



WEB COPY

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.4226 of 2019 & 1185 of 2020
and
C.M.P.No. 7386 of 2020

1.Mahalakshmi
2.Minor Krithik
(Minor represented by his mother
next friend, guardian Mahalakshmi)
3.Rajivee
4.Shankar

... Appellants/Petitioners
in C.M.A.No.4226 of 2019

Vs.

1.A.Sahul Hameed
2.Royal Sundaram Alliance Insurance Company
Limited, Branch Office, Royal Towers
Opp. To ARRS Multiplex, New Bus Stand Road
Meyyanoor, Salem - 636 004.

...Respondents/Respondents
in C.M.A.No.4226 of 2019

Royal Sundaram Alliance General Insurance Company
Limited, Branch Office, Royal Towers
Opp. To ARRS Multiplex, New Bus Stand Road
Meyyanoor, Salem - 636 004.

...Appellant/
in C.M.A.No.1185 of 2020/2nd Respondent

Vs.

1.Mahalakshmi
2.Minor Krithik
(Minor represented by his mother
next friend, guardian Mahalakshmi)
3.Rajivee



4.Shankar

..Respondents 1 to 4/Petitioners

5.A.Sahul Hameed

...5th Respondent/

in C.M.A.No.1185 of 2020/1st Respondent

WEB COPY

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 18.08.2018 made in M.C.O.P.No.1122 of 2016 on the file of the II Additional District Judge, Special District Judge (FAC), Motor Accident Claims Tribunal, Salem.

In C.M.A.No.4226 of 2019:

For Appellants :Mr.K.Kuppusamy

For Respondents :Mr.G.Vasudevan for R2
R1-Exparte

In C.M.A.No.1185 of 2020:

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.K.Kuppusamy for RR1 to 4
for R5-Notice served-
No appearance

COMMON JUDGMENT

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

These appeals are arising out of the Judgment and Decree dated 18.08.2018 made in M.C.O.P.No.1122 of 2016 on the file of the II Additional District Judge, Special District Judge (FAC), Motor Accident Claims Tribunal, Salem.

Facts in nutshell:-

2.On 17.02.2016, at about 7.00 am., the deceased-Baskar was driving a Car along with his wife, son and father in law, from Salem to Chennai on a National Highway. When the Car was near Ulundurpet, a lorry which was coming from the opposite direction in a rash and negligent manner rammed the Car. In the accident the occupants of the Car suffered grievous injuries and they were carried to Ulundurpet Government Hospital, where the said Baskar was declared brought dead. This claim petition is filed by the wife, minor son and parents of the deceased.



3.It is averred in the claim petition that the deceased was working as an Assistant Manager in HSBC - EDP India Ltd., at Chennai and he is earning a sum of Rs.11 Lakhs per annum. He was a Chartered Accountant. Hence, the claimants sought compensation of Rs.1,50,00,000/-. But, the Tribunal has awarded Rs.85,23,044/- along with interest at the rate of 7.5% per annum.

4.Questioning the award, the claimants as well as the Insurance Company have come with these appeals.

5.The learned counsel for the appellant/Insurance Company, Mr.G.Vasudevan would urge that the award passed by the Tribunal is on the higher side and the Tribunal instead of adding 40% towards future prospectus has applied 50%, which needs proper reduction. According to the learned counsel, the award is highly excessive, arbitrary and unsustainable in law.

6.Per contra, the learned counsel for the claimants, Mr.K.Kuppusamy, would argue that the deceased was working as an Assistant Manager in a HSBC Bank and his income was proved through Ex.P.6, Appointment order and Exs.P.7 to 10-Income Tax returns for the year 2013-2014, 2014-2015 and 2016-2017. Since the deceased was an employee in a Bank, the last drawn salary shall be the basis for fixing the loss of income and the average taken by the Tribunal cannot be sustained. It is also contended that the percentage of future prospectus added is correct and no interference by this Court is required.

7.We have heard the rival submissions and perused the available materials.

8.In the instant case, there is no dispute that the claimants are the legal heirs of the deceased-Baskar. To prove the age of the deceased, claimants have produced copy of the passport, which was marked as Ex.P.5. The appointment letter of the deceased was marked as Ex.P.6 and Exs.P.7 to 10 would reveal that the deceased was an employee of the Bank and his annual income was shown as Rs.4,10,566/- for the year 2013 - 2014 and subsequently it was increased to Rs.6,04,786/- and Ex.P.9 shows that his last drawn salary was Rs.7,24,865/-.

9.Taking note of the fact that the deceased was an employee in a Bank, as rightly pointed out by the learned counsel appearing for the claimants, the last drawn salary has to be taken as the income of the deceased instead taking average income for the last three years. It is not out of place to mention that if the deceased was a businessman, the average income can be taken to fix the income of the deceased. Adding



40% towards future prospectus, the income of the deceased would come to Rs.10,14,811/- (7,24,865/- + 2,89,946/-). The Tribunal has rightly deducted 20% for Income Tax and after deducting 20%, the income would be Rs.8,11,849/-. Proper multiplier would be '16' and after deducting 1/4th towards personal expenses, the contribution to the family comes to Rs.97,42,188/- (Rs.8,11,849/- x 16 x $\frac{3}{4}$).

10. Considering the fact that the claimants are 4 in number, a sum of Rs.1,60,000/- is granted for parental consortium/filial consortium and the amounts awarded under the heads of 'loss of consortium' and 'loss of love and affection' are hereby set aside. Another Rs.30,000/- ordered for 'Loss of estate' and 'Funeral expenses'. In total, the claimants would be entitled for Rs.99,32,188/-. Thus the amounts awarded by the Tribunal is recalculated as follows:-

Sl. No.	Particulars	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of dependency	83,53,044/-	97,42,188/-
2.	Loss of consortium	40,000/-	Set aside
3.	Loss of love and affection	1,00,000/-	Set aside
4.	Parental consortium/filial consortium	---	1,60,000/-
5.	Loss of Funeral expenses	15,000/-	15,000/-
6.	Loss of estate	15,000/-	15,000/-
	Total	85,23,044/-	99,32,188/-

11. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.99,32,188/- with interest at the rate of 7.5% from the date of claim petition, till the date of realization. The claimants are entitled to the amount at the ratio of 50:30:20. 50% for wife; 30% for minor son and 20% for the parents of the deceased. On such deposit, the major claimants are permitted to withdraw the amount as per the apportionment fixed above. In so far as, share of the minor, the Tribunal is directed to deposit the same in any of the nationalized bank in a fixed deposit scheme, till the minor attains majority. Till such time, the interest accrued thereon shall be withdrawn by the mother of the minor children/1st claimant, once in three months, directly from the Bank.



12. In fine, the Civil Miscellaneous Appeal preferred by the claimants in C.M.A.No.4226 of 2019 is partly allowed and the appeal preferred by the Insurance Company in C.M.A.No.1185 of 2020 stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The II Additional District Judge
Special District Judge (FAC)
Motor Accident Claims Tribunal, Salem.

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

+1 CC to Mr.G.Vasudevan, Advocate sr 10614
+2 Ccs to Mr.K.Kuppusamy, Advocate sr 11056, 11455.

C.M.A.Nos.4226 of 2019 & 1185 of 2020
and
C.M.P.No. 7386 of 2020

AJB(CO)
SP(17/05/2022)