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CMA No.621/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE **J.NISHA BANU**

Civil Miscellaneous Appeal Nos.621 of 2014
& CMP No.1 of 2014
and CMA SR No.106382 of 2014

CMA No.621 of 2014

M/s.United India Insurance Co. Ltd

134 Silingi Building

Greens Road, Chennai – 106.

.. Appellant/respondent

Vs

1.Revathi

2.Raji

3.P.Elumalai

.. Respondents/Petitioners

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 21.11.2012 made in MACT O.P.No.1858 of 2010 on the file of Motor Accidents Claims Tribunal, (XVI Additional District Judge) Chennai.

For Appellant .. Mr.J.Chandran

For Respondents .. Mr.F.Terry Chellaraja

CMA No.SR106382 of 2014

1.Revathi

2.Raji

.. Respondents/Petitioners

VS

1.P.Elumalai



CMA No.621/2014

2.M/s.United India Insurance Co. Ltd

134 Silingi Building

Greens Road, Chennai – 106.

.. Respondents/Respondents

Prayer in CMA.621 of 2014: Civil Miscellaneous Appeal is filed against the judgment and decree dated 21.11.2012 made in MACT O.P.No.1858 of 2010 on the file of Motor Accidents Claims Tribunal, (XVI Additional District Judge) Chennai.

Prayer in M.P.No.1 of 2014 in CMA.SR.106382/2014:- Petition filed under Section 151 of CPC., to condone the delay of 259 days in filing the CMA against the judgment and decree dated 21.11.2012 passed in M.A.C.T.O.P.No.858/2010 on the file of Motor Accident Claims Tribunal, XVI Additional District Judge, Chennai.

For Appellant

in CMA.621 of 2014/Insurance company : Mr.J.Chandran

For Respondents

in CMA.621 of 2014/ Claimant : Mr.F.Terry Chellaraja

COMMON JUDGMENT

C.M.A.No.621/2014 has been filed by the Insurance company/ appellant praying to reduce the compensation awarded to the claimants on the ground that the fixation of negligence and the compensation is against the well laid principles of law.



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WEB COPY CMA SR No.106382 of 2014 has been filed by the claimants/appellants for enhancement of compensation.

2. The claimants are the parents of the deceased Narendra Kumar. On 24.04.2010, at about 2.15 hrs., when the deceased was riding his motorcycle bearing Registration No.TN02-AD-8915 in GST Road near MH point, St. Thomas Mount, a lorry bearing Registration No.TN32-V-0799 came in a rash and negligent manner in the said road from behind and overtook the motorcycle of the deceased and dashed against the deceased, due to which, the deceased sustained grievous injuries and subsequently succumbed to injuries in the hospital. The claimants filed a claim petition claiming compensation of Rs.8,00,000/-.

3. The insurance company filed counter before the Tribunal stating that the accident had occurred only due to the negligent act of the claimant and resisted the claim.

4. Before the Tribunal, on the side of the claimant, P.Ws.1 and 2 were examined and Exs.P1 to P19 were marked. On the side of the 2nd respondent



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Insurance Company, R.W.-1 was examined and Ex.R1 was marked.

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5. The Tribunal, on considering the pleadings, oral and documentary evidence held that, the accident occurred due to the rash and negligent driving of the driver of the lorry and awarded Rs.7,00,000/- as compensation to the Claimants and fixed the liability on the respondents 1 and 2 and held that the respondents 1 and 2 viz., insured and insurer of the offending vehicle are liable to pay the compensation jointly and severally.

6. As against the findings and compensation awarded, the insurer is before this court challenging the liability and quantum of compensation and not satisfied with the compensation, the claimants filed CMA SR to condone the delay of 259 days in filing the CMA.

7. It is the submission of the learned counsel for the appellants/claimants that the Tribunal erred in fixing the monthly income of the deceased at Rs.6,000/-, when he was actually earning more than that per month. The claimants have lost their son who was aged just 22 years, hence, the amount awarded by the Tribunal is very low and the same needs interference.

8. The learned counsel for the insurance company would submit that the accident occurred solely due to negligent act of the deceased and the



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compensation awarded is highly excessive.

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9. The deceased was aged 22 years at the time of accident. The Tribunal taken the age of the claimants for fixing the multiplier. From Ex.P6 and Ex.P8, the age of mother and father was noted as 44 and 55 years respectively. Accordingly, the tribunal fixed the multiplier as 12. Further, the Tribunal fixed the notional monthly income of the deceased at Rs.6,000/- and granted a sum of Rs.7 lakhs as compensation as under:-

Sl.No.	Heads	Amount awarded in Rs.
1	Loss of Future dependency $6,000 \times 12 \times 12 \times \frac{2}{3} = 5,76,000/-$	5,76,000.00
2	Medical expenses	28,000.00
3	Loss of love and affection	11,000.00
	Total	7,00,000.00

10. The learned counsel for the Insurance company contended that as per Ex.R.1-Accident Register copy of the deceased, the accident is mentioned as “Two wheeler Vs. Standing bus” and therefore, there was no negligence on the driver of the lorry. In this aspect, the Tribunal held that there is no evidence as to who gave such information to the Doctor, so, without examining the author



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of Ex.R.1, negligence cannot be fixed on the driver of the motor cycle. The

Tribunal further held it is a beneficial legislation, if two views are possible, the view in favour of the claimants has to be taken into consideration and accordingly, fixed the negligence on the part of the Insurance company and has awarded a just and reasonable compensation. In the considered opinion of this court, the finding of the Tribunal needs no interference on the aspects of negligence and liability.

11. As far as quantum of compensation is concerned, the Tribunal taking into consideration the factual aspect that the deceased was an Engineering student, aged 22 years who worked as part time employee, was having bright future prospects if he would have been alive and as such, fixed Rs.6000/- as notional income, which in my considered opinion, is very reasonable and calculated the loss of dependency. On other heads also, the Tribunal fixed the just compensation. Therefore, I am not inclined to interfere with the award passed by the Tribunal.

12. As far CMA SR.106382 of 2014 is concerned, the appeal is filed at belated stage with delay of 259 days. Finding no reason to interfere with the reasonings of the Tribunal, the award is found to be just and proper, hence, the



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CMA SR is rejected.

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13. In the result (i) CMA.No.621 of 2014 filed by the insurance company is dismissed.

(ii) CMA.SR.106382 of 2014 filed by the claimants is rejected.

(iii) The appellant in CMA.621 of 2014 is directed to deposit the award amount confirmed by this court, less the amount if any already deposited, along with accrued interest and cost, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same.

No costs. Consequently, connected miscellaneous petition is closed.

02.03.2022

Index : Yes/No

RR/nvsri

To

1. The Motor Accidents Claims Tribunal,
(XVI Additional District Judge) Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.



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J.NISHA BANU, J.

nvsri

C.M.A.No.621 / 2014 and
CMA SR No.106382 of 2014

02.03.2022