



CMA No.2303 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMA No.2303 of 2018 and
CMP No.17590 of 2018

The Divisional Manager,
Divisional Office,
United India Insurance Co., Ltd.,
No.66, 67, Gandhi Road,
Kancheepuram town and Taluk,
kancheepuram District.

... Appellant

Vs

1. Perumal

2. Rajeswari

3. Karpaga Vinayaga Hospital,
Chinnakolambakkam Village,
Palayanur Post,
Madurantakam Taluk,
Kancheepuram District.

... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree, dated 10.01.2018 made in MCOP No.57 of 2013 on the file of the Motor Accident Claim Tribunal (Subordinate Judge) Madurantakam.



WEB COPY



CMA No.2303 of 2018

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : No appearance

J U D G M E N T

The second respondent before the Motor Accident Claims Tribunal (Subordinate Judge) Madurantakam in MCOP No.57 of 2013 is the appellant in the present Civil Miscellaneous Appeal.

2. The brief facts which would be necessary for deciding the above Civil Miscellaneous Appeal are as hereunder:

The respondents 1 and 2 as claimants / parents of the deceased B.Sankar, moved MCOP, seeking compensation to the tune of Rs.15 lakhs for the demise of their son. At the time of accident the deceased Sankar was travelling in a motor cycle as a pillion rider and the bus belonging to the 2nd respondent was driven in a rash and negligent manner without observing traffic rules and regulations and dashed against the said motor cycle, as a result of which, the deceased Sankar sustained multiple grievous injuries on his head and died on spot.



CMA No.2303 of 2018

3. It is the case of the respondents 1 and 2/claimants that the deceased Sankar was the sole breadwinner of the family and he was working as a probationary plant operator in a private company and earning a sum of Rs.14,000/- p.m. His age has been stated as 26 years at the time of accident. Claiming compensation under various heads, total claim of Rs.20,95,000/- was arrived at. However, the claimants restricted the claim amount to Rs.16 lakhs.

4. The appellant herein as 2nd respondent in the MCOP proceedings filed a counter denying the claims made by the respondents 1 and 2 and sought for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent father of the deceased Sankar was examined as P.W.1 and one Elumalai was examined as P.W.2. On the side of the respondents 1 and 2/claimants, Exs.P1 to P9 were marked. On the side of the Insurance Company, no oral or documentary evidence was let in.



CMA No.2303 of 2018

6. The Tribunal on considering the overall circumstances including the oral and documentary evidence before him, came to the conclusion that the accident occurred only because of rash and negligent driving of the 3rd respondent bus. The Tribunal fixed the age of the deceased as 26 years relying on Exs.P6 and P7. Insofar as the salary, the Tribunal took into account of Ex.P8. Insofar as the deduction for personal expenses, the Tribunal deducted 1/3 considering the legal heirs / the parents namely the father and mother who are both depending on the deceased. Finally the Tribunal awarded a sum of Rs.9,19,112/- as compensation payable to the claimants/respondents 1 and 2 together with interest at 9% per annum payable from the date of petition till the date of payment.

7. Aggrieved by the said award, the appellant Insurance Company has preferred the present Civil Miscellaneous Appeal.

8. Heard the learned counsel for the appellant.



CMA No.2303 of 2018

9. The main grounds of challenge to the award which have been canvassed by the learned counsel for the appellant are that the Tribunal ought not to have deducted 1/3 towards personal expenses of the deceased. According to the counsel for the appellant, the deceased being a bachelor, 50 % ought to have been deducted towards personal expenses and therefore, he sought for modification of the award in this regard. Secondly, the learned counsel for the appellant contended that the interest fixed at 9% per annum is excessive and 7.5% interest has to be awarded. Insofar as the other heads of compensation, no serious challenge has been made, even in the grounds of appeal.

10. As regards the contention regarding deduction towards personal expenses, the fact that the deceased was a bachelor, is not the relevant factor to be taken into account. It is the number of dependants which would decide what would be the proper deduction towards personal expenses of the deceased. It is the case of the respondents 1 and 2 that they are the parents of the deceased and that the deceased son is the breadwinner of the family and there is no contra evidence adduced on the side of the



CMA No.2303 of 2018

Insurance Company to repudiate the claim in this regard. There are series of Judgments of the Hon'ble Supreme Court as well as this Court regarding personal deduction. When the dependants are more than one, it would be just and proper to deduct 1/3 towards personal expenses of the deceased. This Court does not find any error or irregularity in the award passed by the Tribunal in this regard.

11. Insofar as the second contention with regard to the awarding of interest at the rate of 9 % per annum, the arguments of the learned counsel for the appellant has merit. It is now settled by the Hon'ble Supreme Court that the interest rate to be awarded for Motor Accident Cases is only at 7.5% per annum and not 9% p.a. Hence, the Tribunal was in error, in awarding 9% p.a. towards interest, which has to be necessarily set aside and accordingly the same is set aside.

12. In fine, the Civil Miscellaneous Appeal is partly allowed, confirming the award amount of Rs.9,19,112/- but with a modification in respect of the interest portion alone, to the extent that the interest rate is



CMA No.2303 of 2018

fixed at 7.5% p.a. instead of 9% p.a., payable from the date of petition i.e., 02.08.2013, till the date of payment. The appellant/Insurance Company is directed to deposit the award amount along with interest at 7.5 % per annum from the date of claim petition (02.08.2013) till the date of payment, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. It is open to the respondents 1 and 2 to approach the Tribunal to take out necessary application to withdraw the award amount by following due process. No orders as to costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

vum

Index: Yes/No

Speaking order / Non speaking order

To

1. The Motor Accident Claim Tribunal
(Subordinate Judge) Madurantakam
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



WEB COPY



CMA No.2303 of 2018

P.B.BALAJI, J.

vum

CMA No.2303 of 2018 and
CMP No.17590 of 2018

30.03.2023