IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.04.2022
Delivered on	27.04.2022

CORAM:

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

C.M.A.Nos.2941 of 2017 and 1677 to 1679 of 2018

D.Narasimham (Late)

1.D.Swetha ... Appellant in CMA No.2941 of 2017
1.Sada bi
2.H.Amir Jan
3.A.Mumtaj ... Appellant in CMA No.1677 of 2018

D.Swetha ... Appellant in CMA No.1678 of 2018

D.Nirmala (Late)

1.D.Swetha ... Appellant in CMA No.1679 of 2018

Vs.

1.N.Selvakumar

2.The New India Assurance Company Ltd.,
Rep. by its Divisional Manager,
Divisional Office,
Bagalur Road,
Hosur. ... Respondents in all CMAs

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the Common Judgment and Decree dated 22.09.2016 made in MCOP Nos.184, 51, 183 and 185 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

In all appeals:-

For Appellants : Mr.S.Jayakumar for
Mr.G.Muthu in all CMAs

For Respondents : M/s.Elveera Ravindran for R2
R1 - left in all CMAs

COMMON JUDGMENT

K.KALYANASUNDARAM.,J

These appeals have been preferred by the claimants in MCOP Nos.51, 183, 184 and 185 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri, seeking enhancement of compensation.

2.The facts in brief:-

According to the claimants, on 20.05.2013, the injured claimant Swetha travelled along with her parents, namely, Narasimhan and Nirmala in a car bearing Reg.No.AP-03-AQ-9865 from Kuppam to Bangalore. The said vehicle was driven by A.Baba Jan and at about 12 hours, when the vehicle was proceeding on Krishnagiri - Hosur N.H Road, a lorry bearing Reg.No.TN-34-E-4570, owned by the first respondent and insured with the second respondent, was stopped by its driver on the middle of the road without any signal and then it proceeded in reverse direction without noticing the car, which was stopped behind the said lorry, and rammed the car. Even though the driver of the car raised alarm, it hit against the car. In the accident, all the passengers and the driver sustained grievous injuries and the driver Baba Jan died in the Government Hospital at Krishnagiri on the same day despite providing first aid. The other injured persons, after getting first aid in the Government Hospital, took treatment in a private hospital at Bangalore. The claimants have further stated that the accident occurred due to the negligence of the driver of the lorry and hence, they are entitled for compensation from the owner as well as the insurer of the offending vehicle.

3.The claim petitions were resisted by the second respondent/Insurance Company on the grounds available under the Motor Vehicles Act. It is contended that the driver of the car drove the vehicle in a rash and negligent manner and hit against the lorry from behind and hence, the owner of the car and its insurer are necessary parties.

4.During trial, on behalf of the claimants, four witnesses were examined and 28 documents were marked. On the side of the respondents, three witnesses were examined and three documents were produced.

5.After analyzing the evidence adduced by the parties, the Tribunal held that both the driver of the car and lorry are responsible for the accident. In respect of the driver of the car, the Tribunal fixed 20% negligence.

6.MCOP No.51 of 2014 was filed by the parents and unmarried sister of the deceased Driver Baba Jan. In the claim petition, it is stated that the deceased died at the age of 26 years and he was earning Rs.25,000/- to Rs.30,000/- per month by working as Driver. The mother of the deceased gave evidence as P.W.1 and deposed in the light of the averments made in the claim petition. Since no documentary evidence was produced to corroborate the oral evidence of P.W.1, the Tribunal fixed the notional income as Rs.9,000/- per month and by applying multiplier '17' and after deducting 1/3rd towards his personal expenses, awarded Rs.12,24,000/- for loss of dependency. Rs.1,50,000/- was awarded towards loss of love and affection; Rs.20,000/- was awarded for Transportation and Rs.20,000/- was awarded towards funeral expenses. After deducting 20% towards contributory negligence, Rs.11,31,200/- was awarded in favour of the claimants.

