IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.04.2023
Pronounced on	28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.2681 & 2682 of 2021

and C.M.P.Nos.15406 of 2021&15412 of 2020

C.M.A.No.2681 of 2021

The Oriental Insurance Co Ltd.

"Oriental House", 2nd Floor,
O.No.15, N.No.116, Prakasam Salai,

Broadway, Chennai 600 108.

…Appellant

Vs.

1.Sujitha

2.Desha (Minor)

3.Gahan (Minor)

(Minor Respondents 2 & 3 are Rep.

by their Mother & NF Mrs.Sujitha)

4.TVS Commutation Solutions Ltd.,

MMS Building, Thally Road,
Anthivadi Post, Hosur Taluk.
(4th Respondent was set exparte in the
Lower Court. Hence notice to them
is dispensed with)

…Respondents

C.M.A.No.2682 of 2021

The Oriental Insurance Co Ltd.
"Oriental House", 2nd Floor,
O.No.15, N.No.116, Prakasam Salai,
Broadway, Chennai 600 108.

...Appellant

Vs.

1.V.Sangeetha,

2.TVS Commutation Solutions Ltd.,
MMS Building, Thally Road,
Anthivadi Post, Hosur Taluk.
(2nd Respondent was set exparte in the
Lower Court. Hence notice to them
is dispensed with)

...Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section

173 of Motor Vehicles Act,1988, appeal against the common award and decree dated 09.04.2021 and 12.08.2021 made in M.C.O.P.Nos.823 & 824 of 2016 on the file of the Motor Accidents Claims Tribunal Chennai (In the II Court of Small Causes, Chennai)

For Appellant in Both C.M.As : Mr.R.Sivakumar
For RR1 to R3 in C.M.A.Nos.2681 of 2021 and
For R1 in C.M.A.Nos.2682 of 2021 : Mr.A.A.Venketasan
For R4 in C.M.A.No.2681of 2021 &
For R2 in C.M.A.No.2682 of 2021 : ex-parte

COMMON JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

These appeals are preferred by the Appellants/Insurance Company has filed this Civil Miscellaneous Appeal, against the judgment and decree dated 09.04.2021 and 12.08.2021 made in M.C.O.P.Nos. 823 of 2016 & 824 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.I) Court of Small Causes, Chennai.

2.Background facts in nutshell are as follows:

On 19.12.2015 at about 00.10 hours while the deceased/Sathyanarayanan and his Mother Vijaya were travelling in an Ambulance van bearing Reg.No.TN 21-AU-3520 as Attender from Sriperampudur to Chennai on the Bangalore High Road and while the Ambulance was crossing the junction of Katrambakkam, at that time a private bus bearing Reg.No TN-19-5816 which was driven by its driver in a rash and negligent manner suddenly emerged from the side road to main High Way, dashed against the Ambulance van and caused the accident. As a result, the deceased/Sathyanarayan and his mother namely Vijaya sustained fatal injuries and died on the spot. The 1st respondent is the owner of the lorry which is insured with 2nd respondent.

The legal heir of the deceased Sathyanarayan filed M.C.O.P.No.823 of 2016 claiming a compensation of Rs.3,00,00,000/-. The legal heirs of the deceased Vijaya filed M.C.O.P.No.824 of 2016 claiming a compensation of Rs.50,00,000/- for the death of the deceased Vijaya. The Tribunal factually found that the accident occurred due to rash and negligent driving of the bus bearing Reg.No. TN-19-5816 by its driver and, therefore, compensation has to be paid by the 2nd respondent, who is the insurer of 1st respondent.

3.Accordingly, in M.C.O.P.No.823 of 2016 the Tribunal has awarded a sum of Rs.51,02,008/-as compensation for the death of the deceased Vijaya. In M.C.O.P.No.824 of 2016 the Tribunal has awarded a sum of Rs.48,79,360/- compensation to the claimants.

4.Aggrieved by this, the present civil miscellaeneous appeals are preferred by the Insurance Company.

5. The learned counsel for the appellant has submitted that the Tribunal recorded a finding on the issue that the accident took place due to the negligent act of the bus driver, without appreciating the evidence placed on record, on the side of the appellant/Insurance Company. The Tribunal ought to have recorded a finding that the accident had occurred only due to the negligence on the part of the driver of the Ambulance van bearing Reg.No. TN-21-AU-3520 in which the deceased Sathyanarayanan and his mother Vijaya, were travelling as attenders at the time of accident. No independent eyewitness was examined on the side of the claimants to prove the manner of accident and no sketch prepared by the Police official was

