



C.M.A.Nos.147 & 148 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.147 & 148 of 2018

C.M.A.No.147 of 2018

T.Nagarajan @ Natarajan

... Petitioner

Vs.

1. L.Guru Prasad
2. K.Ravi
3. HDFC ERGO General Insurance Company Ltd.,
6th Floor, Leela Business Park,
Andheri-kurla Road,
Andheri(E), Mumbai- 400 053.

[The respondents 1 & 2 remained ex-parte
before the Tribunal. Hence notice may be
dispensed with for them in this Appeal]

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 for enhancement of the compensation amount awarded in the judgment and decree dated 07.04.2017 made in M.C.O.P.No.238 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani.

For Petitioner : Mr.Ma.P.Thangavel

For R1 and R2 : Exparte

For R3 : Mr.T.Michael Visuvasam



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... Petitioner

Vs.

1. L.Guru Prasad

2. K.Ravi

3. HDFC ERGO General Insurance Company Ltd.,
6th Floor, Leela Business Park,
Andheri-kurla Road,
Andheri(E), Mumbai- 400 053.

[The respondents 1 & 2 remained ex-parte
before the Tribunal. Hence notice may be
dispensed with for them in this Appeal]

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 for enhancement of the compensation amount awarded in the Award and decree dated 07.04.2017 made in M.C.O.P.No.240 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani.

For Petitioner : Mr.Ma.P.Thangavel

For R1 and R2 : Exparte

For R3 : Mr.T.Michael Visuvasam



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JUDGEMENT

The Civil Miscellaneous Appeal No.147 of 2018 has been filed against the Award and decree dated 07.04.2017 passed in M.C.O.P.No.238 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani.

2. The Civil Miscellaneous Appeal No.148 of 2018 has been filed against the Award and decree dated 07.04.2017 passed in M.C.O.P.No.240 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani.

3. Both the Civil Miscellaneous Appeals are arising out of common Award dated 07.04.2017 passed in M.C.O.P.No.238 of 2013 and M.C.O.P.No.240 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani.



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4. The Claim Petition No.238 of 2013 has been filed by the claimant claiming compensation of Rs.3,00,000/- for the injuries sustained by him and the Claim Petition No.240 of 2013 has been filed by the daughter of the deceased Angammal claiming compensation of Rs.10,00,000/- for the death of the said Angammal.

5. Challenging the Award and decree dated 07.04.2017 passed in M.C.O.P.No.238 of 2013 and M.C.O.P.No.240 of 2013 on the file of the MACT/IV-Additional District Court at Bhavani, the claimants have filed the present Civil Miscellaneous Appeals for enhancement of compensation.

6. The appellant in C.M.A.No.147 of 2018 is the claimant in M.C.O.P.No.238 of 2013. The brief facts of the case in M.C.O.P.No.238 of 2013 is that on 18.12.2012 at about 3.30 pm, when the appellant was driving XL Super bearing Registration No.TN 33 AH 2167 along with one Angammal, who was travelling as a pillion rider with moderate speed, by observing the traffic Rules on the left side of Muthur main



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Vilas Bank, the first respondent was driving the lorry bearing Registration No.KA 16 B 5840 in a rash and negligent manner in the same direction and hit behind the appellant herein, due to which, the accident had occurred. In the accident, the appellant in C.M.A.No.147 of 2018 sustained multiple grievous injuries and the pillion rider Angammal died. The abovesaid accident had happened solely due to the negligence on the part of the first respondent. The first respondent is the driver of the offending lorry bearing Registration No.KA 16 B 5840. The second respondent is the owner of the said vehicle and the third respondent is the Insurance Company of the said vehicle.

7. The case of the claimant in M.C.O.P.No.240 of 2013 is that the deceased was the pillion rider of XL Super bearing Registration No.TN 33 AH 2167. Due to the rash and negligent driving of the driver of the lorry bearing Registration No. KA 16 B 5840, who is the first respondent herein, the accident had occurred and due to which, the deceased sustained injury and subsequently she succumbed to death. The claimant in M.C.O.P.No.240 of 2013 is the legal representative of the deceased.



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The deceased is the only bread-winner of the family. Since the deceased died, the daughter of the deceased sustained mental agony and she suffered loss of earning and income. Hence she has filed the claim petition in M.C.O.P.No.240 of 2013 before the Tribunal.

8. The case of the third respondent/Insurance Company in M.C.O.P.Nos.238 & 240 of 2013 is that the accident had occurred due to rash and negligent driving of the rider of motor cycle XL Super and not due to rash and negligent driving of the first respondent. The claimant has not proved that the accident had happened only due to rash and negligent driving of the driver of the offending lorry bearing Registration No.KA 16 B 5840. The claimant in M.C.O.P.No.240 of 2013 is not the dependent of the deceased. Further, the rider of TVS XL Moped bearing Registration No. TN 33 AH 2167 suddenly came on the middle of the road by violating the traffic Rules and hence the accident had occurred. Further, the manner of accident was not properly proved by the claimant and the claimant has not given the correct particulars in the claim application. Hence, the claimants are not entitled to get any



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compensation and the third respondent is not liable to pay any compensation to the claimant.

