



WEB COPY



C.M.A.No.3102 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.3102 of 2013

M.Lakshmanan (died)

1.Mahima

2.Manisha

.. Appellants

Appellants 1 and 2 declared as Major
and their father next friend Sundarasamy
discharged from guardianship
as per the memo dated 13.12.2022 and vide
Court order dated 02.01.2023 made in
C.M.P.No.21846 of 2022 in
C.M.A.No.3102 of 2013 by SSSRj and AANJ

Vs.

1.Kalaivani

2.National Insurance Company Limited
No.78, T.V.S. Street
Erode-1

3.A.Senbagamoorthy



C.M.A.No.3102 of 2013

4.D.M.Venkatachalam

WEB COPY

5.National Insurance Company Limited
135-1, Rose Building
Main road
Kovilpatti-628 501

6.J.Suganth

7.J.Ragunathan

.. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.09.2012, made in M.C.O.P.No.399 of 2005 on the file of Motor Accident Claims Tribunal (I Additional District Court, Erode).

For Appellants : Mr.V.P.Sengottuvel, Senior Counsel
for
Mr.U.Bharanidharan

For Respondents : Mr.D.Selvaraju for R1
Mr.S.Arun Kumar R2
R3 to 7- No Appearance

J U D G M E N T



C.M.A.No.3102 of 2013

WEB COPY (Judgment of the Court was made by P.B.BALAJI,J.)

The above Civil Miscellaneous Appeal is preferred by the claimants who are the father and minor children of one, L.Gopalakrishnan who died in a road accident on 21.05.2004.

2. It is the case of the claimants before the Tribunal that the deceased was travelling in a Tata Indica car bearing registration No.TN-33-Q-2008 along with one Shiva, the vehicle being driven by one Suresh. At about 04.10 p.m near Kuvalaveli Kaalvai, a bus bearing registration No. TN-59-B-5049 driven by the 3rd respondent, in a rash and negligent manner coming from the opposite direction dashed against the Indica car, head on. All the three persons travelling in the Indica car died on the spot. The driver of the bus gave a complaint accusing the driver of the India car, Suresh of rash driving.

3. The claimant stated that the deceased Gopalakrishnan was aged only 33 years and was a B.E graduate and doing various businesses and that he was earning not less than Rs.36,00,000/- per annum. Infact one of



C.M.A.No.3102 of 2013

WEB COPY

the businesses of the deceased was in Amway, where he was earning substantial income by way of commission. It is also stated that the father of the deceased, the 1st petitioner was dependent on his only son, the deceased Gopalakrishnan and the minor daughters, petitioners 2 and 3 who were twins were also under the care and custody and fully dependent on the deceased Gopalakrishnan and the claimants sought for compensation to the tune of Rs.10,00,00,000/-.

4. The 2nd respondent before the Tribunal, National Insurance company filed a counter contending that the accident occurred only due to the rash and negligent driving of the Indica car and not the bus and therefore the driver being at fault, the claimants are not entitled to any compensation from the 2nd respondent. It is also stated that the deceased Gopalakrishnan was travelling in the vehicle that belonged to his wife, shown as 1st respondent in the claim petition and the claim itself was therefore unsustainable U/s. 163 A of the Motor Vehicles Act, 1988.

5. In so far as the claims with regard to the income of the deceased



C.M.A.No.3102 of 2013

WEB COPY

and compensation sought under various heads, the 2nd respondent denied the same. In so far as the claim with regard to the income by way of commission, the 2nd respondent stated that the wife of the deceased i.e., the 1st respondent in the claim petition was a partner along with the deceased and she continued to do the business and earn commission and therefore there can be no loss of income as alleged by the claimants. In so far as the other businesses are concerned, the 2nd respondent put the claimants to strict proof of the same.

6. The 1st respondent, wife of the deceased filed a counter statement stating that she was entitled to a share in the award amount to be passed and that the accident occurred only due to the rash and negligent driving of the bus.

