



WEB COPY

CMA No.710 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.710 of 2023
and CMP No.6273 of 2023

1.United India Insurance Co., Ltd.,
No.5, Periya Kadai Veedhi
Tarapuram Branch
Tiruppur District.

2.United India Insurance Co., Ltd.,
No.5, Periya Kadai Veedhi
Tarapuram Branch
Tiruppur District.

.. Appellants

.Vs

Amsatthal (deceased)
(As per amendment petition no.758/2021
dated 23.11.2021)

1.Manogaran

2.Valliammal

3.Manivel

.. Respondents



CMA No.710 of 2023

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.1037 of 2018, dated 26.10.2022, on the file of Subordinate Judge, MACT - Kangeyam, Tiruppur District.

For Appellants : Mr.P.Sankaranarayanan

For Respondents : Mr.MA.P.Thangavel

for R1 & R2

JUDGMENT

The Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal, Subordinate Judge, Kangeyam, Tiruppur District in M.C.O.P.No.1037 of 2018, dated 26.10.2022, has filed the present appeal before this Court questioning the quantum of compensation determined by the Tribunal.

2.The claimants who were the wife, son and mother of the deceased Sundaram @ Mohanasundaram filed the claim petition on the ground that on 27.05.2018, the deceased was riding a vehicle and his son who is a 2nd claimant was a pillion rider and they were travelling at Kangeyam to Sennimalai Road at about 6.15 a.m., and they had parked the vehicle near SPS Engineering Lethe Works and were involved in a discussion. At that point of time, the offending



CMA No.710 of 2023

vehicle which was a Jeep and which was coming in the same direction dashed on the deceased Sundaram @ Mohanasundaram and he died on the spot. An FIR came to be registered in Crime No.270 of 2018, against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle viz; the Jeep. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.17,90,000/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of future Prospects	16,80,000/-
2.	Loss of love and affection (2 x Rs.40,000)	80,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	17,90,000/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.



CMA No.710 of 2023

WEB COPY

5.The insurance company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.

6.Heard Mr.P.Sankaranarayanan, learned counsel for the appellants and Mr.MA.P.Thangavel, learned counsel for R1 & R2.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also gone through the award passed by the Tribunal.

8.The main thrust of the argument on the side of the appellant is with regard to the compensation that was fixed under the head 'loss of income/dependency'. The learned counsel for the appellant questioned the fixation of compensation both on the ground of fixation of the monthly income of the deceased as well as on the ground that the claimants have not lost any income after the demise of the deceased since the son was continuing with the business and was earning income and was taking care of the family.

9.The Tribunal had taken into consideration Ex.P.9 and Ex.P.10 while coming to the conclusion that the deceased was owning certain lands. The



Tribunal also considered Ex.P.11 and Ex.P.12 and came to a conclusion that the deceased Sundaram @ Mohanasundaram was running the business of Blue Metals and was having a crusher unit. That apart, he was also running an Oil Mill in the name and style of Sivanmalai Andavar Industries.

10.The Tribunal took into consideration Ex.P.13 to Ex.P.16 which are the income tax returns filed in the name of the deceased for the assessment years 2014-2018. The Tribunal specifically considered Ex.P.16 which was the income tax return for the assessment year 2017-2018. The Tribunal found that the deceased had a gross total income of Rs.3,68,614/- and hence fixed the monthly income at Rs.30,000/-. The same was taken into consideration while calculating the compensation under the head loss of income/dependency. The Tribunal had also deducted 1/3rd towards the personal expenditure of the deceased.

11.The main thrust of the argument, as noted above is regarding the monthly income that was fixed by the Tribunal. It was contended that the Tribunal had taken into account the gross total income without considering the deductions. This Court carefully went through Ex.P.16. On going through the same, it is seen that the deceased was having an independent income of nearly Rs.6,22,589/-. After various deductions, his income was calculated as Rs.3,68,614/-. This is a document of sterling quality with unimpeachable



CMA No.710 of 2023

character since this was the income tax return which was filed by the deceased during his lifetime and at the time of filing this income tax return, the deceased would not have imagined that this would be used for determining the compensation after his unfortunate death in an accident. Therefore, the Tribunal had rightly relied upon Ex.P.16 and determined the monthly income at Rs.30,000/-.

12.The next limb of the argument on the side of the appellant is that the son of the deceased has taken over the business and he was also earning income and therefore, there was no loss of income for the family and that the same was not considered by the Tribunal.

13.To appreciate the above stand taken by the appellant, it is necessary to carefully consider the evidence of PW.1. PW.1 is none other than the son of the deceased and he is the 2nd claimant in this case. PW.1 in his chief examination has specifically stated as follows:

விபத்து சமயம் எனது தகப்பனாருக்கு வயது 62 ஆகும்.
அவர் விபத்திற்கு முன்பு நன்கு ஆரோக்கியமாகவும்,
திடகாத்திரமாகவும் இருந்து வந்தார். விபத்திற்கு முன்பு எனது
தகப்பனார் விவசாயம் செய்தும், கணபதி புரூ மெட்டல்ஸ் என்ற



