IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NOS.1925 OF 2022 AND 1688 OF 2024
AND
CMP NO.14262 OF 2022 IN CMA NO.1925 OF 2022

CMA NO.1925 OF 2022

Reliance General Insurance Co. Ltd.,
T.P.Cell
Represented by its Area Manager (Legal)
Claims Department, 6th Floor,
No.6, Reliance House, Haddows Road,
Nungambakkam, Chennai – 600 006. ... Appellant / Respondent No.1

Vs.

1.Rajmohan S/o. Kannappan

2.Minor Lajitha
Rep. by father / Natural Guardian
/ Next Friend - Rajmohan
... Respondents 1&2 / Claimants

3.K.Harikrishnan S/o. Kannan ... Respondent No.3/ Respondent No.1

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated October 27, 2021 passed in M.C.O.P.No.4358 of 2018 on the file of Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant	:	Mr.R.Sunilkumar
For Respondents 1&2	:	Mr.A.G.F.Terry Chella Raja
For Respondent 3	:	*Ex-parte*

CMA NO.1688 OF 2024

1.Rajmohan S/o. Kannappan

2.Minor Lajitha
(Rep. by her father Rajmohan as
Natural Guardian and Next Friend) ... Appellants / Petitioners

Vs.

1.K.Harikrishnan S/o. Kannan

2.Reliance General Insurance Co. Ltd.,
Reliance House, Haddows Road,
Nungambakkam, Chennai – 600 006. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation amount awarded in Award dated October 27, 2021 passed in M.C.O.P.No.4358 of 2018 on the file of Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants	:	Mr.A.G.F.Terry Chella Raja for Mr.V.Velu
For Respondent-1	:	*Ex-parte*
For Respondent-2	:	Mr.R.Sunilkumar

COMMON JUDGMENT

(Judgment of the Court was made by J.NISHA BANU, J.)

These two Civil Miscellaneous Appeals are arising out of the ‘Award dated October 27, 2021, passed in M.C.O.P.No.4358 of 2018’ ['impugned Award' for short] by the 'Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai' ['Tribunal' for short]. The petitioners in the aforesaid Original Petition have filed C.M.A.No.1688 of 2024 seeking enhancement of compensation, while the second respondent/ Insurance Company therein has filed C.M.A.No.1925 of 2022 praying to set aside the impugned Award. This Common Judgment will now dispose of both these Civil Miscellaneous Appeals.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONERS’ CASE:

3. The 1st petitioner is the husband of the deceased – Devi @ Devasheela, while the 2nd petitioner is their minor daughter. On June 12, 2016 at about 11.45 hours, the deceased was travelling in a Car bearing Registration No.TN-19-F-4647 from Chennai to Bangalore. While nearing NG Road, opposite to Tharkamedu Pavithira Hotel, Santhavellore, a foregoing Eicher Lorry bearing Registration No.TN-01-X-7374, driven in a rash and negligent manner, changed lane, applied sudden brake and dashed against the Car, in which the deceased was travelling. Due to the accident, the deceased sustained multiple injuries and died on the spot. At the time of accident, the deceased was aged about 35 years and she was a B.E. (ECE) Graduate, a Post Graduate in M.B.A. (Technology Management – Anna University) and working as a Consultant (Self Employed), thereby earning Rs.75,000/- per month. The 1st respondent is the owner and the 2nd respondent is the insurer of the Eicher Lorry. The petitioners filed Original Petition claiming a compensation of Rs.75,00,000/- from the respondents.

FIRST RESPONDENT'S CASE:

4. The 1st respondent filed counter denying the allegations levelled against him by the petitioners, including the manner of accident, and contended that the petitioners are put to strict proof of the same. He further contended that the accident had occurred due to the unmindful act and rash and negligent driving of the driver of the Car, in which the deceased was travelling. The owner and insurer of the Car have not been impleaded as parties in the claim petition and therefore, it is bad for non-joinder of necessary parties. Further, the compensation claimed by the petitioners is excessive and exorbitant. Accordingly, he prayed to dismiss the claim petition.

4.1. Though the 1st respondent appeared and filed counter, he did not contest the claim petition during enquiry and therefore, he was set *ex-parte* before the Tribunal.