7. The 5th respondent who is also the same insurance company, though a different branch filed a separate counter, more or less adopting the same stand taken by the 2nd respondent.

8. The 4th respondent adopted the counter of the 5th respondent. The 6th



C.M.A.No.3102 of 2013

WEB COPY

respondent filed a counter which was adopted by the 7th respondent, wherein it has been stated that the 6th and 7th respondents were grand sons of the first claimant through his predeceased daughter, one Poongodi and therefore they were also dependent on the deceased Gopalakrishnan and they sought for awarding substantial compensation in their favour.

9. Before the Tribunal, on the side of the claimants P.Ws1 to 4 were examined and Exs.P1 to P18 were marked. On the side of the respondents, R.Ws1. to 8 were examined and exhibits Exs.R1 to R7 were marked.

10. The Tribunal, appreciating the oral and documentary evidence adduced by the respective parties, proceeded to find that both the vehicles viz., the Indica car as well as the bus were equally responsible for the accident. In so far as the compensation was concerned, the Tribunal fixing the annual income of the deceased at Rs.4,50,000/-, awarding compensation under various other heads, came to the conclusion that a total sum of Rs.48,50,000/- would be just and fair compensation payable to the claimants 2 and 3 and the 1st respondent(taking into account that father of the deceased Gopalakrishnan died pending the proceedings). Out of the



C.M.A.No.3102 of 2013

WEB COPY

said award amount, the minor children were awarded Rs.16,00,000/- each and the wife of the deceased viz., awarded Rs.16,50,000/-. The Tribunal disallowed the claims of respondents 6 and 7 holding that they were not dependent on the deceased.

11. Aggrieved by the judgment and decree of the Tribunal, the claimants, being minors at the time of filing the appeal represented by their next friend and natural guardian and grandfather Sundarasamy (The minor, however, attained the age of majority, pending the appeal) have preferred the above Civil Miscellaneous Appeal on the following grounds:

(i) The Tribunal has not taken into account the actual income earned by their father;

(ii) The Tribunal has ignored the prospects of future income that would have been earned by their father;

(iii) The Tribunal erred in awarding a very low compensation for love and affection;

12. Pending the appeal, the claimants filed C.M.P.No.21846 of 2022 seeking to raise additional grounds. There is no serious objection raised by



C.M.A.No.3102 of 2013

WEB COPY

the counsel for the respondents to permit the additional grounds also to be urged along with other grounds, in the course of arguments of the Civil Miscellaneous Appeal. Accordingly, the C.M.P.No.21846 of 2022 stands allowed.

13. The additional grounds urged by the appellants are to the effect that the finding of the Tribunal holding that both the vehicles were equally responsible for the accident is erroneous and in the light of the Tribunal disregarding evidence of R.W.5, Tribunal ought not to have fixed liability on both the vehicles. The other ground raised is that evidence of P.W.3, an eye witness has been totally disregard. The Tribunal was therefore in error in fixing liability on both the owner of the car as well the bus and ought to have fixed the entire liability on the owner of the bus alone.

14. Heard Mr.V.P.Sengottuvel, learned Senior Counsel for the appellants and Mr.D.Selvaraju, learned counsel for the 1st respondent and Mr.S.Arun Kumar, learned counsel for the 2nd respondent.

15. The points that arise for consideration in the above Civil



C.M.A.No.3102 of 2013

Miscellaneous Appeal are two fold:

WEB COPY

(1) Whether the accident occurred due to the rash and negligent driving of both the vehicles viz., the bus bearing registration No. TN-59-B-5049 and Tata Indica car bearing registration No. TN-33-Q-2008 or whether the bus bearing registration No. TN-59-B-5049 was alone at fault ?

2. Whether the compensation awarded by the Tribunal is fair or as to whether the claimants are entitled to enhancement of the compensation awarded?

