IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

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

C.M.A. No.1349 of 2020
and CMP.No.9777 of 2020

The United India Insurance Co. Ltd.,
No.112, 2nd Floor, Thiruvalluvar Salai,
Thriuvanmiyur, Chennai 41. ...Appellant/2nd Respondent

Vs.

1. Nagarajamma
2. K.Venkata Subbarao ...1 & 2 Respondents/Petitioners
3. D.Selvakumar
4. P.Meenakshi
5. ICICI Lombard General Insurance Company,
(The Bharati AXA General Insurance Co. Ltd.,
No.162, 2nd Floor, Metro Plaza,
Anna Salai, Chennai.

...3 to 5 Respondents/1,3 and 4 Respondents

[R5 amended as per the order of this Court, dated 22.03.2022 in CMP.No.4875 of 2022 in CMA.No.1349 of 2020.]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 15.11.2019 in MCOP.No.4250 of 2015 on the file of the Motor Accidents Claims Tribunal/II Court of Small Causes, Chennai.

For appellant : Mr.D.Bhaskaran

For respondents
for RR1 & 2 : Mr.K.Varadha Kamaraj
for RR3 & 4 : Notice not ready
for R5 : Notice served - No appearance

J U D G M E N T

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

Challenging the judgment and award passed by the Motor Accidents Claims Tribunal/II Court of Small Causes, Chennai in MCOP.No.4250 of 2015, this appeal has been filed.

2. It is the case of the claimants that on 21.03.2015 at about 20.30 hours, the deceased was riding a motorcycle bearing Registration No.TN-07-BV-8256 at 200 feet radial road, towards Thoraipakkam. When he was nearing Ford Vanapakuthi, a scrap fell from the garbage Tipper Lorry bearing Registration No.TN-28-AF-2378 and the deceased ran over the scrap and he fell down. At that time, an Inova Car bearing Registration No.TN-07-BP-4489 came on the same way and ran over him. In the accident, he died on the spot. Hence, the claimants, who are the parents of the deceased, filed a claim petition against the owner of the garbage Tripper Lorry as well as the Inova Car and their insurers for a compensation of Rs.1,82,00,000/-, but the Tribunal has awarded only Rs.78,65,000/-.

3. While dealing with the negligence, the Tribunal has held that both the drivers of the Tipper Lorry and the Inova Car, are equally responsible for the accident, hence, fixed negligence in the ratio of 50:50. There is no dispute with regard to the negligence in this appeal.

4. The learned counsel appearing for the appellant Mr.D.Baskar would argue that the Tribunal without noticing the fact that the income of the deceased was fluctuating and as per Form-16, annual income was only Rs.5,51,982/-, but it has fixed the monthly income of the deceased as Rs.50,000/- and also added 50% towards future prospects instead of 40%. He further argued that the Tribunal failed to deduct any amount towards income tax.

5. He further submitted that though the Tribunal fixed negligence as 50:50, in paragraph 12 of the award held that both the Insurance Companies are jointly liable to pay the award amount. According to the learned counsel, this finding is contra to the earlier finding given by the Tribunal.

6. Per contra, the learned counsel appearing for the claimants submitted that based on Ex.P31 salary certificate, the Tribunal fixed the monthly income of the deceased as Rs.50,000/- and awarded a reasonable compensation. Hence, no interference is needed in the award passed by the Tribunal.

7. Despite service of notice to the fifth respondent/ICICI Lombard General Insurance Company and their name is printed in the cause list, none appears for them.

8. Heard the rival submissions made on either side and perused the materials available on record.

9. As rightly pointed out by the learned counsel appearing for the appellant, Form 16 shows that the annual income of the deceased is Rs.5,51,982/-. He also established that the deceased did not have permanent employment either in a Government Department, Public Limited Company or Corporation, hence, only 40% can be added towards future prospects. Therefore, this court fixes Rs.5,51,982/- as annual income of the deceased and adds 40% towards future prospects. Then, the actual income of the deceased comes to Rs.7,72,775/- [5,51,982 + 2,20,793]. Since it is a taxable income, Rs.79,555/- is deducted towards income tax, the balance amount comes to Rs.6,93,220/-. As the deceased was a bachelor, 50% is deducted towards personal expenses. Then, the contribution to the family comes to Rs.3,46,610/-. Considering the age of the deceased, multiplier 17 is applied, the Loss of Dependency is hereby computed as Rs.58,92,370/-.

10. Further, the Tribunal awarded Rs.1,00,000/- under each of the heads, viz., Love & Affection and Filial Consortium. However, as per the Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to only Rs.80,000/- towards Filial Consortium; Further, the claimants are entitled to Rs.15,000/- towards Loss of Estate. In addition to that, the sum of Rs.15,000/- awarded by the Tribunal towards Funeral Expenses is hereby confirmed. In total, the claimants are entitled to Rs.60,02,370/- (rounded off to Rs.60,00,000/-) 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 claimants is re-calculated and tabulated below:

S.No.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	76,50,000	58,92,370

S.No.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
2.	Loss of Love and Affection	1,00,000	-
3.	Filial Consortium	1,00,000	80,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Estate	-	15,000
	Total	78,65,000	60,02,370
			(rounded off Rs.60,00,000/-)

11. Since the Tribunal has fixed negligence in the ratio of 50:50, both the Insurance Companies are liable to pay the amount equally, it cannot be said that they are jointly liable to pay the entire award amount. Hence, the said finding in paragraph 12 of the impugned award is set aside.

12. In fine, the sum of Rs.78,65,000/- awarded by the Tribunal is reduced to Rs.60,00,000/-. Out of the award amount, claimants 1 and 2 are entitled to Rs.30,00,000/- each. The appellant and the fifth respondent are directed to deposit the above modified award amount in equal share to the credit of the claim petition with proportionate 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. On such deposit, the claimants are permitted to withdraw their respective award amounts as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs.

13. With the above directions, the appeal is partly allowed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

pvs

To

The II Judge, Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.D.Bhaskaran, Advocate Sr.23337
+1cc to Mr.K.Varadhakamaraj, Advocate Sr.23283

C.M.A. No.1349 of 2020

ssd[co]
srg 08/06/2022