IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.Nos.2353 and 2609 of 2018
and
C.M.P.No.19704 of 2018

C.M.A.No.2353 of 2018

1.B.Malliga,
W/o.Late Boopathy
2.Minor B.Logeswari,
D/o.Late Boopathy
3.Minor B.Thrisha,
D/o.Late Boopathy
4.Minor B.Dharanesh,
S/o.Late Boopathy
5.R.Valliyammal ...Petitioners/Appellants

-Vs-

1.M.Shanmugam
2.M/s.United India Insurance Company Limited,
Represented by its Divisional Officer I,
No.104-A, Peramanoor Main Road,
Salem – 7.
3.N.Dhandapani
4.M/s.ICICI Lombard General Insurance Company Limited,
Having office at,
Swarnambika Plaza, Omalur Main Road,
Salem. ...Respondents/Respondents

[Amended as per order in I.A.No.2064 of 2015 dated 15.12.2015]

C.M.A.No.2609 of 2018

M/s.United India Insurance Company Ltd.,
represented by its Divisional Office -1,
104-A, Peramanur Road, Salem-7. ...2nd respondent/Appellant

-Vs-

1.B.Malliga,
W/o.Late Boopathy
2.Minor B.Logeswari,
D/o.Late Boopathy
3.Minor B.Thrisha,
D/o.Late Boopathy
4.Minor B.Dharanesh,
S/o.Late Boopathy
5.R.Valliyammal ...Petitioners
6.M.Shanmugam ...1st respondent
7.N.Dhandapani ...3rd respondent
8.M/s.ICICI Lombard General Insurance Company Limited,
Having office at Swarnambika Plaza,
Omalur Main Road,
Salem-9. ...4th respondent/Respondents

[Amended as per order in I.A.No.2064 of 2015 dated 15.12.2015]

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree, dated 11.12.2017, in M.C.O.P.No.99 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal (Special District Judge), Salem.

C.M.A.No.2353 of 2018

For Appellants	:	Mr.K.Varatha Kamaraj
For R2	:	Mr.D.Bhaskaran
For R1 & R3	:	Notice Served No appearance
For R4	:	Mrs.Sree Vidhya

C.M.A.No.2609 of 2018

For Appellants	:	Mr.D.Bhaskaran
For R1 to R5	:	Mr.K.Varatha Kamaraj
For R6 & R7	:	Not ready
For R8	:	Mrs.Sree Vidhya

COMMON JUDGMENT

These two Civil Miscellaneous Appeals arise out of the award of the Motor Accident Claims Tribunal, Special District Judge, Salem ("the Tribunal" for brevity), dated 11.12.2017, in M.C.O.P.No.99 of 2013. C.M.A.No.2609 of 2018 is filed by the Insurance Company, namely, M/s.United India Insurance Company Ltd., and C.M.A.No.2353/2018 is filed by the claimants, seeking further compensation, both against the same award in the above M.C.O.P. proceedings.

2.The claimants in C.M.A.No.2353 of 2018 are the wife, three minor children, and mother of the deceased, Boopathy, who died in a road accident on 04.08.2012.

3.The case of the claimants/appellants in C.M.A.No.2353 of 2018 is that the deceased was travelling in a car bearing Reg.No.TN 49 J 1555, where the driver dozed off and as a result, the car collided with the lorry bearing Reg.No.TN 19 Y 0979. It is the further case of claimants that the deceased was aged about 45 years and employed as a Foreman and an Accountant in Power Loom Factory, earning Rs.12,000/- per month. Therefore, the claimants filed the claim petition in M.C.O.P.No.99 of 2013 before the Tribunal, claiming a total compensation of Rs.20,00,000/-.

4.A counter was filed by the 2nd respondent/United India Insurance Company Ltd., before the Tribunal. It is the case of the 2nd respondent that the accident took place due to the rash and negligent driving of the car in which the deceased was travelling. It is admitted that at the time of the accident, 8 people were in the car, including a driver, exceeding the permitted limit of 5 people, which is a clear violation of policy and permit conditions. It is further stated that the driver of the car did not possess a valid and effective driving licence. In short, the insurer/2nd respondent in the claim petition disputed their liability to compensate the claimants.