Point 1

16. This Court has perused the oral and documentary evidence. Ex.P2 is the rough sketch depicting the manner in which the accident occurred. Two persons are said to have witnessed the accident in person. One of them is R.W.6, who is a checking inspector of Velmurugan Roadways, viz., Mr. Marichami. He deposed that the accident occurred only because of the rash and negligent driving by the driver of the Indica car. However, the Tribunal has factored the cross examination of R.W.6 and held that he being an employee of Velmurugan Roadways which owned the bus involved in the accident, he was an interested witness and his evidence



C.M.A.No.3102 of 2013

WEB COPY

cannot be given any credence whatsoever. This Court has gone through the oral and documentary evidence in this regard and does not find any infirmity in the said finding of the Tribunal.

17. The only other eye witness to the accident is P.W.3. No doubt, P.W.3 is in no way connected to both the vehicles or their passengers. He is said to be a law student pursuing law in Madurai Law college and when he was riding a bicycle in and around his home town, he witnessed the accident. However, this Court does not find the evidence of P.W.3 inspiring. The version stated by the P.W.3 in cross examination does not corroborate with the Ex.P.2-Sketch. This Court is also not able to appreciate the version projected by P.W.3 considering the fact that the accident was a head on collision and it could not have occurred in the manner as stated by P.W.3. Though the Tribunal has not elaborated its finding with regard to the fact that the accident occurred not only due to rash and negligent driving on the part of the driver of the car but also it was the fault of the bus driver 3rd respondent also, this Court considering the manner in which the accident occurred, the evidence adduced by the contesting parties, has no difficulty in affirming the finding of the Tribunal



C.M.A.No.3102 of 2013

fixing liability on both the vehicles viz., the Tata Indica car as well as the bus. Point 1 is accordingly answered.

Point 2:

18. In so far as the compensation awarded, learned counsel contended that the deceased was a very successful businessman and he was involved in multiple businesses, earning substantial income. According to the learned counsel, Tribunal has not taken into account Exs.P12 to Ex.P18 and if these documents had been properly appreciated, the Tribunal would not had fixed the annual income of the deceased at Rs.4,50,000/-. The learned counsel also invited the attention of this Court to the evidence of P.W.2 to substantiate his contentions that if the deceased had been alive he would have made much more income by way of commission in Amway business and the award of Rs.48,50,000/- was wholly unjustified and far from being just.

19. Per contra, Mr.Arun Kumar, learned counsel appearing for the 2nd respondent/insurance company contended that the Tribunal has taken into account all exhibits filed by the parties, considered the oral and documentary evidence in a proper perspective and come to the correct



C.M.A.No.3102 of 2013

conclusion and contended that the award does not require any interference.

WEB COPY

The learned counsel also brought to the notice of this Court that the wife of the deceased had admitted in cross examination that she was continuing the Amway commission business and she was earning substantially. Therefore, according to the learned counsel for the 2nd respondent there is nothing to warrant any compensation under the head loss of income.

20. This Court has carefully perused Exs.P12 to P18 and also Ex.R1 which are relating to the income of the deceased. P.W.2 has been examined to establish the commission that was being earned by the deceased from Amway business. Ex.P12 has been filed to show that from Oct.1998 to March 2003, the net earnings of the deceased Gopalakrishnan was Rs.1,03,95,067/-. Ex.P.13, however the income tax returns filed by deceased Gopalakrishnan reflects only a sum of Rs. 24,64,949/- to be the commission earned by the deceased from Amway India Enterprises for the year ending 31.03.2003(01.04.2000 to 31.03.2003) From Ex.P13, it is also seen that the deceased Gopalakrishnan had incurred expenditure under various heads viz., boarding, lodging, meeting expenses, fuel, salary, travelling, telephone, commission etc., and only a sum of Rs.3,06,335.17/-



C.M.A.No.3102 of 2013

WEB COPY

was the net excess income over the expenditure. It is to be noted that Ex.P13 is a document that has been relied on by the claimants themselves. Similarly, in Ex.P14 which is a trading and profit and loss account of one “Jai and Co”. It is seen that deceased Gopalakrishnan was only a partner and the gross profit of the firm for the period 01.04.2004 to 21.05.2004 has been shown as only Rs.10,234/-. Similarly in Poongodi Constructions also as seen from Ex.P15 the business income for the year 2004-2005 has been shown as only Rs.6,320/-.