marked on the side of the claimants. In fact, the apellant examined R.W.1 and marked the investigation Report along with sketch was not considered by the Tribunal. The Tribunal erred to take note of the fact that the bus emerged from the side road to the main Highway and only the driver of the Ambulance Van drove the vehicle in a rash and negligent manner, dashed against the bus. Since there was an head on collusion, the negligence has to be apportioned as the ratio of 50:50. The claimants failed to produce any documentary evidence to prove that the deceased in both the claim petitions were doing travell business at the relevant period. The Income Tax Returns filed in the claim above petitions shows that the deceased in both claim petitions were receiving only rental income and the same is also admitted by P.W.1 and P.W.2 in their cross examination admitted and that they are still receiving the rental income even after the death of the deceased in both claim petitions. Hence, there is no loss of income for the claimants in M.C.O.P.Nos.823 & 824 of 2016 and the same is not considered by the Tribunal. It is further submitted that the monthly income of the deceased fixed by the Tribunal in the above claim petitions is excessive.

6.In order to prove their case, the 1st claimants in M.C.O.P.Nos.823 & 824 of 2016 examined themselves as P.W.1 & P.W.2 and marked Exs.P.1 to P.30. Apart from this, the claimants have examined one Mr.B.Vinoth, eyewitness to the alleged accident as P.W.3. On the side of the the *Insurance Company*, the Assistant Manager of the Insurance Company was examined as R.W.1 and Exs.R.1 and R2 were marked.

7.The Tribunal, considering the oral evidence of P.W.1 to P.W.3 and the documentary evidence Ex.P.1 – copy of FIR and Ex.P.30-Charge sheet arrived at a conclusion that the accident occurred only due to the rash and negligent driving of the bus driver.

8.The appellant/Insurance Company failed to prove the manner of accident. The driver of the bus was not examined. No independent witness was examined to prove the alleged accident. In fact, no complaint was preferred against the Van driver neither by the owner nor by the driver of the bus. The appellant/Insurnace Company is relying on the evidence of R.W.1 and Ex.R.1 investigation report to substantiate their defense. Admittedly, R.W.1 is not the author of Ex.R.1 report.

No explanation on the side of the appellant/Insurance Company for not examining the investigating officer who prepared Ex.R.1 report. In the absence of any contra evidence on the side of the appellant/Insurance Company the Tribunal has rightly fixed the negligence on the part of the Bus driver. Hence, the above finding of the Tribunal has to be confirmed.

9.With regard to the quantum, the learned counsel vehemently argued that the Tribunal erred in fixing the monthly income of the deceased in M.C.O.P.No.823 of 2016 at Rs.25,877/- and for the deceased in M.C.O.P.No. 824 of 2016 at Rs.37,072/- without any documentary evidence regarding the occupation and income of the deceased before the accident, except the Income Tax Returns. On perusal of Ex.P.10-ITR for the year 2014-2015 it is mentioned the gross total income of the deceased Sathyanarayanan is at Rs.3,10,515/- per annum which includes his rental income and business income. The rental income is shown as Rs.1,98,100/- per annum and his business income is shown Rs.1,12,415/- per annum. However, the tribunal erred in calculating the rental income for the loss of dependency. Even after the death of the deceased Sathyanrayanan, there will be no loss of rental income and the same will be recieved by the claimants. Therefore, the business income alone ought to have been taken for calculating the loss of dependency. The Tribunal has wrongly fixed the monthly income of the deceased Sathyanarayan at Rs.25,877/- which ought to have been fixed at Rs.9,500/- =(Rs.1,12,415/12). As per the judgment of the Apex Court in ***Pranay Sethi*** case 40% future prospects would be added, which comes to a sum of Rs.9,500/-+40%= Rs.13,300/- (9500+3800). Thus, the annual income of the deceased would be (13,300x12)= 1,59,600/-.

10.Taking the number of dependants into account, if we deduct 1/3rd towards 'personal expenses', the monthly dependency of the family comes to Rs.1,59,600/1/3rd= Rs.159600-52668= Rs.1,06,932/- thus, the annual loss of income would be Rs.1,06,932/-. Applying multiplier '17', total loss of income for the family has to be fixed at Rs. 1,06,932/-x17= Rs.18,17,844/- as against Rs.49,27,008/- fixed by the tribunal. The tribunal also awarded a sum of Rs.40,000/- under the head of loss of consortium is confirmed. Further, a sum of Rs.1,00,000/- was awarded for the 2nd & 3rd claimants for 'loss of love and affection', which in our view is not admissible. However, a sum of Rs. 40,000/- each can be awarded for 'parental consortium' to the 2nd & 3rd claimants. A sum of Rs.15,000/- for loss of estate and a sum of Rs.15,000/- for funeral expenses and a sum of Rs.5000/- for transport charges awarded by the Tribunal is confirmed. Therefore the total compensation awarded amounts to Rs.19,72,844/-:

S.No.	***Description***	***Amount awarded by the Tribunal (Rs.)***	***Amount awarded by this Court (Rs.)***	***Award confirmed or enhanced or granted***
1	Loss of Income	49,27,008/-	18,17,844/-	Reduced
2	Loss of Consortium Claimants	40,000/-	40,000/-	Confirmed
3.	Parental Consortium for R2 & R3	1,00,000/-	80,000/-	Reduced
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5	Funeral Expenses	15,000/-	15,000/-	Confirmed
6.	Transport charges	5000/-	5000/-	Confirmed
	Total	**51,02,008/-**	**19,72,844/-**	**Reduced by Rs. 31,29,164/-**

11.With regard to the deceased in M.C.O.P.No.824 of 2016, the claimant in the claim petition has stated that the deceased, mother of the claimant was a proprietor, of a travel business and was earning a sum of Rs.4,45,000/- per annum. To establish the same, the account holder certificate, the bank statement and the ITR were marked as Exs.P.22, P.23 and P.26 respectively. On perusal of the copy of ITR for the assessment year 2014-2015. It is seen that the income of the deceased Vijaya for the assessment year 2014-2015 the gross income at Rs.4,44,862/-. However, in the gross income the rental income alone is shown as the gross income of the deceased Vijaya. The Tribunal without, proper application of mind fixed the monthly income of the deceased Vijaya at Rs.37,072/- without considering the fact that there will be no loss in the rental income when the same will be continue to be received by the claimant in M.C.O.P.No.824 of 2016. However, considering the facts and circumstances of the case, a sum of Rs.6,000/- is fixed as monthly notional income of the deceased Vijaya. Thus the annual income of the deceased would be Rs.6000/-x12=Rs.72,000/- the Tribunal has rightly applied multiplier '13' as per the decision of the Hon'ble Supreme Court in ***Sarla Verma and Others Vs.Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 21***. The annual loss of income after applying multiplier '13' is Rs.9,36,000/-=(72,000x13). As per the judgment of the Apex Court in ***Pranay Sethi*** case 25% future prospects would be added, which comes to a sum of Rs.9,36,000/-+25%= Rs.11,70,000/- (9,36,000+2,34,000/-).

12.As the quantum of compensation is being visited, the amount under the conventional heads is awarded in consonance with the decision of Supreme Court in ***Pranay Sethi*** case, the claimant is entitled to Rs.15,000/- (Rs.30,000/-) for funeral expenses and for loss of estate each. The claimant is also entitled for a sum of Rs. 40,000/- towards filial consortium. A sum of Rs.5000/- awarded by the Tribunal for transportation is confirmed. The total compensation awarded is Rs.12,85,000/-.

S.No.	*Description*	*Amount awarded by the Tribunal (Rs.)*	*Amount awarded by this Court (Rs.)*	*Award confirmed or enhanced or granted*
1	Loss of Income	48,19,360/-	11,70,000/-	Reduced
2	Loss of Consortium	-	40,000/-	Granted
3.	Loss of Love and affection	25,000/-	40,000/-	Enhanced
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
6.	Transport charges	5000/-	5000/-	Confirmed
	Total	**48,79,360/-**	**12,85,000/-**	**Reduced by Rs. 35,94,360/-**

13. In the result, this **Civil Miscellaneous Appeal No.2681 of 2021** is partly allowed and the compensation awarded by the Tribunal is hereby reduced from Rs.51,02,008/- to Rs.19,72,844/- together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The

Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st claimant is entitled to withdraw their respective share as per the apportionment granted by the Tribunal. As far as minors/2nd and 3rd respondents shares are concerned, the same is to be deposited in any of the nationalized bank under interest bearing deposit scheme till the minor attains the age of majority and the same shall be renewed periodically. There shall be no order as to costs.

14.In the result, the **Civil Miscellaneous Appeal No.2682 of 2021** is partly allowed and the compensation awarded by the Tribunal is hereby reduced from Rs.48,79,360/- to Rs.12,85,000/- together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st claimant is entitled to withdraw her amount as per the apportionment granted by the Tribunal. There shall be no order as to costs. Consequently the connected Miscellaneous Petitions are closed.

(D.K.K.,J.) **(K.G.T.,J.)**

28.06.2023

vsn

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To:-
The Motor Accident Claims Tribunal,
(Special Sub Court No.I) Court of Small Causes, Chennai.

D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre-delivery common judgment made in
C.M.A.Nos.2681 & 2682 of 2021
and C.M.P.Nos.15406 of 2021&15412 of 2020

28.06.2023