5.Before the Tribunal, 1st claimant/wife of the deceased was examined as P.W.1 and Mr.Ganesh Babu and Mr.Anandavel were examined as P.W.2 and P.W.3 respectively. On the side of the respondents, three witnesses namely Sujatha, Ramalingam and Dhinakarunakaran were examined as R.W.1, R.W.2 and R.W.3. On the side of claimants, Exs.P1 to P20 were marked and on the side of respondents, Exs.R1 to R5 were marked.

6.It is to be noted that the insurer of the lorry, namely M/s.ICICI Lombard General Insurance Company Ltd., was impleaded as the 4th respondent before the Tribunal in pursuance of order passed in I.A.No.2064 of 2015 dated 15.12.2015.

7.The Tribunal, considering the oral and documentary evidence available on record, awarded a sum of Rs.13,30,000/- together with 7.5% interest; the claim against M/s.ICICI Lombard General Insurance Company Ltd., namely, the 4th respondent, was dismissed; ultimately, the liability was fixed on the 2nd respondent, namely, M/s.United India Insurance Company Ltd.

8.As against the total compensation of Rs.13,30,000/-, the above appeals have been preferred, both by the 2nd respondent/Insurance

Company (M/s.United India Insurance Company Ltd.) as well as by the claimants. This Court has heard the respective counsel for the contesting parties in both the appeals.

9.The claimants have filed C.M.A.No.2353 of 2018 seeking enhancement of the award amount, and learned counsel for the appellants argued that the Tribunal has fixed the income of the deceased as Rs.8,000/- instead of Rs.12,000/- erroneously. The learned counsel also contended that compensation under the heads of Love and Affection and Pecuniary Loss were also either disallowed or erroneously awarded at a much lesser amount.

10.Per contra, the learned counsel for the appellant/Insurance Company in C.M.A.No.2609 of 2018, argued that in so far as the award passed by the Tribunal being already on the higher side, and findings with regard to liability also being erroneous, prayed that C.M.A.No.2609 of 2018 has to be allowed and C.M.A.No.2353 of 2018 deserves to be dismissed.

11.The main crux of the argument of the learned counsel for the appellant/Insurance Company is that the insurer, namely M/s.ICICI Lombard General Insurance Company Ltd., was also liable to compensate the claimants and that the entire fault was on the part of the lorry, which was insured with the 8th respondent i.e., M/s.ICICI Lombard General Insurance Company Ltd. Further contending that the Tribunal has drawn an adverse inference as against the insurer of the lorry for not having appeared and contesting the claim, the Tribunal ought to have presumed rash and negligent driving on the part of the driver of the lorry.

12.Firstly, dealing with the liability of the two insurance companies, this Court, having heard the submissions of the respective counsel and perusing the oral and documentary evidence on record, finds force in the submission of the learned counsel for the appellant in C.M.A.No.2609 of 2018 with regard to the fixing of liability on the insurer of the lorry which was also involved in the accident. Admittedly, there was no evidence to suggest that the driver of the lorry was at fault. On the contrary, the insurer of the lorry also chose to remain ex-parte before the Tribunal and the owner/driver of the vehicle, namely the 6th respondent in C.M.A.No.2609 of 2018 also did not appear and contest the proceedings. Further, it is also brought to the notice of this Court, that in respect of the same accident, other civil miscellaneous appeals came to be filed, challenging the awards passed in other M.C.O.P. cases, and this Court, in C.M.A.No.3162 of 2019 held that the compensation awarded to the claimants should be paid by both the insurers, namely the M/s.United India Insurance Company Ltd., and M/s.ICICI Lombard General Insurance Company Ltd., and the ratio of 80:20 was also fixed. It is fairly brought to the notice of this Court that, apart from C.M.A.No.3162 of 2019, in C.M.A.Nos.3243, 3147 and 3224 of 2019, this Court also found that both the insurers were liable and fixed the same ratio of 80:20 (80% – M/s.United India Insurance Company Ltd. and 20% – M/s.ICICI Lombard General Insurance Company Ltd.). It is also informed that the said judgments have become final. Therefore, this Court has no hesitation in applying the same ratio in so far as the payment of compensation to the claimants are concerned.

