IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.Nos.1720 and 1722 of 2021

1.Rajeshwari

2.Minor Mithran
Rep. By his next friend Natural guardian
mother Rajeswari
3.Periyasamy
4.Azhagammal ... Appellants
in C.M.A.No.1720 of 2021

Ramkumar ....Appellant
in C.M.A.No.1722 of 2021

Vs.

1.Veeramani

2.The Manager,
The Oriental Insurance Company Limited,
No.73-B, Lakshmi Complex,
Salai Road, Tiruchirappalli. ... Respondents
in both C.M.As

Prayer in C.M.A.No.1720 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount made in the Judgment and Decree dated 15.03.2021 made in M.C.O.P.No.78 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

Prayer in C.M.A.No.1722 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount made in the Judgment and Decree dated 15.03.2021 made in M.C.O.P.No.145 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellants in both CMAs : Mr.S.P.Yuaraj

For R1 in both CMAs : No appearance

For R2 in both CMAs : Mr.J.Chandran

COMMON JUDGMENT

C.M.A.No.1720 of 2021 has been filed by the appellants/claimants seeking to enhance the compensation amount for the death of the 1st claimant's husband namely Govindhan. C.M.A.No.1722 of 2021 has been filed by the appellant/injured claimant seeking to enhance the compensation amount for the injuries sustained by him.

2.The parties are referred to hereunder according to the status and ranking before the trial Court.

3.The case of the claimants is as follows:

The deceased Govindhan was working as Site Foreman in Astorat Ibra Trad and Construction, Sultanate of Oman. He returned to India for vacation and on 01.02.2017, he travelled as a pillion rider along with rider Ramkmar (injured claimant – appellant in CMA1722/2021) in a two wheeler (Honda Dream Yuga) bearing registration No.TN 31 BV 4638 in

Trichy-Chennai NH 45 Road. When they reached Chinnaru Section Road, at about 6.00 p.m., a Ford Car bearing registration No.TN 31 BX 2277 belonging to the 1st respondent and insured with the 2nd respondent driven by its driver in a rash and negligent manner, dashed against the two wheeler, which resulted in causing injuries to both of them. They were taken to Government Hospital, Perambalur. Govindhan died on the way to hospital. The injured Ramkumar taken first aid treatment and for further treatment sent to Private Hospital, Salem. A criminal case was also registered in Crime No.42 of 2017 under sections 279, 337 and 304(A) of IPC on the file of Mangalamedu Police Station.

4. The wife, son, father mother of Govindhan who died in the accident are dependants filed M.C.O.P.No.78 of 2017 claiming Rs.50 lakhs as compensation, under Section 166 of Motor Vehicles Act. The injured Ramkumar filed M.C.O.P.No.145 of 2017, seeks compensation for the disability caused to him.

5. The claim petition was contested by the insurer of the car and the owner of the vehicle has not contested and remained ex-parte.

6. The Insurance Company contended that the accident has not taken place due to negligent act of the driver of the car. The compensation claimed is also on the higher side. The claimants should prove the age,

income, avocation and dependancy.

7. After considering the evidence put forth before the Tribunal, the Tribunal has held that driver of car is tort-feasor and the respondents are liable to pay compensation to the claimants. After fixing the notional monthly income of the deceased as Rs.9,000/-and quantified and awarded. Totally compensation of Rs.18,84,400/-in M.C.O.P.No.78 of 2017.

8. The insurance company has not filed any appeal as against the findings of the tribunal in respect of fixing negligence or liability.

9. The learned counsel for the appellants/claimants submitted that claimants produced various documents to show that the deceased Govindan was working at Oman and was earning 400 Oman Rial per month. Those documents have not been properly appreciated by the Tribunal and the said documents to prove the income of the deceased was totally rejected by the Tribunal without any reason and prays to refix the loss of income and award enhanced compensation.

10. The learned counsel for the Insurance Company-2nd respondent herein, submitted that the claimants have not proved the employment of the deceased and the documents produced also only shown that he was

under contract for employment for two years and it was only temporary employment, hence the Tribunal has rightly rejected the said evidence.

11. I have considered the submissions of learned counsel for both sides and perused the records.

12. Before the trial Court, in support of the petitioners/claimants claim, PW1 to PW4 were examined and EX.P1 to P34 and EX.C1 were marked. On behalf of the 2nd respondent, RW1 to RW3 were examined, Ex.R1 to Ex.R4 have been marked.

13. P.W.1 is the wife of the deceased Govindhan and she deposed that her husband was working as site supervisor at abroad and he returned to India on 18.12.2016 and the accident has taken place on 01.02.2017 and in the accident, he succumbed to the injuries. The basic salary received by the deceased was 400 Oman Rial per month and also other allowances were paid to him. Manivannan- PW4 who was working in the very same company examined and he has stated that the deceased was working in Astorat Ibra Trad and Construction, Sultanate of Oman as site Foreman and earned 400 Oman Rial per month. Ex.P.5, copy of the passport was marked to show that the deceased was working at Oman wherein it is stated that he was at Oman from 2012 to 2016 and his visa period expires on 23.03.2017. Ex.P7 is the salary certificate issued by the

Astorat Ibra Trad. and Construction, Sultanate of Oman, stating that he was earning basic salary of 400 Oman Rial, which includes other allowances and that the deceased was working there from 22.03.2011. Ex.P8 is the card issued by the Sultanate showing that he is entitled to stay at Oman till 20.03.2017.

