



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1821 of 2016 and 3057, 3357 & 3444 of 2019
and Cross Obj. 32 of 2018
& CMP.No.13443 of 2016 & 19601, 20177 of 2019

CMA.No.1821 of 2016:

United India Insurance Co. Ltd.,
134, Greams Road,
Chennai-6.

.. Appellant

Vs.

1. Mrs.Seshadri
2. R.Kunnabiran
3. Chinnakuzhanhai @ Valliammal
4. A.Velmurugan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2016 made in MCOP.No.1827 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (II Court of Small Causes, Chennai).

For Appellant : Mr.S.Arunkumar
For M/s.A.Subadra

For Respondents : Mr.V.Velu RR1 to 3
R4- NRN



Cros. Obj. No.32 of 2018:

1. Mrs.Seshadri
2. R.Kannabiran
3. Chinnakuzhanthai @ Valliammal

.. Appellants

Vs.

- 1.United India Insurance Co. Ltd.,
No.134, Greams Road, Chennai-6.

2. A.Velumurugan

.. Respondents

Prayer: Cross Objection filed order 41 Rule 22 of CPC., to enhance the award dated 01.02.2016 and made in MCOP. No.1827 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Chennai.

For Appellant : Ms.A.Subadra for M/s.Velu

For Respondents : Mr.S.Arunkumar R1

CMA.No.3057 of 2017:

Logeswari

.. Appellant

Vs.

- 1.Velmurugan
2. United India Insurance Co. Ltd.,
134, Greams Road,



Chennai-6.

.. Respondents

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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2017 made in MCOP.No.1686 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (Sub Judge-2) Chennai.

For Appellant : Ms. A.Subadra for M/s.Velu

For Respondents : Mr.S.Arunkumar R2
R1- Exparte

CMA.No.3357 of 2017:

United India Insurance Co. Ltd.,
134, Greams Road,
Chennai-6.

.. Appellant

Vs.

1.Mathanraj

2. A.Velmurugan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2017 made in MCOP.No.1685 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (Sub Judge-2) Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Ms.M.Malar R1
R2 – NA



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CMA.No.3444 of 2019:

United India Insurance Co. Ltd.,
134, Greams Road,
Chennai-6.

.. Appellant

Vs.

1.Logeswari

2. A.Velmurugan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2017 made in MCOP.No.1686 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (Sub Judge-2) Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Ms.M.Malar R1
R2 - NA

COMMON JUDGMENT

One set of appeal has filed by the Insurance Company against the award passed by the Tribunal seeking to set aside the same insofar as the injured claimant and in respect of the deceased and appeal in CMA. No.3057 of 2017 has been filed by the injured claimant and Cros. Obj. No.32 of 2018 has filed by the claimants of the deceased seeking



enhancement.

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2. It is the case of the respective claimants that on 23.01.2013 at about 6.45 a.m. the car bearing Reg. No.TN 22 BQ 8920 driven by its driver in a rash and negligent manner, had dashed against the deceased who was pedestrian and also in the same transaction also, dashed against the vehicle, in which, the injured claimants were riding motor cycle, resulting in registration of two crime Numbers. One at the instance of the legal heir of the deceased and another at the instance of the injured claimants. The deceased, on suffering injuries, died on the spot. While the injured claimants, on suffering injuries, were taken to the hospital for treatment. The two crime numbers have registered against the driver of the offending vehicle, owner of the offending vehicle and its insurer. The claim petition was filed seeking compensation at the hands of the respondents with regard to the death of the deceased as well as with regard to the injuries sustained by the claimants. The Tribunal, considering the oral and documentary evidence, allowed the petitions in part and awarded compensation to the injured claimants and the legal heirs of the deceased. Aggrieved by the said common award, the Insurance company has filed three appeals viz., CMA



Nos.1821 of 2016, 3357 of 2019 and 3444 of 2019 and the injured claimant has filed CMA.No.3057 of 2017 and legal heirs of the deceased has filed CMA.No.32 of 2018 before this Court.

3. Insofar as the appeal in CMA.Nos.1821 of 2016 is relating to the deceased, the learned counsel for the appellant/insurance company submits that the income has been fixed on the deceased and the amount awarded towards loss of consortium and loss of estate and also under other heads are excessive, which require interference.