WEB COPY



CMA No.710 of 2023

பெயரில் ஜல்லி கிராமம் நடத்தி வந்தார் மற்றும் சிவன்மலை ஆண்டாவர் ஆயில்மில் என்ற பெயரில் தேங்காய் எண்ணெய் மில் நடத்தி வந்து மொத்தமாக மாதம் ரூ.1,00,000/- வரை சம்பாதித்து வந்தார். வருமான வரியம் என் தகப்பனார் கட்டி வந்தார். (PAN CARD) No.BZJPS4001A. என் தகப்பனார் தனது சம்பாத்தியம் முழுவதையும் எங்களது குடும்பத்திற்காகவே செலவு செய்து வந்தார். எனது தகப்பனரின் இறப்பிற்கு பின்னிட்டு எங்கள் குடும்ப உறுப்பினர்கள் அனைவரும் மிகுந்த கஷ்ட ஜீவனம் செய்து வருகிறோம். மேலும் என் தாயார் என் தகப்பனரின் இறப்பினால் மிகுந்த மனவேதனை அடைந்த நிலையில் உடல்நலக்குறைபாடு ஏற்பட்டு கடந்த 03.05.2021-ந் தேதி இறந்துவிட்டார், அவரது இறப்புச்சான்று தாக்கல் செய்யப்பட்டுள்ளது. என் தாயாருக்கு சட்டப்படியான வாரிசு 2-ம் மனுதாரரான நான் ஒருவர் மட்டுமே ஆவேன். அவரது இறப்பு குறித்து இந்த வழக்கில் அசல் மனுவினை திருத்தல் யெய்ய வேண்டி மனு தாக்கல் செய்து 23.11.2021-ல் அம்மனு அனுமதிக்கப்பட்டு இ.ம.எண்.758/2021-ன்படி அசல் திருத்தல் மனுவும் சமீகம் நீதிமன்றத்தில் தாக்கல் செய்யப்பட்டுள்ளது.

14.It is quite clear from the above evidence of PW.1 that it is the deceased who was running the business and was earning the income and



CMA No.710 of 2023

through that income, he was taking care of the family. It must be seen as to whether this evidence tendered by PW.1 in the chief examination has been discredited in the cross examination. For that purpose, the relevant portion in the cross examination is extracted under:

நான் BA வரை படித்துள்ளேன். தற்போது எனது
தந்தை செய்த தொழிலை நடத்திவருகிறேன்.

15.The learned counsel for the appellant submitted that since the son has taken over the business, there is absolutely no loss of income for the family and therefore, this factor will have a lot of significance while determining the compensation under the head loss of income/dependency.

16.While appreciating the evidence, there is no scope for assumptions and conjectures. The evidence can only be read as a whole and the Court is expected to appreciate the same from the stand point of view of a prudent man. When the son has taken a very specific stand in the chief examination regarding the business conducted by the deceased, the income earned by him and also of the fact that he was taking care of the family, not a single question has been put to PW.1 in the cross examination, to counter any of the stand taken in the chief examination.



WEB COPY

17. When the cross examination of PW.1 was conducted, the learned counsel appearing for the insurance company should have put questions to PW.1 by asking him as to whether he was also involved in the business and in the agricultural activities along with his father. The next question should have been as to whether he is continuing to do the business and is taking care of the agricultural activity. The third question must be as to what is the income that is earned by him in the business and in the agricultural activities after the demise of his father. The fourth question should have been as to whether he is also taking care of his mother and his grand mother. The answers that are given to all these questions would have clearly brought out the fact regarding the income that is continued to be earned by the son of the deceased and his contribution to the family. In the absence of any of these questions, just because PW.1 says in the cross examination that he was continuing to do the business of the father, Court cannot assume that he is earning income and he is also contributing it to the family. Running a business per se does not result in earning profits/income. Many times it also ends up in loss and ends up without income. Sometimes it also pushes a person into a debt trap.

18. The case in hand is yet another instance where this Court is able to notice the deterioration in the art of cross examination in the trial Courts. In the case in hand, PW.1 should have been subjected to a detailed cross examination



CMA No.710 of 2023

based on his statements made in the chief examination and by showing the relevant documents. However, no questions have been put to PW.1 to discredit his evidence. This Court has time and again lamented that the advocates are loosing the skill of cross examination which is considered to be the crown in the art of advocacy. On a regular basis, this Court is able to painfully notice that this art is being lost quite drastically and I shudder to think as to what will be fate of clients who depend upon the advocates to safeguard their rights before a Court of law and find that the advocates are not possessing the skill of cross examination in a trial Court. It must also be borne in mind that in the absence of laying a good foundation before the Trial Court, the structure cannot be built before an appellate Court and such a structure will naturally crumble because of a very weak foundation. The case in hand is a clear sample for an attempt being made to build up a structure in the appeal without laying a strong foundation before the Tribunal. This Court hopes that the above lament falls in the ears of the upcoming junior advocates who are expected to horn their skills in cross examination atleast in future.

19.In the light of the above discussion, this Court holds that the finding rendered by the Tribunal does not suffer from any illegality or infirmity and the same is not liable to the interfered by this Court and accordingly, the civil miscellaneous appeal stands dismissed.



CMA No.710 of 2023

WEB COPY

20.The appellant Insurance Company is directed to deposit the compensation, less the amount already deposited, together with interest at the rate of 7.5% p.a, from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. It goes without saying that the pay and recovery that was directed by the Tribunal shall enure in favour of the insurance company after the payment of the compensation to the claimants. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2024

Index : Yes
Speaking Order
Neutral citation : Yes
KP

To

Subordinate Judge
MACT – Kangeyam
Tiruppur District.



WEB COPY



CMA No.710 of 2023

N. ANAND VENKATESH, J
KP

CMA No.710 of 2023

04.07.2024