7.The learned counsel appearing for the appellants Mr.S.Jayakumar would argue that the claimants have proved the age and avocation of the deceased Baba Jan by producing Ex.P.2-Postmortem Certificate and Ex.P.3-Driving Licence, but the Tribunal fixed the lesser income of Rs.9,000/- per month. It is also stated that no addition was made for future prospects.

8.Per contra, the learned counsel appearing for the second respondent Mr.Elveera Ravindran submitted that if the driver of the car had maintained sufficient distance as per the Motor Vehicles Act, this accident would not have taken place. According to him, the Tribunal ought to have fixed the entire negligence on the driver of the car or at least 50% on him. He further added that the notional income fixed by the Tribunal is correct and the award is also reasonable and hence, no interference is necessary.

9.In the instant case, as rightly pointed out by the learned counsel appearing for the claimants, the claimants have proved the avocation and the age of the deceased Baba Jan through Exs.P.2 and P.3. It is an admitted fact that the claimants failed to produce documentary evidence to prove the income of the deceased. Considering the fact that the accident occurred in the year 2013 and the deceased died at the age of 26 years, it would be appropriate to fix the notional income as Rs.10,000/- per month. As per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled to 40% addition towards future prospects. Since the deceased was Bachelor, 50% of the income has to be deducted towards his personal expenses. Hence, after adding 40% towards future prospects and after deducting 50% towards personal and living expenses and by applying multiplier '17', the loss of dependency is assessed as Rs.14,28,000/-

(10000+4000=14000x12x17x1/2).

10.As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), each of the dependents are entitled to Rs.40,000/- towards Filial consortium, which comes to Rs.1,20,000/-. Hence, the amount of Rs.1,50,000/- awarded towards loss of love and affection is set aside. The amount of Rs.20,000/- awarded towards funeral expenses is reduced to Rs.15,000/- and the amount of Rs.20,000/- awarded towards transportation is confirmed. Rs.15,000/- is awarded towards loss of Estate. Total compensation is Rs.15,98,000/-.

11.Perusal of the evidence of the injured claimant/P.W.2 would reveal that both the vehicles were proceeding on the same direction and the vehicles were stopped due to the traffic jam, thereafter, the lorry moved in reverse direction and hit against the car. The Tribunal without noticing the averments made in the claim petitions and the evidence of injured claimant/P.W.2, has held that if the car driver drove the vehicle in a moderate and controllable speed, the accident would have been averted. This observation of the Tribunal cannot be sustained. In the considered opinion of this Court, the driver of the lorry was solely responsible for the accident, hence, 20% negligence fixed on the deceased is set aside. The claimants would be entitled for entire compensation of Rs.15,98,000/- in the ratio of 50:30:20.

12.In MCOP No.183 of 2014, the claimant Swetha was 23 year old at the time of accident and she suffered 55-60% disability. The disability certificate was marked as Ex.P.25. Ex.P.9-Discharge Summary discloses that the injured was admitted in a private hospital at Bangalore and she underwent surgery and took treatment as an inpatient for more than one month. During the treatment, she underwent surgeries on 25.05.2013, 07.06.2013 and 10.06.2013. The Tribunal has awarded total sum of Rs.9.38,000/- under the following heads:-

S.No.	Heads	Amount (Rs.)
1.	Permanent Disability	1,60,000/-
2	Loss of Earning	30,000/-
3	Pain and Sufferings	50,000/-
4	Ex.P.5 Medical Bills	6,38,000/-
5	Transportation	30,000/-
6	For Extra Nourishment	20,000/-
7	For Attenders	10,000/-

S.No.	Heads	Amount (Rs.)
	Total	9,38,000/-

13.Ex.P.11 medical bills show that she had spent Rs.7,58,844/- towards medical expenses, out of which, Rs.1,20,459/- was paid by the Insurance Company under Ex.R.3. So, the Tribunal has awarded Rs.6,38,000/- towards medical expenses and the same is confirmed.