21. This Court finds that the Tribunal has rightly factored all the available evidence in coming to the conclusion that the annual income of the deceased was only Rs.3,00,000/-. The Tribunal has also been liberal in giving 50% towards future prospects and arriving at an annual income of Rs.4,50,000/- and there is absolutely no evidence available on the side of the claimants to warrant any enhancement under the head “loss of income”. It is also pertinent to point out that P.W.2 who was examined on the side of the claimants has categorically stated that the wife of the deceased Gopalakrishnan viz., the 1st respondent was continuing to do the business as an agent of Amway and she was also earning substantial income. This



C.M.A.No.3102 of 2013

WEB COPY

Court, therefore finds that there is no justification whatsoever to enhance the award amount under the head “loss of income”. However, this Court finds that the Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium to the wife of the deceased and Rs.10,000/- to each of the minor children towards loss of love and affection. This award of Rs.10,000/- each under these heads is certainly very negligible and this Court feels that a sum of Rs.40,000/-each should be awarded to the 1st respondent and claimants 2 and 3 respectively. In so far as funeral expenses is concerned the Tribunal has awarded only a sum of Rs.10,000/-. This Court feels that an additional sum of Rs.5,000/- can be awarded under this head. The Tribunal also has not awarded any amount towards loss of estate and under the head loss of estate this Court awards a sum of Rs.15,000/-. This Court does not find any justifiable grounds or reasons for interfering or modifying the award in all other aspects. Point 2 is accordingly answered.

22. The Tribunal has awarded Rs.15,000/- to the claimants towards loss of love and affection. The Tribunal has lost sight of the fact that the first claimant had died pending the proceedings before the Tribunal and



C.M.A.No.3102 of 2013

therefore the award of Rs.10,000/- to the first claimant is liable to set aside.

WEB COPY

However, towards loss of love and affection the claimants being minor daughters of the deceased Gopalakrishnan are entitled to Rs.40,000/- each. Similarly for loss of consortium to the wife of the deceased Gopalakrishnan viz., the 1st respondent as against the award of Rs.10,000/- is awarded Rs.40,000/-.

23. In so far as the award of Rs.10,000/- to the 1st claimant who died pending the proceedings, the said sum of Rs.10,000/- is awarded to the two claimants viz., daughters of the deceased. The Tribunal awarded only Rs.10,000/- towards loss of love and affection to the claimants. With this Court awarding Rs.5,000/- each to the claimants being the sum awarded to the 1st claimant, each of the claimants would only be entitled to Rs.15,000/- However, the Hon'ble Supreme Court has held that dependants are entitled to Rs.40,000/- each under the head, "loss of love and affection". Therefore an additional sum of Rs.25,000/- each is awarded to the appellants, thereby enhancing the total award under the head 'loss of love and affection' to Rs.80,000/-. In so far as the wife of the deceased Gopalakrishnan, who is the 1st respondent in the present Civil Miscellaneous Appeal, she has been



C.M.A.No.3102 of 2013

WEB COPY

awarded only Rs.10,000/- towards loss of consortium, which amount is enhanced to Rs.40,000/-.

24. In fine, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation by a further sum of Rs.1,00,000/- and the enhanced amount shall carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit. There shall be no order as to costs. In other aspects, the order of the Tribunal shall stand confirmed.

(P.B.B.J)

(S.S.S.R.J) &

27.04.2023

Internet : Yes

Neutral Citation: Yes/No

To

1.The I Additional District Judge
Erode

2.The Section Officer
VR Section,
High Court, Madras



WEB COPY



C.M.A.No.3102 of 2013

S.S.SUNDAR, J.,
and
P.B.BALAJI,J

kpr

C.M.A.No.3102 of 2013

27.04.2023