14. It is true that working visa issued by the employer expired on 23.03.2017. The letter issued by the company, in which the deceased was working shows that he was working there from the year 2013 onwards. The Insurance company has not produced any contra evidence or contested that the deceased was not at all employed at Oman as claimed by the claimants. RW3/Insurance official deposed that the deceased was employed at Oman prior to return to India. He came under visa period and was employed at Oman from the year 2013. This fact has not been properly appreciated by the Tribunal. The evidence placed on record shows that, the deceased was having working visa as on the date of accident. Ex.P.8 shows that deceased was eligible to stay and work till 23.03.2017. He came to India for vacation on 18.12.2014. The passport and evidence of P.W.4 supports the case of claimants that he was earning 400 Rial per month. The claimants have proved the income of deceased and there is reason to reject the evidence of P.W.1, P.W.4 and other

documentary evidences. Accordingly, this Court accepts the case of the claimants that, deceased was working at Sultanate of Oman and was earning 400 Rial per month.

15. In catena of decisions, it is held that 30% of the income shall be deducted for payment of income tax for the person working in foreign countries. Further, following the Division Bench judgment in ***United India Insurance Company Vs. S.Malarvizhi [CMA.No.2623 of 2009 dated 06.06.2013]***, deduction of 1/3 of amount towards personal expenses is to be followed.

16. Following the decision of the case of ***United India Insurance Co.Ltd., Vs. Patricia Mahajan and others***, reported in ***2002 ACJ 1441***, multiplier 10 is adopted for arriving total loss of dependency. Accordingly, loss of income is awarded as follows:

One Rial when converted to Indian Rupee is Rs.167/-

400 Rial x Rs.167 =66,800/-

1/3 rd deduction towards personal expenses.

40% added for future prospectus

Multiplier – 10,

Annual loss of dependency

66,800 x 12 = 8,01,600/-

8,01,600 x 10 multiplier = 80,16,000/-

80,16,000 – 1/3rd deduction towards personal expenses[2,672,000]

80,16,000 – 2672000 = 53,44,000/-

53,44,000 x 40/100 [21,37,600/- added for future prospects]

53,44,000 + 21,37,600= 74,81,600/-

74,81,600 – 30% income deduction[22,44,480]

7481600 – 2244480= 52,37,120/-.

17. Towards other conventional heads, under the head “loss of consortium”, each petitioners are entitled to Rs.40,000/-.

Accordingly 4 x 40,000 = 1,60,000/- is awarded.

Under the head 'funeral expenses, Rs.15,000/- is awarded and under the head 'loss of estate' , Rs.15,000/- is awarded.

18. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of dependency	Rs.18,14,400/-	Rs.52,37,120/-
2	Loss of Consortium	Rs.40,000/-	(Rs.40,000/-x4)= 1,60,000/-
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.18,84,400/-	Rs.54,27,120/-

19. Insofar as CMA.No.1722 of 2021 is concerned, the claimant is the injured and he is the rider of two wheeler. The injured was sent to medical board for assessing disability and it opined that the injured was not having any disability.

20. PW3/Doctor who treated the injured has deposed that injured sustained severe head injury and brain oedema and surgery was performed, but no disability has been found, however, he could not continue his earlier avocation due to the impact of head injuries. Medical records shows that he was admitted in hospital on 01.02.2017 and discharged on 08.03.2017. After in-patient treatment for more than 36 days, he was re-admitted in the hospital on 10.04.2017 and discharged on 15.04.2017. The Tribunal, considering the period of inpatient treatment has awarded Rs.36,000/- under the loss of earning for the period of 6 months. Similarly, Rs.10,000/- was awarded towards extra nourishment, Rs.10,000/- towards pain and suffering and separately awarded Rs.2,00,000/- towards injuries sustained. Rs.6,72,411/- awarded towards medical expenses and Rs.7500/- towards transportation.

21. Considering the nature of injury on the face as well as brain,

compensation awarded towards "pain and suffering' enhancement will be reasonable and accordingly, Rs.20,000/- is awarded. Further, taking note of the treatment underwent by the injured and the need of attender for his day to day chores, Rs.12,000/- is awarded under the head "Attender Charges'. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed or enhanced or granted or reduced
1	For injuries	Rs.2,00,000/-	Rs.2,00,000/-	confirmed
2	Loss of earning (6,000 x 12)	Rs.36,000/-	Rs. 36,000/-	confirmed
3	Extra nourishment	Rs.10,000/-	Rs.10,000/-	confirmed
4	Pain and suffering	Rs.10,000/-	Rs.20,000/-	enhanced
5	Transportation	Rs.7,500/-	Rs.7,500/-	confirmed
6	Medical Expenses	Rs.6,72,411/-	Rs.6,72,411/-	confirmed
7	Attender charges	-	Rs.12,000/-	granted
	Total	Rs.9,35,911/-	Rs.9,57,911/-	Enhanced by Rs.22,000/-

22. In the result, the appellants in CMA.No.1720 of 2021 are entitled to Rs.54,27,120/- as compensation with interest at the rate of 7.5% per annum. The claimants 1 and 2 are entitled to Rs.25 lakhs;

24,27,120/- respectively. Minor's share shall be deposited in a Nationalised bank until he attains majority. The 3rd and 4th appellants/claimants are entitled to Rs.2.50 lakhs each. the appellants/claimants have to pay the appropriate Court fee, if any, in order to receive the enhanced amount.

23. The appellant/claimant in CMA.No.1722 of 2021 is entitled to Rs.9,57,911/- as compensation along with 7.5% interest per annum.

24. The 2nd respondent-Insurance Company is directed to deposit the balance award amount, less the amount already awarded within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Appellants 1, 3 and 4 in CMA.1720 of 2021 and the appellant in CMA.No.1722 of 2021 are permitted to withdraw their entire share along with accrued interest. No costs.

19.01.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

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To

1.The learned Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR, J.,

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C.M.A.Nos.1720 and 1722 of 2021

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