IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.03.2023**

CORAM:

THE HON'BLE **JUSTICE Mrs.N. MALA**

C.M.A.Nos.1693 & 1387 of 2020
and
C.M.P.No.12482 of 2020

**C.M.A.No.1693 of 2020**

United India Insurance Co. Ltd.,
146 N, Kumar Complex, Anna Salai,
Tiruchedgode, Namakkal Taluk,
Tiruchengode.
...Appellant.

Vs.

1.Dhanapal
2.Anitha
3.Thangammal
4.Balamurugan
...Respondents.

**Prayer in C.M.A.No.1693 of 2020:** Civil Miscellaneous Appeal had been filed under Section 173 of the Motor Vehicles Act, seeking to allow the above CMA and enhance the award amount in the judgment and decree dt. 03/01/2020 made in MACTOP No.434/2014 on the file of the MACT Subordinate Judge court Tiruchengode.

For Petitioner : Mr.D.Bhaskaran

For Respondents : Mr.C.Paraneedharan - R1 to R3.
: R4-NA

**C.M.A.No.1387 of 2020**

1.Dhanapal
2.Anitha
3.Thangammal ...Appellants.

Vs.

1.Balamurugan

2.United India Insurance Co.,Ltd.,
146 N - Kumar Complex, Annasalai,
Tiruchengode Taluk, Namakkal District. ...Respondents.

**Prayer in C.M.A.No.1387 of 2020**: Civil Miscellaneous Appeal had been filed under Section 173 of the Motor Vehicles Act, seeking to allow the above CMA and enhance the award amount in the judgment and decree dt. 03/01/2020 made in MACTOP No.434/2014 on the file fo the MACT Subordinate Judge court Tiruchengode.

For Petitioner : Mr.C.Paraneedharan
For Respondents : R1-NA
: R2-Mr.D.Bhaskaran.

**COMMON JUDGMENT**

The Present Civil Miscellaneous Appeals arise out of the judgment & decree passed in M.C.O.P.NO.434 of 2014 dated 03.01.2020 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruchengode.

2.C.M.A.No.1693 of 2020 is filed by the Insurance Company challenging both liability as well as quantum. C.M.A.No.1387 of 2020 is filed by the claimants seeking enhancement of compensation. As common issue arise for consideration in both the appeals the same are taken up together and disposed by this common judgment. The summary of facts leading to the above said appeals are as follows:-

(i) The deceased was riding a two wheeler along with his daughter the second claimant on 09.06.2014 on Tiruchengode road to Namakkal road. While so, the driver of a Chevrolet Tavera Car that was proceeding in front of the deceased's two wheeler applied sudden brakes on seeing a dog crossing the road in front of the car. The deceased's two wheeler which was coming behind the car rammed into the Chevrolet Car and due to the impact, the deceased sustained grievous injuries and died subsequently on 07/07/2014. The deceased/Marimuthu was aged 54 years at the time of the accident and as an agriculturalist, earning a sum of Rs.20,000/- per month at the time of the accident. The claimant's the legal heirs of the deceased, therefore, claimed compensation of Rs.25,00,000/-.

3.The first respondent/owner of the Chevrolet Tavera Car contested the claim petition by filing counter denying all the averments raised in the claim petition.

4.The second respondent the insurer of the car filed a counter denying all the averments raised in the claim petition. The 2nd respondent specifically pleaded that it was the negligence of the deceased which caused the accident and hence it was not liable to pay any compensation.

5.The claimants examined four witnesses on their side and marked Exs.P1 to P11. The respondent examined RW1 and marked two documents. The Tribunal awarded a sum of Rs.7,22,112/- along with 7.5% as compensation to the claimants. Aggrieved by the judgment and decree of the claims tribunal, both the insurance company as well as the claimants have preferred the above appeals. The parties willl be referred to as per their ranking in the claims tribunal.

6.The 2nd respondent/Insurance Corporation in its CMA contended that as the two wheeler rider, the deceased hit the Chevrolet Tavera car from behind, negligence should be presumed only against the deceased two wheeler rider and not against the driver of the Tavera Car. The Learned Counsel for the 2nd respondent contended that had the deceased, driven the vehicle at reasonable speed and maintained sufficient distance from the car, the accident could have been avoided. Therefore, on the basis of the last opportunity theory the counsel submitted that the negligence should be mulcted only against the deceased and not against the driver of the car. On the issue of quantum the counsel submitted that the deceased was an agriculturist and no evidence was filed in support of the income by the claimants. In the absence of reliable evidence, the claims tribunal was not justified in awarding a sum of Rs.7,22,112/- as compensation.