13.In fine, the appellant in C.M.A.No.2609 of 2018 namely M/s.United India Insurance Company Ltd., is liable to pay 80% of the award amount together with accrued interest, and the remaining 20% together with accrued interest shall be paid by the 8th respondent namely

M/s.ICICI Lombard General Insurance Company Ltd.

14.Now coming to the appeal C.M.A.No.2353 of 2018 filed by the claimants seeking enhancement, it is seen that the salary of the deceased was fixed at Rs.8,000/-. Considering the fact that the deceased was employed as a Foreman and an Accountant in a Power Loom Factory and also factoring the evidence of P.W.3, this Court feels that the salary ought to have been fixed at Rs.10,000/- per month. In so far as the Loss of Estate only a sum of Rs.15,000/- has been awarded and for Loss of Consortium, Rs.40,000/- has been awarded only to the 1st appellant/wife of the deceased.

15.Following the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others,*** reported in ***(2017) 16 SCC 680***, this Court holds that all the claimants are entitled to a sum of Rs.40,000/- and not just the wife of the deceased. In so far as future prospects is concerned, considering the age of the deceased and his employment at the time of his demise i.e. date of accident, 25% would be just and fair. 1/4th deduction made towards personal expenses/contribution of the deceased does not warrant any interference.

16.Applying the above modifications in line with the ratio laid down by the Constitution Bench of the Apex Court, the revised award amount is as follows:

Heads	*Amount awarded by the Tribunal*	*Amount awarded by this Court*	*Amount confirmed or enhanced*
Future Prospects	*Rs.12,60,000/-*	***Rs.15,75,000/-***	***enhanced***
Funeral Expenses	*Rs.15,000/-*	***Rs.15,000/-***	***confirmed***
Loss of Estate	*Rs.15,000/-*	***Rs.15,000/-***	***confirmed***
Loss of consortium	*Rs.40,000/-*	***Rs.2,00,000/-***	***enhanced***
Total	*Rs.13,30,000/-*	***Rs.18,05,000/-***	***Enhanced by Rs.4,75,000/-***

17.The amounts to be deposited, after adjusting any amount paid pending the proceedings shall be deposited by the said Insurance Company, within a period of four weeks from the date of receipt of a copy of this judgment, and the claimants shall be at liberty to take appropriate steps, in a manner known to law and seek payment out.

18.As a result, both the Civil Miscellaneous Appeals are partly allowed, enhancing the award amount in C.M.A.No.2353 of 2018 to **Rs.18,05,000/-(Rupees Eighteen Lakhs and Five Thousand only)** payable together with interest at 7.5% per annum from the date of claim petition till the respective dates of deposit being made by the two Insurance Companies. The liability of the appellant/Insurance Company, namely, M/s.United India Insurance Company Ltd., in C.M.A.No.2609 of 2018 is fixed at 80% and the liability of the 8th respondent, namely, M/s.ICICI Lombard General Insurance Co. Ltd., in C.M.A.No.2609 of 2018 is fixed at 20% and the said Insurance Companies shall pay the award amount together with accrued interest in the above said proportion. The 1st claimant shall be entitled to 6.5 lakhs; claimants 2, 3 and 4 shall be entitled to Rs.3.5 lakhs each and 5th claimant shall be entitled to Rs.1,05,000/- together with proportionate accrued interest. No costs. Connected miscellaneous petition is closed.

02.03.2023

cda
Internet:Yes
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No

P.B.BALAJI, J.,

cda

To

The Special District Judge,
(Motor Vehicle Accident Claims Tribunal),
Salem.

C.M.A.Nos.2353 and 2609 of 2018

02.03.2023