R4.

5. The Tribunal, after considering the oral and documentary evidence, awarded compensation of Rs.18,12,323/- to the claimants.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7.In this appeal, the Tribunal has rightly fixed the negligence upon parties involved in the accident and therefore, this aspect is not challenged and hence with regard to negligence, the issue is not discussed herein.

8. It is the contention of the learned counsel for the Insurance Company that the Tribunal erred in believing the evidence of Exs.P.3 and 4. Though the bank statement of the deceased were marked before the Tribunal, the income of the deceased is not standard one. He was doing business. Further, the deceased has not paid the Income tax for his income. Therefore, the amount fixed by the Tribunal as monthly income of Rs.20,000/- cannot be sustained and needs to be properly reduced.

9. On the other hand, the learned counsel for the claimants supported the finding of the Tribunal. She further submitted that the deceased was the sole bread winner of the family and he died at the age of 53. Ex.P.3 is the account statement held in the Bank of ICICI Bank and Ex.P.4 is the account statement of Axis bank. It is further contended that the amounts awarded under other heads are meagre and needs proper enhancement.

10. The Tribunal, by relying upon Ex.P1- FIR and the evidence of PW2 & PW3, rightly came to the conclusion that the accident had occurred due to the negligent act of the driver of the 1st respondent.

11. As regards quantum, the Tribunal has fixed the notional income of the deceased at Rs.20,000/- per month. Since the deceased owned two lorries at the time of the accident and he might have earned a sum of Rs.25,000/- from his business and hence, it is appropriate to fix a sum of

Rs.25,000/- as the monthly income of the deceased. After adding 10 % towards, future prospectus, and deducting 1/4th towards personal expenses, the annual income would be Rs.2,47,500/- (Rs.25,000/- + Rs.2,500/- x ¾ x 12). A sum of Rs.24,750/- is deducted from the total annual income of the deceased, for the Income Tax, the balance amount comes to Rs.2,22,750/-. Thereafter, by applying multiplier '11' a sum of Rs.24,50,250/- (Rs.2,22,750/- x 11) is awarded towards loss of dependency. In addition to that a sum of Rs.1,60,000/- is awarded towards Consortium and Filial consortium. The amounts awarded under the heads, namely Rs.15,000/- for funeral expenses ,Rs.15,000/- for loss of estate and Rs.40,000/- for loss of dependency to the 1st claimant are very reasonable, which do not warrant any interference by this Court. Thus, in total the claimants are entitled for a sum of Rs.26,80,250/- rounded of to Rs.26,80,000/-. Out of which, the 1st claimant is awarded Rs.12,80,000/-; the claimants 2 and 3 are awarded Rs.4,00,000/- each and the claimants 4 and 5 are awarded Rs.3,00,000/- each.

12.i) In view of the above modifications, the Civil Miscellaneous Appeals preferred by the claimants in C.M.A.No.1268 of 2021 is partly allowed. The appellant/Insurance Company is directed to deposit the above modified amount of Rs.26,80,000/- with interest at the rate of 7.5 % from the date of claim petition, till the date of realization 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 is being made, the claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs.

ii)The appeal preferred by the Insurance Company in C.M.A.No.2071 of 2018 stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   The Special District Judge, Salem.

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

+2ccs to Mr.S.Vadivel, Advocate SR.No.10590,10591

+1cc to Mrs.Ramya V.Rao, Advocate SR.No.10663

C.M.A. Nos.2071 of 2018 and 1268 of 2021

NRL(CO)
GMY(04/04/2022)