4. With regard to the injured claimant is concerned, the learned counsel appearing for the insurance company submitted that the reliance placed on the testimony of PW1 and PW2 to conclude that the negligence was on the offending vehicle is only erroneous as the evidence of the said witnesses are interested testimony and the Tribunal has not properly appreciated evidence of RW1 and Exs.R1 to R5. The negligence fastened on the offending vehicle is alone impermissible.

5. It is the further submission of the learned counsel that the



involvement of the offending vehicle in the accident has not been proved beyond doubt. Further, the same vehicle is said to have been involved in the accident which happened at 7.00 am. in Cr.No.7 of 2013 whereas relating to the deceased, whereas in respect of the injured claimant, the accident had occurred at 6.45 am. Which shows that the accident has been framed against the offending vehicle. The discrepancies in the materials above warrants interference with the award passed by the Tribunal.

6. Per contra, the learned counsel appearing for the respective claimants, who have filed appeal and cross objection seeking enhancement of compensate submits that there is no error in the award relating to fixing of negligence on the offending vehicle. It is the submission of the learned counsel for the claimants in Cross Obj. No.32 of 2018 .that the income of the deceased has not been properly fixed as the Tribunal without considering the deposition of the employer of the deceased as fixed the income on the lower side, which requires enhanced.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the



materials available on record. There is no representation on behalf of the respective respondents.

8. The factum of the case are not in dispute. The appellant insurance company premises its case on the two crime numbers having been registered at the instance of the legal heirs of the deceased and injured claimants stating that there is an improbability in the crime as one accident is said to have occurred at 6.45 a.m. While the other accident is said to have occurred at 7.00 a.m. with the very same vehicle. The timing of the accident has been put in issue before this Court to doubt the accident. However, it is to be pointed out that a complaint which is registered at the instance of the legal heirs of the deceased of the injured claimant will not with pin point accuracy specify the timing at which the accident had taken place. The accident in both the cases have taken place between 6.45 a.m. and 7.00 a.m, which could only be taken to mean that it is in the same transaction. Therefore, the minor discrepancy in the timing cannot be the basis to reject the claim moreso when the occurrence of the accident has been spoken to by eyewitnesses to the accident. PW1 and PW2 who are the injured claimants have spoken about the manner in which the accident had taken place. Their



testimony has not been shaken in any manner. Exs. R1 to R5 have been filed by the respondents with regard to accident in MCOP. No.1685 and 1686 of 2013. However the said document is no way discredits the testimony or negatives the accident i.e. said to have occurred on that day. Consequently in MCOP.No.1827 of 2013, PW1 to PW4 have been examined who have spoken about the accident. PW2 is the disinterested witness who is an eyewitness to the occurrence and who has spoken about the manner in which the accident had occurred. In fact, PW2 had held that the victim to be taken in an ambulance, no contra evidence has been elicited by the appellant insurance company to discredit the testimony of PW2. In the absence of any evidence to the contra, the finding referred by the Tribunal with regard to the negligent act of the offending vehicle cannot be interfered with. The Tribunal in two sets of awards, has analyzed the accident in depth and has given finding that the negligence is on the offending vehicle. Therefore, in the absence of any material, contrary to such finding, the findings cannot be interfered with.

9. Insofar as the liability of the insurance company to compensate the claimants are concerned, there is no quarrel that the insurance policy is a



valid one and that the driver of the offending vehicle was also possessed the valid driving license. Therefore, the liability of the insurance company to pay the compensation.

10. Now the only question that needs to be addressed in the appeal filed by the injured claimants from the cross objection is has to enhancement of compensation.

