



Civil Miscellaneous Appeal Nos.2473 of 2019 & 4382 of 2019
and Cros.obj.No.3 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM

HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.2473 & 4382 of 2019

and

Cros. Obj.No.3 of 2023

and

C.M.P.Nos.11468, 24940 & 17752 of 2019

United India Insurance Co. Ltd

Branch Office,

C.G.Complex,

Kumaran Road, Tiruppur – 641 601.

..Appellant in both Civil

Miscellaneous Appeals/

First Respondent in Cross-objection

Vs.

1. Deepalakshmi

...First Respondent in

both Civil Miscellaneous Appeals/

Petitioner in Cross-objection

2. Minor. Kavinaya

3. Ramakrishnan



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4. Vijayalakshmi

...Respondents in C.M.A.No.2473/2019
/Cross objectors

5. Mylsamy

6. Selvaraj

...Respondents in Civil Miscellaneous
Appeals and Cross-objection

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 20.10.2016 made in MCOP.Nos.589 & 594 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tiruppur.

For Appellant

::Mr.S.Arun Kumar

For Respondents

::Mr.Ma.P.Thangavel for R1 to R4

No such Address- R5

No Appearance – R6

COMMON JUDGMENT

These Appeals in CMA.Nos.2473 & 4382 of 2019 are by the Insurance Company questioning the award of the Motor Accident Claims Tribunal, Tiruppur granting a sum of Rs.52,50,000/- for the death of one Kamalakannan in a road accident occurred on 01.06.2012 at 7.25 p.m and a sum of Rs.28,700/- for the injuries caused to Deepalakshmi w/o. Kamalakannan in the very same accident. The claimants have also filed



Cross Objection seeking enhancement. The claimants, who are the widow, daughter and parents of the deceased Kamalakannan, sought for a compensation of Rs.90,00,000/- for the death of the said Kamalakannan in the accident. According to the claimants, while Kamalakannan and his wife Deepa @ Deepalakshmi were riding Hero Honda Pleasure Motorcycle bearing Registration No. TN-66-E-5294 from West to East on Coimbatore-Trichy Road, a bus bearing Registration No.TN-39-P-1366 owned by the second Respondent and insured with the third Respondent which was driven in a rash and negligent manner by the first Respondent, came from behind and hit against the two-wheeler. As a result of the impact, the pillion rider Deepa @ Deepa Lakshmi was thrown off the vehicle and the rider of the vehicle, Kamalakannan fell to his right side resulting in the front left tire of the bus running over his head killing him instantaneously.

2. Contending that the rash and negligent driving on the part of the bus driver was the sole reason for the accident and that the said Kamalakannan was employed in Lakshmi Machine Works Ltd, Coimbatore



and was earning Rs.40,705/- per month, the claimants sought for a sum of Rs.90,00,000/- as compensation. The third Respondent/Insurance Company resisted the claim contending that the accident did not happen in the manner suggested by the claimants. According to the Insurance Company, the said Kamalakannan drove the two wheeler in a rash and negligent manner, attempted to overtake the bus and upon sighting a oncoming vehicle suddenly turned towards left resulting in the accident. The quantum of compensation claimed was termed excessive and the salary particulars were also denied thereby, putting the claimants to strict proof of the earnings and the consequential loss of dependency.

3. As far as CMA.No.4382 of 2019 is concerned, the claimant suffered simple injuries and a compensation of Rs.28,700/- was awarded.

4. The driver of the bus namely the first Respondent filed a separate counter wherein he had stated that the driver of the two wheeler drove the two wheeler in a rash and negligent manner, attempted to overtake the bus



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on the left side, lost balance, hit against the bridge and fell down.

According to him, the cause of the accident was the negligence on the part of the rider of the motor cycle only and therefore, the third Respondent/Insurance Company is not liable to pay the compensation.

5. Before the Tribunal, the first claimant was examined as P.W-1, one Mr.Deepak Ragupathy, Human Resource Officer of the employer of the deceased was examined as P.W-2 and an independent eye witness one Palanisamy was examined as P.W-3. Exs.A-1 to A-18 were marked. On the side of the Respondents, the driver of the bus was examined as R.W-1 and one Seenivasan was examined as R.W-2. Exs.B-1 to Ex.B-3 were marked.

6. The Tribunal, on consideration of the evidence on record, concluded that the negligence of the driver of the bus alone caused the accident. The Tribunal took into account the fact that the FIR was filed against the driver of the bus and no attempt was made by either the driver or the owner of the bus to even lodge a complaint against the deceased. It was



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also pointed out that the Tribunal chose to rely upon the evidence of P.W-1, the pillion rider and P.W-3-Palanisamy in support of its conclusion on negligence. The evidence of the driver of the bus was not believed in as much as it ran counter to the averments made in the counter filed by the third Respondent/Insurance Company. On the quantum, the Tribunal relied upon the bank statements namely Ex.P-17 in preference to the salary certificate Ex.P-5, since there was a vast gap between the amounts that were credited month on month in the account of the deceased and the amounts reflected in the salary certificate namely Ex.P-5. The tribunal also took into account the admission of P.W-2-Human Resource Manager to the effect that the documents that were filed were not sufficient to arrive at the exact salary paid to the deceased. On the above conclusion, the Tribunal took the monthly income at Rs.25,000/- added 50% towards future prospects, deducted 1/4th and fixed the loss of dependency at Rs.28,125/-. The Tribunal applied a multiplier 15 and arrived at the total loss of dependency at Rs.50,62,500/-. It also awarded a sum of Rs.1,00,000/- for the loss of consortium to the first Petitioner/wife, Rs.50,000/- for the loss of love and



