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C.M.A.Nos.1004 & 2140 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.Nos.1004 & 2140 of 2022

C.M.A.No.1004 of 2022

R.Pattu

... Appellant

VS.

1.A.R.Vellavan

2.The United India Insurance Co. Ltd.,
13-A, Nethaji Road,
Manjakuppam,
Cuddalore.

3.S.Soundari

... Respondents

C.M.A.No.2140 of 2022

S.Soundari

... Appellant

VS.

1.A.R.Vellavan

2.The United India Insurance Co. Ltd.,
13-A, Nethaji Road,
Manjakuppam,

1/11



C.M.A.Nos.1004 & 2140 of 2022

WEB COURT

Cuddalore.

3.R.Pattu

... Respondents

Common Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.2953 of 2014 dated 22.11.2021 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore.

For Appellant

(in CMA.No.1004 of 2022) &

For R3

(in CMA.No.2140 of 2022) : Mr.S.Chakravarthi

For Appellant

(in CMA.No.2140 of 2022) &

For R3

(in CMA.No.1004 of 2022) : M/s.Mira Aurobindo Cumar

For R1

(for both C.M.A.Nos.) : No appearance

For R2

(in CMA.No.1004 of 2022) : Mr.S.Arunkumar

For R2

(in CMA.No.2140 of 2022) : Mr.P.Sankaranarayanan

* * * * *

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the Judgment



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and Decree in M.C.O.P.No.2953 of 2014 dated 22.11.2021 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore.

2.The appeal in C.M.A.No.2140 of 2022 is filed by the widow of the deceased claiming enhancement of compensation.

3.The appeal in C.M.A.No.1004 of 2022 is filed by the mother of the deceased claiming enhanced compensation and challenging the apportionment of compensation made by the Claims Tribunal.

4.Both the appeals are filed against the order dated 22.11.2021 made in M.C.O.P.No.2953 of 2014 passed by the Principal District Judge, Cuddalore. Hence, the appeals are taken up together and disposed of by this common order. The claimants, wife and mother of the deceased filed the claim petition for the death of one R.Subramanian in a motor accident which took place on 10.07.2014.

5.According to the claimants, on 10.07.2014, while the deceased R.Subramanian was riding his motor cycle a lorry belonging to the first



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respondent, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the deceased's motor cycle causing his death. The deceased was aged about 36 years at the time of the accident and as a Registered contractor at M/s.Tagros Chemicals Company Pvt. Ltd., Sipcot was earning Rs.1,50,000/- per month. Therefore, the claimants filed the claim petition claiming a sum of Rs.4,00,00,000/- as compensation for the death of R.Subramanian.

6.Before the Claims Tribunal, the owner of the lorry remained ex-parte. The appellant in CMA.No.1004 of 2022, who was originally arrayed as the third respondent in the claim petition filed a separate counter claiming compensation for herself. The second respondent / Insurance Company in its counter denied all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

7.Before the Claims Tribunal, the claimants examined two witnesses and marked Ex.P1 to Ex.P20. The mother of the deceased who was originally arrayed as the third respondent, examined herself as RW1.



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8.The Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the driver of the lorry, assessed the compensation at Rs.26,10,000/- along with 7.5% interest and mulcted the liability on the second respondent Insurance Company. The Tribunal apportioned the liability at Rs.23,10,000/- to the wife of the deceased and Rs.3,00,000/- to the mother of the deceased. Not satisfied with the award passed by the Claims Tribunal, the widow of the deceased filed CMA.No.2140 of 2022 claiming enhancement of compensation and the mother of the deceased filed CMA.No.1004 of 2022 claiming both enhanced compensation and enhancement of apportionment of compensation made by the Claims Tribunal.

9.The learned counsel appearing for the appellant in CMA.No.2140 of 2022 submitted that the award of the Tribunal was very much on the lower side. The learned counsel further submitted that the assessment of the notional income by the Tribunal at Rs.15,000/- per month was against the evidence placed on record. As regards the other heads, the learned counsel



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fairly submitted that she had no serious objections.

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10.The learned counsel appearing for the appellant in CMA.No.1004 of 2022 submitted that the Tribunal erred in awarding Rs.20,000/- towards loss of love and affection to the appellant who was the mother of the deceased. The learned counsel further submitted that the Tribunal having assessed the compensation at Rs.26,10,000/- erred in awarding a measly sum of Rs.3,00,000/- to the mother of the deceased who was aged 72 years at the time of the accident. The learned counsel therefore submitted that the apportionment of compensation by the Tribunal was unjust and unfair and the same deserved to be modified in the appeal.

11.The learned counsel appearing for the respondent/Insurance company submitted that the award passed by the Tribunal was just, fair and reasonable and the same did not call for any interference in the appeal.

12.I have heard all the learned counsels and have perused the materials placed on record.



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13.As far as the appeal of the wife of the deceased is concerned, she has filed the same for enhancement of compensation only. According to the appellant, the deceased was aged about 36 years at the time of the accident and as a Registered contractor at M/s.Tagros Chemicals Company Pvt. Ltd., Sipcot was earning Rs.1,50,000/- per month. Ex.P12 to Ex.P14 were marked to establish the income of the deceased. It is seen that Ex.P12 to Ex.P14 were the income tax returns for the years 2011-2012, 2012-2013, 2013-2014. From Ex.P14, it is seen that the annual income of the deceased was shown at Rs.1,34,864/-. The Tribunal considering the above documents assessed the income notionally at Rs.15,000/- per month. I am of the view that the assessment of the notional income of the Tribunal cannot be faulted and therefore, the same is confirmed. The award of the Tribunal towards other heads except for loss of love and affection to the mother of the deceased cannot be faulted, as the same are in conformity with the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. The Tribunal awarded Rs.20,000/- only towards love and affection to



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the mother of the deceased which is against the aforesaid Judgment of the Hon'ble Supreme Court. I am therefore of the view that the award under the head of love and affection for the mother of the deceased is to be enhanced to Rs.40,000/-. As regards the award towards other heads, the award of the Tribunal is confirmed.

14.As far as the appeal of the mother of the deceased is concerned, it is seen that the Claims Tribunal awarded a sum of Rs.3,00,000/- only. In my view, the apportionment is inequitable. Therefore, the apportionment for the mother of the deceased is enhanced to Rs.5,20,000/-. Therefore the apportionment of compensation is modified at Rs.5,20,000/- to the mother of the deceased and Rs.21,10,000/- to the widow of the deceased. The appeal of the mother of the deceased is partly allowed and the appeal of the widow is dismissed.

15.In the result, it is held that the claimants shall be entitled to



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Rs.26,30,000/- along with 7.5% interest and the apportionment of compensation shall be Rs.21,10,000/- to the widow of the deceased and Rs.5,20,000/- to the mother of the deceased. It is submitted by the learned counsel for the appellants that the Insurance Company has not deposited the award amount. In view of the said submission, there shall be a direction to the second respondent/Insurance company to deposit the entire award amount along with 7.5% interest, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit being made the claimants shall be entitled to withdraw their share as apportioned by this Court by making proper application before the Claims Tribunal.

16. Accordingly, the appeal in CMA.No.1004 of 2022 is allowed and the appeal in CMA.No.2140 of 2022 is dismissed. There shall be no order as to costs.

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Index : yes/no
Internet : yes/no
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To

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- 1.The Motor Accident Claims Tribunal /
Principal District Judge, Cuddalore.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA, J.

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