11. Insofar as the appeal filed by the injured claimants seeking enhancement of compensation is concerned, the Tribunal has awarded a sum of Rs.3,22,600/- of which, a sum of Rs.1,50,000/- has been awarded towards disability. For computing the disability, taking note of Ex.P8, discharge summary, wherein the disability has been fixed at 55%. the Tribunal taking the disability at 50% and considering the fact the accident had happened in the year 2013 applying percentage method has quantified the compensation payable at Rs.1,50,000/- by taking Rs.3000/- per percentage of disability. Though the claimants had claimed a sum of Rs.9,45,000/- as loss of earning power. The above amount arrived at by the Tribunal by placing reliance of Ex.p8 discharge summary wherein there is a



categorical finding that the injured claimant was fit to join duty. Such being the case, the compensation awarded by the Tribunal cannot be said to be erroneous or meagre. Accordingly, the same is confirmed. Insofar as the compensation awarded under the other heads are concerned, this Court has considered all the materials which had prevailed upon the Tribunal to give the compensation for under the various heads. The compensation under the various heads even on a bear perusal is just and reasonable. Considering the nature of injuries suffered by the claimants and also the period of hospitalization. Insofar as the appeals filed by the insurance company, this Court having held that the offending vehicle was negligent and the insurance company being liable to pay the compensation, the appeals filed at the instance of the insurance company are liable to be dismissed. Therefore, no interference is warranted with the compensation awarded in MCOP No.1685 and 1686 of 2013 and accordingly, CMA.Nos.3357, 3057 & 3444 of 2017 are dismissed.

12. Insofar as the cross objection filed by the legal heirs of the deceased is concerned, except for the compensation awarded under the head loss of income, the compensation awarded under the other heads are just and reasonable and they do not require any interference. Under the head loss



of income, the Tribunal has fixed the income of the deceased at Rs.8000/- per month and applying 50% future prospects considering the age of the deceased is 43 and adopting multiplier of 14 had granted the compensation. However, the employer of the deceased was examined, who have spoken about the monthly income paid to the deceased. However, no documentary evidence to substantiate such payment has been filed before the Tribunal. Even before this Court, no such document has been filed. In the absence of any documentary evidence, this Court merely on oral testimony with regard to some payment cannot fix the monthly income. However, taking into consideration the fact that the deceased was engaged in masonry works. The notional income of the deceased even during the year 2013, could be safely fixed at Rs.10,000/- The future prospects has been fixed at 50%. However, without taking into consideration, the decision of the Hon'ble Apex Court in the case of *Pranay Sethi* wherein persons in the age group of 40-50 years, who are salaried, the future prospects had been fixed at 30%. Therefore, this Court is inclined to fix the future prospectus at 30% and the multiplier adopted at 14 based on the decision of *Sarla verma* is proper. Accordingly, this Court quantifies the compensation under the head loss of income as follows:



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= 13,000 X 1/3 = 4333

= 13,000 - 4333 = Rs.8667 X 12 X 14

= **14,56,056/-**

The compensation awarded by the Tribunal is modified as follows:

Sl.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of pecuniary benefits	13,44,000	14,56,056
2	Loss of love and affection	3,00,000	3,00,000
3	Loss of consortium	1,00,000	1,00,000
4	Funeral exp.	25,000	25,000
5	Loss of Estate	50,000	50,000
	Total	18,19,000	19,31,056 Rounded of to Rs.19,31,000/-

13. Accordingly, Cross. Obj. No.32 of 2018 filed by the claimants is allowed in part and CMA.No.1821 of 2016 filed by the insurance company is dismissed. CMA.Nos.3357, 3057 and 3444 of 2017 are dismissed. The insurance company is directed to deposit the enhanced compensation/compensation as awarded by this Court/Tribunal within a



period of four weeks from the date of receipt of a copy of this order along with interests and costs, as awarded by the Tribunal, less the amount, if any deposited to the credit of the respective original petitions. Upon such deposit being made, which the claimants 2 & 3 in Cross Objection No.32 of 2018 shall be entitled to the compensation as apportioned by the Tribunal. The first claimant in Cross Objection No.32 of 2018 shall be entitled to the balance of the compensation amount. The Tribunal is directed to transfer the compensation amount to the bank account of the respective claimants in all the appeals/cross objection directly through RTGS within a period of two weeks thereafter. There shall be no order as to cost in all the appeals. Consequently, connected miscellaneous petition are closed.

21.11.2023

Index : Yes
Speaking Order : Yes
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To

The Motor Vehicle Accidents claims Tribunal
(II Court of Small Causes, Chennai.



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M.DHANDAPANI,J.

Rli

C.M.A.Nos.1821 of 2016 and 3057, 3357
& 3444 of 2019 and Cross Obj. 32 of 2018

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