SECOND RESPONDENT'S CASE:

5. The 2nd respondent / Insurance Company filed counter wherein it is stated that the driver of the Car ought to have maintained a safe distance with the foregoing vehicle. The driver of the 1st respondent's lorry did not possess a valid driving licence on the date of accident and thereby violated the terms and conditions of the insurance policy. Further, the petition mentioned averments are false and the petitioners are put to strict proof of the same. Further, the compensation claimed is excessive. Accordingly, the second respondent prayed to dismiss the petition.

TRIBUNAL

6. On the side of the petitioners, 1st petitioner was examined as P.W.1, one R.Muthaiyan, ocular witness to the accident, was examined as P.W.2 and Ex-P.1 to Ex-P.17 were marked. On the side of the 2nd respondent, neither any witness was examined nor any document was marked.

7. The Tribunal, relying on the evidence of P.W.1, P.W.2, as well as Ex-P.1–First Information Report (FIR) and Ex-P.2 – Final Report, concluded that the accident occurred due to the rash and negligent driving of the first respondent's driver. Admittedly the first respondent's lorry was insured with the second respondent and the policy was in force at the time of accident, it held the respondents are jointly and severally liable to pay compensation to the petitioners.

7.1. Further, relying on the evidence of P.W.1 and Ex-P.9 – Pay Slip, the Tribunal fixed notional income of the deceased at Rs.20,000/- per month. Considering the age of the deceased at the time of accident and also relying on the Judgment of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation*** reported in ***(2009) 6***

SCC 121, the Tribunal adopted the multiplier of 16. Further, in accordance with the guidelines laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi*** reported in ***(2017) 16 SCC 680***, the Tribunal fixed future prospects at 40%, and it deducted 1/3rd towards the deceased's personal expenses. Further, it awarded compensation under various heads with interest at the rate of 7.5% per annum from the date of presentation of the petition till the date of realization, as hereunder:

Monthly Income	=	Rs.20,000/-
ADD: Future Prospects 40%	=	Rs.8,000/-
Total Income	=	Rs.28,000/-
Towards Loss of Income / Dependency Rs.28000 x 12 x 16 x 2/3	=	Rs.35,84,000/-
Towards Loss of Estate	=	Rs.15,000/-
Towards Loss of Consortium Rs.40,000/- (Each) x 2	=	Rs.80,000/-
Towards Funeral Expenses	=	Rs.15,000/-
Compensation Payable	**=**	**Rs.36,94,000/-**

8. Challenging the quantum of compensation as excessive, the 2nd respondent/Insurance Company has preferred CMA No.1925 of 2022.

9. Dissatisfied with the quantum of compensation, the petitioners have preferred CMA No.1688 of 2024.

ARGUMENTS:

10. Mr.R.Sunilkumar, learned Counsel for the Insurance Company submits that the Tribunal failed to note that it is a case of contributory negligence. The Car driver ought to have maintained a minimum safe distance from the foregoing first respondent's lorry. Further, the petitioners have not proved the deceased's income. In these circumstances, the Tribunal fixing the income of the deceased at Rs.20,000/- per month solely based on Ex-P.9, which contains Pay Slips for the year 2011 (while the accident occurred in 2016), is not sustainable in law. The Tribunal ought to have considered the fact that the petitioners failed to produce Bank Statement for any other year. Further submits that the compensation under conventional heads are not in line with ***Pranay Sethi's Case*** (*supra*). Accordingly, he prays to allow the Civil Miscellaneous Appeal.

11. Per contra, Mr.A.G.F.Terry Chella Raja, learned Counsel for the claimants / petitioners submits that the Tribunal failed to consider the age, occupation and income of the deceased. At the time of accident, the deceased was aged about 35 years and was earning about Rs.75,000/- per month as a Consultant and she had completed B.E. (Electronics and Communication Engineering) and MBA (Technology Management at Anna University), whereas the Tribunal fixed the income of the deceased as Rs.20,000/- per month for the year 2016 without considering her qualification. The Tribunal ought to have awarded just compensation for the death of the deceased. Accordingly, he prays to enhance the compensation.

