IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.12.2023

Judgment Delivered on : 05.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

Civil Miscellaneous Appeal Nos. 703 & 704 of 2022
and
CMP.Nos. 5124 & 5129 of 2022
and
CMP.No. 18496 & 18521 of 2023
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The Manager
Reliance General Insurance Company Limited
No. 15/29, 3rd Floor, North Usman Road
T. Nagar, Chennai – 600 017 .. Appellant
[In both CMAs]

Versus

1.S. Selvaraj
2. S. Kala
3. Minor V.K. Varshini
Represented by her father
and next friend Mr.S.Selvaraj

4.M. Maragatham
5.V. Ponnusamy ..Respondents
[In CMA.No.703/2022]

1. R.Kalimuthu
2. K. Nachamai
3. Minor K. Mohana Rajesh
4. R. Ramasamy
5. R. Saraswathi
6. V. Ponnusamy ...Respondents

[In CMA.No.704/2022]

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, prays to set aside the decree and judgment in MCOP.Nos. 6180 and 6181 of 2013, dated 21.07.2020 passed by the Motor Accident Claims Tribunal-II, Court of Small Causes, Chennai, respectively.

For Appellant : Ms. C. Bhuvanasundari [In both CMAs]

For RR1 to R4 : Mr. R. Sevugaraja [In CMA.703/2022]
For RR1 to R5 : Mr. R. Sevugaraja [In CMA.704/2022]

For R5 in CMA.703/2022: Set Exparte before the Tribunal
For R6 in CMA.704/2022: Set Exparte before the Tribunal

COMMON JUDGMENT

N. SENTHILKUMAR, J.

These two appeals, namely, CMA.Nos. 703 and 704 of 2022 arise out of the award dated 21.07.2020 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes, Chennai). The Insurance Company is the appellant.

2. MCOP.No. 6180 of 2013 was filed by the legal heirs of the deceased S.K. Madhan who was the pillion rider on the fateful day in the motor-cycle. MCOP.No. 6181 of 2013 was filed by the dependents of Lokesh the rider of the Motor Cycle.

3. Both the claim petitions have been filed by contending that on 01.12.2012, the deceased Lokesh was driving the two wheeler bearing Registration No. TN-10-AJ-3282 on the extreme left side of the road near Arunachalam and Pangajam Road, in front of the ICICI ATM Centre, Saligramam, Chennai with S.K. Madhan as a pillion rider. At that time, a Tata Indica Car bearing Registration No. TN-09-BF-3240 came from the opposite direction in a rash and negligent manner on the wrong side and dashed against the two wheeler driven by Lokesh. Due to the impact, both the driver and pillion rider of the two wheeler were thrown out and sustained grievous injuries all over the body. They were taken to Sooriya Hospital, Saligramam, Chennai, where they were treated as inpatients for a day. Unfortunately, on the next day, namely, 02.12.2012 both the rider and pillion rider, who were young in their age, succumbed to the injuries.

4. Seeking compensation for the death of the rider of the two wheeler namely Lokesh in MCOP.No. 6181 of 2013, was filed by his legal heirs, claiming a sum of Rs.49,00,000/- as compensation but restricted it to Rs.30,00,000/-.

5. For the death of the pillion rider S.K. Madhan, his legal heirs have filed MCOP.No. 6180 of 2013 seeking a compensation of Rs.39,00,000/-, however they restricted it to Rs.25,00,000/-.

6. In both the MCOP. Nos.6180 and 6181 of 2013, counter affidavit has been filed by the appellant/Insurance Company contending *inter alia* that the accident was caused due to the negligent driving of the two wheeler driven by Lokesh (deceased in MCOP. No. 6181/2013) and therefore, contributory negligence is on the part of the said rider. It was, therefore, contended that Lokesh (deceased MCOP. No.6181/2013) has contributed to the accident in entirety. It is further contended that the rider of the two wheeler is the tortfeasor and therefore, the claim for compensation made by his legal heirs cannot be sustained. It was contended that the Insurance Company is not liable to pay any compensation to the claimants in MCOP. Nos. 6180 and 6181 of 2013. Above all, it was contended that the deceased were students and they are not the earning members, in any way contributing to their families monetarily. While so, the question of seeking compensation will not arise. The Insurance Company also denied the age and other particulars furnished by the claimants in the claim petitions.

7. Before the Tribunal, in MCOP. No. 6180 of 2013 filed for the death of the deceased S.K. Madhan (Pillion Rider) Selvaraj, who is his father examined himself as PW1 and Sekar, who is the complainant, was examined as PW2. Ex.P1 to Ex.P17 were marked. On behalf of the respondents in MCOP.No. 6180 of 2013 no document was marked or witness was examined.