9. Learned counsel for the appellant in C.M.A.No.147 of 2018 submitted that though the Tribunal has accepted the case of the claimant, manner of accident and the liability of the respondents, it had not properly appreciated the injury and disability sustained by the appellant and loss of earning and other heads and simply awarded unreasonable compensation. Though the appellant has sought Rs.3,00,000/- as compensation, the Tribunal has awarded Rs.68,460/- only, which warrants interference by this Court.

10. The third respondent/Insurance Company filed a counter statement denying the averments made in the claim petitions and contended that the accident had occurred solely due to rash and negligent driving of the TVS XL Moped TN 33 AH 2167. Further, the learned counsel for the third respondent in C.M.A.No.147 of 2018 submitted that the injury sustained by the claimant was simple in nature and he neither



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sustained any grievous injury, nor suffered from any disability. Further, the claimant has to prove his income, nature of injuries, medical expenses incurred due to the injuries sustained in the accident etc., by producing documentary evidence. The Tribunal has rightly appreciated that the claim made by the appellant is exorbitant and considering the age of injured and the nature of injury, awarded Rs.68,460/- as compensation and prayed for dismissal of the appeal.

11. Learned counsel for the appellant in C.M.A.No.148 of 2018 submitted that the claimant is the destitute woman and she is the daughter of the deceased. After her marriage, her husband is away from the matrimonial home and hence, the claimant was residing with her mother. The deceased mother is the only bread-winner of the family. Age of the deceased was not correctly mentioned by the Tribunal and proper multiplier method was also not adopted by the Tribunal. He further contended that the entire quantum of compensation awarded by the Tribunal is very low. The Tribunal has awarded the compensation without following various judgments and law laid down by the Hon'ble



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Apex Court. The Tribunal has erred in adopting the multiplier method.

The monthly income fixed by the Tribunal is very low. The Tribunal has also failed to award any compensation under the other heads namely towards love and affection, funeral expenses, transportation charges and damages. Hence, he prays to enhance the amount awarded by the Tribunal.

12. Learned counsel for the third respondent/Insurance Company in C.M.A.No.148 of 2018 disputed the said contention of the appellant/claimant by stating that, based on the oral and documentary evidence adduced, the Tribunal has rightly awarded a reasonable compensation and therefore, there is no need to interfere with the said finding of the Tribunal. Thus, the award given by the Tribunal is to be confirmed and the appeal may be dismissed.

13. Heard the learned counsel appearing for the appellant in both the appeals and the learned counsel appearing for the third respondent/Insurance Company and perused the materials available on record.



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14. The accident and the manner of accident are not in dispute.

The Tribunal found that the accident had happened only due to rash and negligent driving of the driver of the said lorry. The respondents 1 & 2 herein have not filed any appeal or cross objection with regard to the same and they remained ex-parte before the Tribunal and also did not appear before this Court. Hence, the appellate court cannot traverse beyond the scope of appeal.

15. On a perusal of the records, it is found that though the injured witness claimed Rs.3,00,000/- as compensation, on considering the oral and documentary evidence, and that the appellate court being a final Court of fact finding, while appreciating the evidence, finds that the claimants have not produced any material documents to get the higher compensation than the Award passed by the Tribunal. The Tribunal has rightly appreciated the oral and documentary evidence and found that the injured witness namely the appellant in C.M.A.No.147 of 2018 has not produced any document to prove the disability and also to show that the



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injuries sustained by him are grievous in nature. Further, the injured has taken treatment in the hospital only for two days. Hence, the Tribunal rightly awarded Rs.15,000/- towards pain and suffering. This Court does not find any perversity in appreciation of evidence by the Tribunal and there is no merit in C.M.A.No.147 of 2018. While appreciating the evidence, this Court finds that the compensation awarded by the Tribunal is “just and reasonable” and hence, C.M.A.No.147 of 2018 is liable to be dismissed.

16. As far as the Claim Petition No.240 of 2013 filed for the death of the deceased is concerned, based on the oral and documentary evidence, the Tribunal has rightly fixed the age of the deceased at the time of accident as 60 years. Though it is stated by the claimant that the deceased was doing textile business and was earning not less than Rs.15,000/- per month, neither material evidence was produced and nor independent witness was examined with regard to the same. The fact, the Tribunal has fixed the annual income of the deceased was at Rs.48,000/- notionally and since the age of the deceased fixed at 60 years, the



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Tribunal has adopted the multiplier method as contemplated by the Apex Court in Sarala Varma Case. On a perusal of the records, it is found that the claimant is 29 year old, whereas, the deceased is 60 year old at the time of accident. It is not acceptable that 29 years young woman is depending upon the income of the 60 years old woman. The Tribunal considering the abovesaid facts, notionally fixed the monthly salary at Rs.4000/-. Therefore, considering the age and the dependency, this Court does not find any perversity in appreciation of the evidence by the Tribunal. The claimant has not satisfied this Court for enhancement of compensation. This Court independently finds that the compensation awarded by the Tribunal is “just and reasonable” and there is no perversity in appreciation of evidence by the Tribunal.

17. In the result, both the Civil Miscellaneous Appeals are dismissed. No costs.

17.07.2023

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To

1. The Tribunal Judge, (Additional District Judge),
MACT/IV-Additional District Court,
Bhavani.
2. The Section Officer,
VR Section,
High Court,
Chennai.



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P.VELMURUGAN, J.

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