IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.Nos.49 & 1099 of 2022
& CMP.No.8060 of 2022

CMA.No.49 of 2022

1.A.Sathiya
2.Minor S.Dhakshan
rep. by mother, guardian
and next friend A.Sathiya,
the 1st petitioner herein
3.Mallika ... Appellants

-Vs-

1.R.Aruljothi
2.G.Ramesh
3.The Cholamandalam MS Gen.Insurance Co. Ltd.,
II Floor, Shaw Wallance Building,
154, ThambuChetty Street,
Parry's Corner,
Chennai – 600 001. ...Respondents

CMA.No.1099 of 2022

The Cholamandalam MS General
Insurance Company Limited,
Shaw Wallace Building II Floor,
No.154, Thambu Chetty Street,
Parry's Corner,
Chennai – 600 001. ... Appellants

-Vs-

1.A.Sathiya

2.Minor S.Dhakshan
rep. by his mother, guardian
and next friend A.Sathiya
3.Mallika
4.R.Aruljothi
5.G.Ramesh ...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree in MCOP.No.3361 of 2017, dated 13.09.2021 on the file of the Motor Accidents Claims Tribunal/ I Additional District and Sessions Judge, Cuddalore.

In CMA.No.49 of 2022

For Appellants : Mrs.Ramya V.Rao
For R1 & R2 : Notice D/w Vide order dated 10.10.2023
For R3 : Mr.J.Michael Visuvasam

In CMA.No.1099 of 2022

For Appellant : Mr.J.Michael Visuvasam
For R1 to R3 : Mrs.Ramya V.Rao
For R4 & R5 : Notice D/w Vide order dated 03.11.2023

JUDGMENT

Aggrieved by the award passed by the Tribunal in MCOP.No.3361 of 2017 (I Additional District and Sessions Court), Cuddalore, both the claimants as well as the Insurance Company had preferred separate appeals.

2.The accident had taken place in the following manner; On 27.06.2017, at around 15.30 hours, the victim of the accident, a 26 year old Sivaramakrishnan, was riding his two wheeler bearing Regn.No.TN 31 BR 2494, when he suddenly encountered a goods carrier bearing Regn.No.TN 32 H 9419 belonging to the first and second respondents in the claim petition and insured with the third respondent, parked without any indication. The victim tried to avoid an accident but could not help and ramped on to the stationary vehicle.

3.Turning to quantum part, the victim was stated to be working as a driver and his driving license is also produced as Ext.R5. Since the claimants did not produce any material to prove the income of the victim, the Tribunal notionally fixed it at Rs.8,500/- to which it added 40% towards future prospects and deducted 1/3rd towards the personal expenditure of the victim and applied 17 as the multiplier and arrived at a net value of loss of dependency at Rs.16,18,536/-. After adding the compensation under other conventional heads, the Tribunal arrived at a total compensation of Rs.17,18,536/-. The break up is as follows;

Sl. No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	16,18,536/-
2.	Loss of Consortium	40,000/-
3.	Loss of love and Affection	30,000/-
4.	Transport Expenses	15,000/-
5.	Funeral Expenses	15,000/-
	Grand Total	**17,18,536/-**

4.The claimants' only grievance is that the Tribunal has fixed the monthly notional income of the victim very unrealistic at Rs.8,500/- and it should have been at least taken at Rs.15,000/- a month.

5.The learned counsel for the insurance company in its appeal contended that it is an admitted fact that the goods carrier insured with the appellant was stationary at the relevant time. The only difference is that while according to the insurance company, the vehicle was parked on the left hand margin of the road, according to the claimant, it was parked right in the middle of the road. Either way, it was around 3.30 p.m. in the afternoon, and the road where the accident took place as per Ext.R2, the rough sketch prepared by the investigating agency into the criminal angle of the case, was a straight road. Therefore, the victim had every opportunity to avoid an accident.

6.Secondly, the victim had died only due to head injuries as per Ext.P2 postmortem certificate, and he was not wearing helmet at the relevant time, and was literally driving his motor cycle rather suicidally. The Tribunal had gone wrong in fixing the entire blame on the owner and the insurance company of the stationary vehicle. He further submitted that since the driver of the goods carrier did not possess a valid driving license, the Tribunal had ordered pay and recovery.

7.In terms of Section 122 read with Section 126 of the Motor Vehicles Act, no motor vehicle can be parked in a public place as to cause obstruction to free flow of traffic, unless a licensed driver is in the seat.

8.Since the driver of the goods carrier did not bestow adequate care to abide by the statutory provisions, he cannot escape his share of the negligence. However, that does not enure to the advantage of the other party to the accident. After all, and as correctly contended by the counsel for the insurance company, the rider of the motor cycle had the last opportunity to avoid the accident. Very apparently, he too was negligent in ramping his vehicle to his own fatal end. After appreciating the evidence on record, this Court deems it appropriate to apportion negligence at 75% to the driver of the goods carrier and 25% to the victim of the accident.

9.Turning to the quantum, this Court considers that the notional income as fixed by the Tribunal is slightly unrealistic. He being a driver and since the accident had taken place only in 2017, Rs.13,000/- a month would be more realistic notional income that this Court considers appropriate to fix. To this adding another 40% towards future prospects, deducting 1/3rd towards personal expenditure of the victim, and applying 17 as the multiplier, and value of loss of dependency would be Rs.24,75,336/-. Retaining the compensation awarded under the other conventional heads of compensation by the Tribunal, the total will be Rs.25,75,336/-. From this 25% is deducted towards the contributory negligence of the victim and the net compensation then arrived is Rs.19,31,502/-.

10.Both the appeals are partly allowed and the compensation amount is enhanced from 17,18,536 to 19,31,502/-. This Court is informed that the insurance company had already deposited the entire compensation amount as was awarded by the Tribunal. Now, the insurance company, the appellant in CMA.No.1099 of 2022, is required to deposit the differential sum of Rs.2,12,966/- within a period of six (6) weeks from the date of receipt of a copy of this order. The enhanced portion of the compensation shall go to the second claimant, the minor child of the victim. The claimants 1 and 3 are entitled to withdraw their share of the compensation, along with interest and costs, less the amount if any, already withdrawn. The enhanced compensation amount pertaining to the minor S.Dhakshan is directed to be deposited in a nationalised Bank in the interest bearing Fixed Deposit till the minor attains the age of majority and the mother of the minor viz., A.Sathiya is permitted to withdraw the accrued interest on the deposit of the minor once in six months. The insurance company is entitled to recover the enhanced portion of the compensation from the owners of the goods carrier in question. As to the rest, the Award of the Tribunal is confirmed. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs. Consequently, the connected miscellaneous petition is closed.

03.11.2023

Tsg

To

1.The Motor Accidents Claims Tribunal,
I Additional District and Sessions Judge,
Cuddalore.
2.The Section Officer,
V.R.Section, High Court, Madras.

N.SESHASAYEE, J.,

Tsg

CMA.No.49 of 2022

03.11.2023