8. In MCOP. No. 6181 of 2013 filed by the legal heirs of the deceased Lokesh (the rider of the two wheeler) is his father Kalimuthu was examined as PW1 and Sekar, complainant was examined as PW2. Ex.P1 to Ex.P18 were marked. On behalf of the respondents in MCOP.No. 6181 of 2013 no document was marked or witness was examined.

9. The Tribunal on considering the oral and documentary evidence and taking note of the fact that the First Information Report as well as Charge Sheet were registered as against the driver of the Tata Indica Car, concluded that it is the driver of the Car who was negligent in driving the vehicle due to which two young lives were lost. For the purpose of awarding pecuniary compensation, the Tribunal had taken the notional income of the deceased S.K. Madhan (Pillion Rider) as Rs.10,000/- and added 50% thereof towards future prospects and worked out the monthly earning at Rs.15,000/- and annual earning at Rs.1,80,000/-, By giving 50% deduction towards personal expenses, the annual contribution of the deceased was worked out at Rs.90,000. By applying multiplier 18, a sum of Rs.16,20,000/- was awarded towards loss of dependency. In all the Tribunal has awarded a total sum of Rs.20,00,000/- under the following heads:-

Sl. No.	Heads awarded by the Tribunal	Amount (in Rs.)
1	Loss of Dependency	16,20,000
2	Loss of Filial Consortium	2,00,000
3	Loss of Love and Affection	1,00,000
4	Medical Expenses	50,000
5	Loss of Estate	15,000
6	Funeral Expenses	15,000

Total	**20,00,000**

10. Insofar as the claim petition in MCOP. No. 6181 of 2013 is concerned, which was filed by the legal heirs of the deceased Lokesh (the rider of the two wheeler), the Tribunal has taken a sum of Rs.15,000/- as his notional income, added 50% towards future prospects and arrived at a sum of Rs.22,500/- as his notional income per month and Rs.2,70,000/- as his annual income. By applying 50% deduction for his personal expenses and by applying multiplier 18 a sum of Rs.24,30,000/- was awarded towards loss of dependency. In all a total sum of Rs.27,60,000/- was awarded in MCOP.No. 6181 of 2013 as follows:-

Sl.No.	Heads awarded by the Tribunal	Amount (in Rs.)
1	Loss of Dependency	24,30,000
2	Loss of Filial Consortium	2,00,000
3	Loss of Love and Affection	50,000
4	Medical Expenses	50,000
5	Loss of Estate	15,000
6	Funeral Expenses	15,000
	Total	**27,60,000**

11. Assailing the aforesaid awards passed by the Tribunal, the learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal did not take note of the fact that the due to rash and negligent driving of the two wheeler by the deceased Lokesh, the accident had taken place and therefore, the Tribunal ought to have apportioned 50% towards contributory negligence but it failed to do so. The notional income of Rs.10,000/- for the pillion rider and Rs.15,000/- for the rider of the two wheeler taken by the Tribunal is excessive. Admittedly, when both the rider and pillion rider were students and the claimants have not produced any document to show that they have lost the income of the deceased, in any manner, the fixation of notional income by the Tribunal is *per se* unsustainable. In any event, the sum of Rs.50,000/- awarded towards the medical expenses, Rs.1,00,000/- awarded towards loss of love and affection, apart from compensation towards filial consortium are excessive and it is liable to be interfered with. It is also contended that adding 50% towards future prospects is contrary to the decision of the Honourable Supreme Court in *Pranay Sethi's* case where future prospects should be added at 40% only.

12. On the above contentions, we have heard the learned counsel appearing for the respective claimants in these appeals and perused the materials placed on record.

13. It is an admitted fact that both the deceased in this case died at a young age. It is no doubt true that had the deceased been alive, they would have definitely earned and financially supported their respective family. However, they lost their life in their young age. It is also not in dispute that the driver of the Tata Indica Car was found to be responsible for the accident. The First Information Report exhibited as Ex.P.1,was registered against him and later charge sheet was also filed. Even though on behalf of the Insurance Company it was contended that the claimants have contributed to the accident, the Insurance Company failed to mark any document or examine witness in support of the defence. In the absence of any document or examination of witness, the arguments advanced on behalf of the appellant/Insurance Company cannot be countenanced. Therefore, the question of contributory negligence will not arise in this case.