affection to the second petitioner and Rs.10,000/- each to the petitioners 3 and 4/parents. The Tribunal awarded Rs.10,000/- each towards transport expenses and funeral expenses. Thus the total award works out to Rs.52,52,500/- which was rounded off to Rs.52,50,000/-. As regards, the injuries caused to the claimant in MCOP.No.594 of 2012 subject matter of CMA.No.4382 of 2019, the Tribunal, considering the fact that the injuries were simple injuries awarded a sum of Rs.28,700/- based on the bills produced.

7. We have heard Mr.S.Arunkumar, the learned counsel appearing for the appellant/Insurance Company and Mr.Ma.P.Thangavel, learned counsel appearing for the claimants/cross-objectors.

8. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal having arrived that the income of Rs.24,069/- ought not to have rounded it off to Rs.25,000/-. He would also point out that the Tribunal has not deducted any amount



towards income tax. Therefore, according to the learned counsel, if the income/salary is taken as Rs.24,000/- and income tax is deducted, the award would be far less than what has been granted. The learned counsel would also point out that the future prospects have been taken as 50% instead of 40%. It is the further contention that the Tribunal ought to have apportioned certain amount of the negligence on the rider of the two wheeler considering the evidence of P.W-1 as well as R.W-1. He would also point out that the rider of the motorcycle was not wearing helmet and therefore, deduction should have been made for that purpose also.

9. Contending contra, Mr.Ma.P.Thangavel, learned counsel for the claimants would submit that Ex.P-5-salary certificate would go to show that the deceased was earning at least at Rs.40,705/- per month. He would also point out that the salary certificate is supported by the evidence of the P.W-2- Official of the employer of the deceased.

10. Mr.Ma.P.Thangavel would also contend that the deceased was



aged 30 years 8 months and 20 days on the date of accident and therefore, the multiplier should have been 17 and not 15. He would justify the adoption of 50% as future prospects considering the fact that the deceased was having a permanent job.

11. We have considered the rival submissions. We see some force in the contentions of Mr.S.Arun Kumar, when he attacks Ex.P-5 based on the contents of Ex.P-16 and Ex.P-17 which are bank statements.

12. A perusal of the bank statements would show that the salary of the deceased has been directly deposited in his bank account and as on April 2012 he had been paid only a sum of Rs.24,069/-. Therefore, Ex.P-5, salary certificate which has been issued after the accident cannot be made the basis for computation of the compensation.

13. While we are in entire agreement to the contention of the learned



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counsel on this account, we are unable to fix the income at Rs.24,000/- as suggested by the learned counsel. We find the salary certificate that has been issued has different components and if we are to take the essential components namely the Basic Pay at Rs.7,700/-, Dearness Allowance at Rs.9802/-, House Rental Allowance at Rs.5730/- and Special Allowance at Rs.5730/-, the total comes to Rs.28,962/-. We also find that there has been contribution for PF which has been deducted month on month from the salary and therefore, we fix the monthly loss of income at Rs.28,000/- after deducting income tax at 12%. If 40% is added towards future prospects, the monthly income would come to Rs.39,200/-. Since the deceased has completed 30 years 8 months 20 days, we find that the multiplier of 16 would be appropriate, thus calculated, the total loss of dependency Rs.75,26,400/-. If we deduct $\frac{1}{4}$ th towards personal expenditure of the deceased, the total loss of dependency would be Rs.56,44,800/-. We fix the loss of consortium at Rs.40,000/- for the wife of the deceased/first claimant and Rs.40,000/- each for the loss of love and affection per head for the other three claimants and funeral expenses and travelling expenses at Rs.30,000/-.



The total compensation payable would be 58,34,800/-.

14. The compensation payable as regards CMA.No.4382 of 2019, we do not find any ground to reduce the compensation awarded by the Tribunal. Therefore, CMA.No.4382 of 2019 stands dismissed. CMA.No.2473 of 2019 stands dismissed. The Cross. Obj. No.3 of 2023 is allowed to the extent indicated above.

15. The claimants shall pay the court fee for the enhanced compensation. The compensation awarded for the death of Kamalakannan is apportioned as follows:

First claimant/Wife would take Rs.25,00,000/-.

Second claimant /Daughter would take Rs.13,34,800/-

Father/third claimant would take Rs.7,50,000/-

Mother/fourth claimant would take Rs.12,50,000/-

with proportionate interest on the amounts apportioned to them. The



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Insurance Company has deposited the entire compensation awarded by the Tribunal and the Company shall deposit the enhanced compensation with 7.5% interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the major claimants would be entitled to withdraw the entire amount awarded to them. The share of the second claimant/minor daughter shall be kept in the fixed deposit in a Nationalized Bank under re-investment scheme with automatic renewal clause to be paid over to her on her attaining majority. Consequently, connected Miscellaneous Petitions are closed. No costs.

(R.S.M.J.) (S.S.K.J.)
22.12.2022

dh
Internet: Yes/No
Speaking order/Non Speaking order



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To

1.The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge,
Tiruppur.

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



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