IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A No.817 of 2022
&
C.M.A No.297 of 2018
and
CMP.No.5826 of 2022

CMA.No.817 of 2022

United India Insurance Co. Ltd.,
146-N, Kumar Complex
Tiruchengode. ... Appellant

Versus

1. Madheshwari
2. Dharmalingam
3.P.Veerabadran ... Respondents

CMA No.297 of 2018

1.Madheswari
2.Dharmalingam ... Appellants

Versus

1.P.Veerabathran

2.United India Insurance Co. Ltd.,
146-N, Kumar Complex
Tiruchengode. ... Respondents

These two Civil Miscellaneous Appeals are filed against the award and decree dated 17.07.2017, made in M.C.O.P.No.781 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sankari.

For Appellant/Insurance Company
in CMA No.817 of 2022 : M/s.I.Malar

For Appellant/ Claimant
in CMA No.297 of 2018 : Mr.T.S.Arthanareeswaran

COMMON JUDGMENT

CMA No.817 of 2022 has been preferred by the Insurance Company and CMA No.297 of 2018 has been preferred by the claimants 1 & 2 against the award and decree dated 17.07.2017, passed by the Motor Accident Claims Tribunal/ Sub Judge, Sankari, in MCOP No.781 of 2010.

2. As per the claim petition, on 04.11.2010 at about 10.25 a.m, at Tiruchengode to Erode Main Road, near Rajagoundempalayam Association Petrol Bunk, when the deceased Yuvaraj was proceeding in his vehicle viz., Hero Honda bearing Registration No.TN-34 9538, the

driver of the vehicle viz., TATA 407 bearing Registration No.TN 33 L 4410 came in a rash and negligent manner and hit against the deceased. In the impact, he sustained fatal injuries and died in the hospital.

3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the vehicle and hence, directed the Insurance Company to pay a sum of Rs.32,11,000/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimants.

4. Aggrieved over the quantum of award, the appellant/Insurance Company has come forward with CMA No.817 of 2022.

5. Being not satisfied with the quantum of the award, the claimant has filed CMA No.297 of 2018.

6. The learned counsel for the appellant/Insurance company in CMA No.817 of 2022 contended that the Tribunal has committed grave error in awarding compensation to the claimants in the absence of any documentary evidence to show that the accident had occurred due to the negligent act of the Tempo driver. The Tribunal has failed to fix contributory negligence on the part of the deceased who invited the accident at his own fault. In the absence of any material evidence, the monthly income fixed by the Tribunal adding 50% future prospects is on the higher side. The Tribunal has wrongly deducted 1/3rd instead of 1/2 towards personal expenses of the deceased. The compensation awarded by the Tribunal under the heads of love and affection, funeral expenses and pain and suffering are on the higher side, hence, he prays to reduce the award amount.

7. On the other hand, the learned counsel appearing for the appellants/claimants in CMA No.297 of 2018 submitted that though the Tribunal had given a finding that the accident had occurred only due to rash and negligent act of the driver of the four wheeler, had awarded only very meager amount as compensation against the established principles

and rulings of the Hight Courts and Supreme Court. The monthly income fixed by the Tribunal at Rs.13,500/- is very low. No amount was awarded under the head of loss of estate. Hence, he prays to dismiss the appeal filed by the Insurance Company and to enhance the compensation amount claimed by the claimants.

8. Heard Ms.I. Malar, the learned counsel appearing for the Insurance Company and Mr. T.S. Arthanraeeswaran, the learned counsel appearing for the claimants.

9. In the claim petition, it was stated that the deceased was doing Computer and Xerox Machine service engineering (self employed). But, Tribunal has awarded 50% towards loss of future prospects without following the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & others*** reported in ***2017 (2) TN MAC 609 (SC).*** Therefore, this Court is inclined to reduce the future prospects to 40%.

10. The main contention of the Insurance Company is that

while the deceased was a bachelor at the time of accident, the Tribunal has committed an error in deducting 1/3rd towards his personal expenses. In view of the fact that the deceased was a bachelor, it would be appropriate to deduct 1/2 towards the personal expenses of the deceased instead of 1/3, as per *Sarla Verma* and *Praney Sethi case*. Accordingly, the loss of income is modified from Rs.29,16,000/- to Rs.20,41,200/- as detailed below:

13500 + 40% (-) 1/2 x 12 x 18 = Rs.20,41,200/-

11. The compensation awarded by the Tribunal towards loss of love and affection and funeral expenses is on the higher side in the considered view of this Court. As per the settled practice, the compensation awarded by the Tribunal towards loss of love and affection is reduced to Rs.80,000/- from Rs.2,00,000/- and the compensation towards funeral expenses is reduced to Rs.15,000/- from Rs.25,000/- by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate and they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate.

12. A perusal of Ex.P7, P8 Medical bills and Ex.P5 postmortem certificate would reveal that after the accident, the deceased had taken treatment for 2 days i.e. on 04.11.2010 and 05.11.2010 for the injuries sustained by him and thereafter, he died on 05.11.2010. In the considered view of this Court, though the deceased had taken treatment only for 2 days, however, the injuries being grievous in nature, the deceased would not have felt the pain and would not have realised the suffering due to the pain and therefore, the compensation of Rs.35,000/- awarded by the Tribunal towards pain and suffering is not warranted and hence, the compensation awarded under the head of pain and suffering is deleted by this Court.

13. Insofar as the compensation awarded under the head of medical expenses is concerned, the assessment of the compensation under the said head by the Tribunal is a just compensation and it does not call for any interference by this Court.

14. Hence, the total compensation payable to the claimants are

as hereunder:

Heads	***Amount awarded by the Tribunal (Rs)***	***Award Amount by this Court (Rs)***
Loss of Income	29,16,000/- (13500 + 50% (-) 1/3 x 12 x 18)	20,41,200/- (13500 +40% (-) 1/2 x 12 x 18)
Loss of love and affection	2,00,000/-	80,000/-
Medical Expenses	35,000/-	35,000/-
Pain and suffering	35,000/-	Nil
Loss of Estate	Nil	15,000/-
Funeral Expenses	25,000/-	15,000/-
Total	**32,11,000/-**	**21,86,200/-**

Accordingly, out of the entire award amount, the claimants 1 & 2 shall receive Rs.10,93,100/- each towards their share.

15. In the result,

(i) The Appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.21,86,200/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.781 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimants along with accrued interest through RTGS within a period of two weeks thereafter.

16. Accordingly, CMA. No.817 of 2022 filed by the Insurance Company is allowed by reducing the award of the Tribunal from Rs.32,11,000/- to Rs.21,86,200/-. CMA No.297 of 2018 filed by the claimants is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

27.04.2023

Index : Yes/No
Speaking order/Non-Speaking order
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To

1. The Motor Accident Claims Tribunal
   Subordinate Judge, Sankari.

2. The Section Officer
   V.R.Section, High Court of Madras.

A.A.NAKKIRAN J.

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and CMA No.297 of 2018 &
C.M.P No.5826 of 2022

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