14. As far as the award of compensation it is no doubt true that both the deceased in these cases are students. While the deceased in MCOP.No. 6180 of 2013 was 17 years at the time of accident, the deceased in MCOP. No. 6181 of 2013 was 19 year old. Both of them are students, pursuing their education. Therefore, the Tribunal fixed a sum of Rs.10,000/- and Rs.15,000/- respectively as their notional income. However, we find that the accident had taken place in the year 2012 and therefore, fixation of Rs.15,000/- as notional income in respect of CMA No. 704 of 2022 is not warranted. Further, we find that fixation of 50% towards future prospects in both the cases is also liable to be scaled down in the light of the decision of the Honourable Supreme Court in National Insurance Company -Vs- Pranay Sethi & others. Accordingly, we modify the awards passed by the Tribunal as follows:-

<u>CMA No. 703 of 2022 (MCOP No. 6180 of 2013)</u>

Notional Income Rs.10,000/- Plus 40% future prospects (instead of 50%)

(Rs.10,000 + Rs.4,000) Rs.14,000/- X 12 X 18	= Rs.30,24,000/-
Less 50% towards personal expenses	= Rs.15,12,000/-
Loss of dependency	= Rs.15,12,000/-

15. In effect, the compensation amount payable to the claimants in C.M.A. No. 703 of 2022 is re-calculated as follows:-

Sl. No.	**Heads awarded by the Tribunal**	**Amount (in Rs.)**
1	Loss of Dependency	15,12,000
2	Loss of Consortium & Love and Affection (Rs.40,000 x 4)	1,60,000
4	Medical Expenses	50,000
5	Loss of Estate	15,000
6	Funeral Expenses	15,000
	Total	**17,52,000**

<u>CMA No.704 of 2022 (MCOP No. 6181 of 2013)</u>

Notional Income Rs.13,000/- Plus 40% future prospects
(Rs.13,000 + Rs.5,200) Rs.18,200/- X 12 X 18 = Rs.39,31,200/-
Less 50% towards personal expenses = Rs.19,65,600/-
Loss of dependency = Rs.19,65,600/-

16. In effect, the compensation amount payable to the claimants in C.M.A. No. 704 of 2022 is modified and re-calculated as follows:-

Sl. No.	**Heads awarded by the Tribunal**	**Amount (in Rs.)**
1	Loss of Dependency	19,65,600
2	Loss of Consortium & Love and Affection (Rs.40,000 x 5)	2,00,000

4	Medical Expenses	50,000
5	Loss of Estate	15,000
6	Funeral Expenses	15,000
	Total	**22,45,600**

17. In all other respects, we do not find any reason to interfere with the award passed by the Tribunal and therefore, the compensation awarded by the Tribunal in respect of other heads in both the Original Petitions are hereby confirmed.

18. In the result, both the Civil Miscellaneous Appeals are partly allowed by reducing the compensation amount awarded by the Tribunal in the Award dated 21.07.2020 in MCOP.Nos. 6180 and 6181 of 2013, to the extent indicated above.

19. The appellant-Insurance company is directed to deposit the compensation amount, as determined by us, in these appeals, less the amount already deposited, if any, together with interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this common judgment.

20. Apportionment in CMA.No. 703 of 2022 (MCOP.No. 6180 of 2013), the compensation equally among the claimants 1 and 2 who are the parents of the deceased. The claimants 3 and 4 being the sister and grand-mother of the deceased are not entitled any amount as compensation. On deposit being made by the insurance company, the claimants 1 and 2 are permitted to withdraw the entire compensation amount with interest as aforementioned. The direction was given by the Tribunal to deposit 50% compensation amount in any Nationalized Bank is set aside.

21. In CMA.No. 704 of 2022 (MCOP.No. 6181 of 2013) the compensation is apportioned equally among the claimants 1 and 2 who are the parents of the deceased. The claimants 3, 4 and 5 who are brother and grand parents of the deceased are not entitled to any compensation. The Insurance Company is directed to deposit the balance compensation amount, less, if any, already deposited within a period of 8 weeks from the date of receipt of this common judgment. On such deposit being made, the claimants 1 and 2 are permitted to withdraw the entire compensation amount with interest as aforementioned. The direction was given by the Tribunal to deposit 50% compensation amount in any Nationalized Bank is set aside. No costs.

[R.S.M., J] [N.S., J]
05.01.2024

Index:Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
MSM

To

1. The II Court of Small Causes,
   Motor Accident Claims Tribunal, Chennai.
2. The Manager
   Reliance General Insurance Company Limited
   No. 15/29, 3rd Floor, North Usman Road
   T. Nagar, Chennai – 600 017.

R. SUBRAMANIAN, J
and
N. SENTHILKUMAR, J

MSM

Pre-Delivery Common Judgment in
CMA.Nos. 703 & 704 of 2022

Delivered on
05.01.2024