14.According to the claimant Swetha, she was an M.Sc., Graduate and she was earning Rs.15,000/- per month by taking private tuition. Since Ex.P.25-disability certificate was not issued by the Doctor, who treated her, the Tribunal has taken disability as 40% and awarded Rs.1,60,000/- by applying Rs.4,000/- per percentage. Here also, the Tribunal failed to consider the testimony of P.W.2 to decide the loss of earning capacity. Ex.P.9-discharge summary shows that she suffered head injury and she underwent major surgeries on three occasions as referred above. On account of the injuries sustained in the accident, she was not able to take tuition and she lost her earnings. So, we are of the view that it is the fit case to apply multiplier method, instead of percentage method to assess the loss of income. By fixing notional income at Rs.10,000/-, by adding 40% towards future prospects and by applying multiplier '17', the loss of income for 40% disability is assessed as Rs.11,42,400/- (10000+4000(40%)=14000x12x17x40/100). Hence, the amount of Rs.1,60,000/- awarded towards permanent disability is set aside. In other aspects, the award of the Tribunal is confirmed. Hence, the claimant Swetha would be entitled to Rs.19,20,400/-.

15.MCOP No.184 of 2014 was originally filed by the Narasimhan, who is the father of the injured claimant Swetha. The claimant Narasimhan was working as Assistant Account Officer in the Kuppam Rural Electric Co-operative Society. He was treated at Fortis Hospital, Bangalore. Ex.P.13-Discharge Summary shows that he sustained injuries in the accident and he spent Rs.9,25,724/- towards medical expenses, out of which, the Oriental Insurance Company paid Rs.2,14,861/- under health insurance scheme. Though he was discharged from the hospital in the year 2014, he subsequently died. The Tribunal has totally awarded Rs.10,52,530/-.

16.MCOP No.185 of 2014 was filed by the mother of the injured claimant Swetha, namely, Nirmala. Ex.21 is the Discharge Summary relating to D.Nirmala and it shows that she had taken treatment at BGS Global Hospital, Bangalore and she underwent surgery on 21.05.2013. Ex.P.22 series are the medical bills relating to Nirmala and it shows that she had spent

Rs.1,70,831/- towards medical expenses. Ex.P.22 reveals that she died during the pendency of the claim petition. The Tribunal has totally awarded Rs.3,71,000/- as compensation. It has been held that the claimants are entitled for interest at the rate of 7.5% per annum from the date of petition till the date of realization. We are of the view that the award of the Tribunal passed in MCOP Nos.184 and 185 of 2014 are just and reasonable and hence, they are confirmed.

17. In fine, C.M.A.Nos.2941 and 1679 of 2018 are dismissed and the award passed in MCOP Nos.184 and 185 of 2014 are confirmed. C.M.A.Nos.1677 and 1678 are partly allowed. The amount of Rs.11,31,200/- awarded in MCOP No.51 of 2014 is enhanced to Rs.15,98,000/-. Out of which, the claimants are entitled in the ratio of 50:30:20. The amount of Rs.9,38,000/- awarded in MCOP No.183 of 2014 is enhanced to Rs.19,20,000/-. The rate of interest is fixed by the Tribunal as 7.5% per annum is confirmed. The Insurance Company is directed to deposit the modified award amount with accrued interest 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, the claimants are permitted to withdraw their respective share after filing a memo, along with a copy of this Judgment, less the amount if already withdrawn. There is no order as to costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

skn

To
1.Motor Accident Claims Tribunal,
  Additional District Judge, Krishnagiri.

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

+4cc to Mr.Elveera Ravindran, Advocate, S.R.No.28950
+3cc to Mr.G.Muthu, Advocate, S.R.No.28819

C.M.A.Nos.2941 of 2017 and 1677 to 1679 of 2018

SSV(CO)
GN(23/05/2022)