7.On the other hand, the counsel for the claimant and the appellant in the CMA No.1693/2020 submitted that the tribunal was justified in its finding on negligence, as it is clear from the facts that the deceased rammed into the car only because of sudden brakes applied by the car driver. On the issue of quantum, the learned Counsel submitted that the assessment of income by the Tribunal was very much on the lower side. The counsel submitted that the Tribunal failed to note that the accident happened in 2014 and at that time, the deceased was maintaining a family of three members and therefore, the assessment of the deceased's income was very meagre.

8.The Counsel further submitted that the Tribunal had failed to award any compensation towards loss of consortium as mandated in ***Pranay***

***Sethi's Case.*** On these grounds the Counsel prayed for enhancement of compensation.

9.I have heard both sides and perused the materials on record.

10.It is seen that Daughter of the deceased was pillion riding with the deceased in the two wheeler at the time of the accident. She was examined as PW2 and in her evidence she has clearly stated that the driver of the car applied the brakes suddenly on seeing a dog cross the road. Therefore, from the evidence of PW2, who is an eye witness to the accident, it is clear that the driver of the car applied the brakes suddenly without any signal and hence the deceased who was behind the said car was not able to avoid collision. The Tribunal has held that the 2nd respondent the owner and the insurer of the car, did not examine their driver and therefore, in the absence of any contra evidence that the driver of the car applied the brakes following all precautions, the negligence can be attributed only to the driver of the car. It is true that the respondents did not examine the driver and failed to lead any contra evidence, but the fact remains that the deceased hit the car from behind and therefore, it cannot be said that the deceased was not at all negligent. Had the deceased maintained considerable distance from the car and driven the two wheeler with reasonable speed, he could have avoided the accident. I am therefore, of the view that the deceased contributed to the accident and therefore, 25% of the compensation amount is deducted towards the contributory negligence of the deceased. Therefore, on the issue of negligence, I find that the drivers of both the vehicles were negligent and contributed to the accident and their negligence is apportioned in the ratio 75:25.

11.On the issue of quantum the Tribunal has assessed the income at Rs.6500/- and I am of the view that the income assessed by the Tribunal is very much meagre and the same deserves to be enhanced.

12.The deceased was aged 54 years, was an agriculturalist and maintaining a family of three members. As the accident occurred in 2014 in my view considering the cost escalation the income of the deceased can be fixed at Rs.9,900/- per month (including 10% future prospects).

13.Therefore, in my view the annual income of the deceased can be fixed at Rs.9,900/- x 12 = 1,18,800/-. 1/3$^{rd}$ income of the annual income of the deceased i.e., Rs.39,600/- is deducted towards the personal expenses of the deceased. Hence the loss of income is arrived at Rs.9,50,400/- (79,200 X

12).

14.I am in agreement with the submission of the Learned Counsel for the claimants that the claimants are entitled to Rs.40,000/- each towards loss of consortium. In view of the above discussion the award of the tribunal is modified as follows:-

| ***S.No*** | ***Various Heads*** | ***Awarded by Claims Tribunal*** | ***Awarded by this Court*** |
|---|---|---|---|
| 1. | Loss of Income | Rs.6,29,112/- | Rs.9,50,400/- |
| 2. | Medical Bill | Rs.63,000/- | Rs.63,000/- |
| 3. | Loss of Estate | Rs.15,000/- | Rs.15,000/- |
| 4. | Funeral expenses | Rs.15,000/- | Rs.15,000/- |
| 5. | Loss of Consortium | - | Rs.1,20,000/- Rs.40,000/- x 3 (each). |
| | Total | Rs.7,22,112/- | Rs.11,63,400/- |

15.Accordingly, the amount awarded by the Tribunal is enhanced from Rs.7,22,112/- to Rs.11,63,400/- together with interest at 7.5% per annum from the date of petition till date of deposit. 25% of the enhanced compensation is deducted towards the contributory negligence of the deceased and hence the enhanced compensation is fixed at Rs.8,72,550/-. The claimants shall be entitled to Rs.8,72,550/- @ 7.5% interest from the date of petition till the date of deposit. The Insurance Company is directed to deposit the enhanced compensation less the amount already deposited within a period of six (6) weeks from the date of receipt of copy of this order. On such deposit being made the claimants would be entitled to withdraw the same as per the apportionment fixed by the Tribunal by making proper application before the Tribunal.

16.In the result, these civil miscellaneous appeals are partly allowed. Connected miscellaneous petition is closed. No costs.

**07.03.2023**

***nst***

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No

**N.MALA ,J.**

***nst***

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