DISCUSSION:

12. This Court has heard the learned Counsel for the second respondent / Insurance Company and perused the typed sets of papers and the impugned Award.

13. The learned Counsel for the Insurance Company would contend that the Tribunal ought to have reduced certain amount towards contributory negligence and also claimed that the compensation awarded is on the higher side.

14. This Court is unable to accept the said submissions of the learned Counsel. Contributory negligence is a question of fact and has to be decided only based on the evidence available. This Court finds that there is no evidence on the part of the Insurance Company to prove its contentions. Ex-P.1 - FIR as well as Ex-P.2 – Final Report, which were laid against the first respondent's driver, stands uncontroverted. Further, the evidence of P.W.2, ocular witness to the accident, is also trustworthy and believable. He has deposed against the respondents that the first respondent's lorry's driver was rash and negligent in driving leading to the accident. P.W.1, who is the husband of the deceased, has also deposed in line with the petition averments as regards the manner of accident, attributing negligence on the first respondent's driver. There is no other evidence regarding the manner in which the accident occurred. Therefore, the Tribunal was justified in going by Ex-P.1, Ex-P.2 as well as the evidence of P.W.1 and P.W.2 to conclude that the accident occurred due to the rash and negligent driving by the driver of the 1^{st} respondent's lorry.

15. There is no serious dispute with the fact that the first respondent's lorry was insured with the second respondent and the Insurance Policy was in force on the date of accident. Hence, the Tribunal is justified in holding the 2nd respondent liable to compensate the petitioners.

16. On the quantum, the Tribunal has taken a very fair amount as income. The deceased has completed B.E. (Electronics and Communication Engineering) and then pursued her Post Graduation in M.B.A [Technology Management - Anna University]. P.W.1 has deposed that she was working as a Senior Service Engineer in a private company at Bangalore in 2011, earning Rs.22,000/- per month and that later, in order to take care of their newborn baby, the deceased remained at home as a home maker. Thus, admittedly, the deceased was not working at the time of accident. However, considering her qualifications, the fact that she was working as Senior level Service Engineer in a private company at Bangalore previously, the fact that the accident occurred in 2016, as well as the deceased's age at the time of accident, this Court is of the view that the deceased could have easily earned more than a sum of Rs.20,000/- per month at the time of accident. Though there was finding to show that the claimant was earning Rs.22,000/- per month in the year 2011, the Tribunal has fixed the monthly income including future prospects at Rs.28,000/-, which appears to be just and reasonable. This Court does not see a case for reduction of the said fixation made by the Tribunal.

17. Relying on Ex-P.11 – Passport of the deceased, the Tribunal found that her age at the time of accident was 33 years. The Tribunal has rightly applied the multiplier of 16, taken future prospects at 40% and deducted 1/3rd of the deceased's income towards her personal expenses, bearing in mind the age of the deceased at the time of accident and that she was married. The compensation awarded by the Tribunal under the head of loss of income is in tune with ***Sarla Verma's Case*** and ***Pranay Sethi's Case*** (cited *supra*).

18. Further, the compensation under the conventional heads awarded by the Tribunal are in tune with ***Pranay Sethi's Case***. Hence, this Court finds no merit in the Civil Miscellaneous Appeal filed by the Insurance Company in CMA No.1925 of 2022 and the same deserves to be dismissed.

19. Considering the peculiar facts and circumstances of the case, as well as the dispositive reasons stated *supra*, this Court does not think that it is a fit case for enhancement of the quantum of compensation awarded by the Tribunal and accordingly, the Civil Miscellaneous Appeal in CMA No.1688 of 2024 filed by the petitioners / claimants also deserves to be dismissed.

CONCLUSION:

20. Resultantly, both these Civil Miscellaneous Appeals are dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition in CMP No.14262 of 2022 in CMA No.1925 of 2022 is closed.

[J.N.B., J.] **[R.S.V., J.]**

03.12.2024

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

J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

TK

To

The Motor Accidents Claims Tribunal
Chief Judge
Court of Small Causes
Chennai.

CMA NOS.1925 OF 2022 & 1688 OF 2024

03.12.2024