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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NOS.3374 OF 2021 AND 471 OF 2022

AND

C.M.P.NO.19468 OF 2021

C.M.A.No.3374 of 2021:

The Oriental Insurance Co. Ltd.,
3rd Party Claim Hub,
No.215, Prakasam Salai,
Chennai - 600 001.

... Appellant/R2

-Vs.-

1. Krishnaveni
2. Velan

... R1 & R2/Petitioners

3. Creamy Inn,
No.W.396, School Road,
Anna Nagar West Extn,
Chennai - 600 101.

... R3/R1

C.M.A.No.471 of 2022:

1.Krishnaveni
2.Velan

... Appellants/Petitioners

-Vs.-

1. Creamy Inn,
No.W.396, School Road,
Anna Nagar West Extn,
Chennai - 600 101.

2. The Oriental Insurance Co. Ltd.,
3rd Party Claim Hub,
No.215, Prakasam Salai,
Chennai - 600 001.

... Respondents/Respondents



Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2021 made in M.C.O.P.No.3866 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

C.M.A.No.3374 of 2021:

For Appellant	:	Mr.J.Chandran
For Respondents	:	Mr.A.G.F.Terry Chella Raja for R1 and R2 R3 - Not ready in notice

C.M.A.No.471 of 2022:

For Appellants	:	Mr.A.G.F.Terry Chella Raja
For Respondents	:	M/s.A.Laxmi Raj Rathnam for R1 Mr.J.Chandran for R2

COMMON JUDGMENT

Since both the appeals arise out of a single claim petition, a common judgement is being pronounced.

2. C.M.A.No.3374 of 2021 is filed by the Insurance Company, challenging the award passed in M.C.O.P.No.3866 of 2019 by the learned Chief Judge, Court of Small Causes, Chennai. C.M.A.No.471 of 2022 is filed by the claimants against the very same award.

3. The facts in brief are as follows:-

The claimants are the parents of one Srinivasan, who died in a road accident on 02.06.2019. It is the case of the claimants that on the said date, their son Srinivasan was riding a motor-cycle bearing Registration No.TN 04 AU 7194 as pillion rider on Anna Salai and, when the motor-cycle had reached the G.P.Road Junction, Near Buhari Hotel, a car bearing Registration No.TN 02 AS 3000, which was driven in a rash and negligent manner on the left side of the motor-cycle and proceeding in the same direction, had turned suddenly to the right without any indication, as a result of which, the Car hit the motor-cycle and both the claimant's son as well as the rider of the motor-cycle were thrown out and the claimant's son succumbed to the injuries in the hospital, to which, he was taken for treatment. It is their case that their son was aged about 21 years and was working as an Office Assistant in a private concern and earning a



monthly income of Rs.20,000/-. The claimants who claim to be his dependents, had filed the claim petition, seeking compensation of a sum of Rs.50,00,000/-.

4. The first respondent had filed a counter statement, in which, he had claimed that the accident was due to the negligence of the driver of the motor-cycle and not on account of the negligence on the car driver.

5. The second respondent-Insurance Company has also filed a counter statement contending that it is for the claimants to prove their case.

6. The Tribunal below held negligence to be on the side of the rider of the car belonging to the first respondent, since they had not been able to establish their contention that the accident had occurred on account of the negligence of the rider of the motor-cycle. Thereafter, the Tribunal had adopted a notional income of Rs.9,810/-, since the claimants had not proved their case that their son was employed as an Office Assistant in a private concern. The Tribunal had calculated the salary on the basis of the minimum wages for a casual labourer in the Tamil Nadu during 2019, which was a sum of Rs.327/- per day. Therefore, the Tribunal had arrived at a notional income of Rs.9,810/- to which, they had added 40% towards future prospects and deducted 1/3 towards personal expenses and arrived at a loss of income/dependency at Rs.22,60,224/-, loss of Consortium at Rs.80,000/-, Loss of Estate at Rs.15,000/- and Funeral expenses at Rs.15,000/- and therefore, a total sum of Rs.23,70,224/- was awarded as compensation.

7. The Insurance Company has filed C.M.A.No.3374 of 2021, challenging the quantum, particularly, with reference to the apportionment of the compensation towards personal expenses. The Insurance Company had also challenged the fact that the deceased rider of the motor-cycle had driven the vehicle without driving licence and that both the rider as well as the pillion rider, were not wearing a helmet.

8. It is the contention of the learned counsel appearing for the Insurance Company that the Tribunal has erred in deducting 1/3 towards personal expenses over-looking the fact that the deceased was a bachelor and therefore 50% ought to have been deducted towards the personal expenses.

9. Per contra, Mr.A.G.F.Terry Chella Raja, learned counsel appearing for the claimants would contend that the accident is of the year 2019 and taking into account the age of the deceased, the Tribunal ought to have adopted a sum of



Rs.12,500/- towards notional income and not Rs.9,810/- as adopted by the Tribunal. He would therefore submit that the amount under the head of "Loss of Dependency" has to necessarily be enhanced.

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10. Heard both the counsels and perused the materials available on record.

11. As rightly pointed by the learned counsel appearing for the Insurance Company, the Tribunal has erred in deducting 1/3 towards personal expenses instead of 50%, considering the fact that the deceased was a Bachelor. It is also correct that the notional income arrived at by the Tribunal is on the lower side. The accident is of the year 2019 and the deceased was aged about 21 years. Therefore, the notional income ought to have been fixed at a sum of Rs.12,500/-, to which, 40% should be added towards future prospects. Out of this, 50% has to be deducted towards personal expenses and considering the age, multiplier "18" should have been adopted. Therefore, the compensation under the head of "Loss of dependency" is fixed as sum of Rs.18,90,000/-. [Rs.12,500/- x 40% = Rs.17,500/-]. Out of this 50% is to be deducted towards personal expenses i.e., Rs.8,750 x 12 x 18 = Rs.18,90,000. The amounts granted under the other heads do not require any revision. The modified award would be as follows:

Heads	Amount by the Tribunal in Rs.	Amount Awarded by this Court in Rs.
Loss of Income/Dependency	22,60,224	18,90,000
Loss of Estate	15,000	15,000
Loss of Consortium at Rs.40,000/- for each claimants	80,000	80,000
Funeral Expenses	15,000	15,000
Total	23,70,224	20,00,000

12. Therefore, C.M.A.No.471 of 2022 is dismissed and C.M.A.No.3374 of 2021 is partly allowed and the compensation of Rs.23,70,224/- awarded by the Tribunal is hereby reduced to a sum of Rs.20,00,000/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. The Insurance Company is directed to deposit the said amount Rs.20,00,000/- to the credit of M.C.O.P.No.3866 of 2019 together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal,



less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. The said amount shall be apportioned equally amongst the claimants. On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, as apportioned by the Tribunal, after adjusting the amount if any already withdrawn. The Insurance Company is permitted to withdraw any excess amount deposited by them. The claimants are directed to pay the Court fee for the compensation amount as awarded by this Court. The Tribunal below shall not disburse the compensation amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

srn

To

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

Copy To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.27763

+1cc to M/s.M.Malar, Advocate, S.R.No.27672

C.M.A.Nos.3374 of 2021 and 471 of 2022
and
C.M.P.No.19468 of 2021

KV(CO)
RLP(27/06/2022)