In the High Court of Judicature at Madras

Dated : 24.6.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal No.2344 of 2014 and M.P.Nos.1 of 2014 & 1 of 2015 and Cross Objection No.112/2014

The Oriental Insurance Company Limited,
Chennai-108. ...Appellant in CMA & R1 in Cross Objection

Vs

1.Bhola Raut
2.Bhagabati Devi
3.Kabali Kumari
4.Pabil Kumari
5.Nith Kumari ...R1 to R5 in CMA& Cross Objectors

6.S.Narayanan ...R6 in CMA & R2 in Cross Objection

APPEAL under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection under Order XLI Rule 22 of the Civil Procedure Code against the order dated 19.3.2014 made in M.C.O.P.No.4919 of 2012 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant in CMA & R1 in Cross Objection : Mr.S.Manohar
For Respondents 1 to 5 in CMA & Cross objectors : Mr.V.Velu
For Respondent-6 in CMA & R2 in Cross Ojbection : No appearance

COMMON JUDGMENT
(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J)

This appeal and cross objection arise out of an award passed by the Motor Accidents Claims Tribunal.

2. Heard Mr.S.Manohar, learned counsel appearing for the Insurance Company and Mr.V.Velu, learned counsel appearing for the claimants.

3. In a road traffic accident that occurred on 21.4.2012, a person by name Sunnu Kumar died. Therefore, his parents and three unmarried sisters, claiming to be dependants, filed a claim petition in M.C.O.P.No.4919 of 2012 on the file of the Motor Accidents Claims Tribunal, Chennai. By an award dated 19.3.2014, the Tribunal awarded a compensation of Rs.22,36,000/-. Aggrieved by the said award, the Insurance Company has come up with the above appeal. The claimants also have come up with cross objection seeking enhancement.

4. On facts, it is seen that the deceased was a bachelor and he was actually travelling in a TATA 207 vehicle. The claimants contended that he was engaged as a loadman by a transport operator and that therefore, he was made to travel in the van involved in the accident, in the course of his employment. They also claimed that he died at the age of 20 leaving behind his parents and three unmarried sisters. According to the claimants, he was earning a monthly income of Rs.15,000/-.

5. Before the Tribunal, the father of the deceased was examined as P.W.1. One eyewitness was examined as P.W.2 and the employer of the deceased was examined as P.W.3. The salary certificate was marked as Ex.P.6. On the side of the

Insurance Company, an employee was examined as R.W.1 and a private investigator was examined as R.W.2.

6. In the absence of any independent evidence to the contrary, the Tribunal took the age of the deceased as 20 years, both on the basis of the oral evidence and also on the basis of the post mortem report, marked as Ex.P.2. On the said finding, we cannot interfere in view of the fact that there was no contra evidence.

7. The main grievance of the Insurance Company is that the monthly salary of the deceased was taken to be Rs.15,000/- and that the Tribunal unnecessarily added 30% towards future prospects, to arrive at Rs.19,500/- as the future income.

8. But, it is seen that the Tribunal went on the basis of the salary certificate produced as Ex.P.6. As per the evidence of P.W.3, the deceased was paid Rs.500/- per day, totalling to Rs.15,000/-. But, what the Tribunal did was that it took into account Rs.12,000/- per month as per the salary certificate and also took Rs.100/- per day as batta. The amount of Rs.100/- per day was not borne out by the proof affidavit filed by P.W.3 in lieu of chief examination. Therefore, we are of the view that the Tribunal ought to have taken only Rs.12,000/- as the salary and not Rs.15,000/- per month.

9. Though Mr.V.Velu, learned counsel for the claimants contended that an increase of 30% towards future prospects is inadequate and the addition of 50% should have been made, we are of the view that the addition need not be interfered with. The issue as to whether there should be an addition at all, is now pending before a Larger Bench, upon a reference. Therefore, at this stage, we do not wish to make the addition of 30% towards future prospects into 50%.

10. On all other issues, we find that the amounts fixed by the Tribunal were just and proper. The Tribunal has deducted 50% for personal expenses, since the deceased was a bachelor. The same is perfectly in order. The amount of Rs.20,000/- towards funeral expenses, the amount of Rs.1 lakh towards loss of love and affection and the amount of Rs.10,000/- towards transportation charges cannot be said to be of a high order. Therefore, we find no reason to interfere with the award of the Tribunal except to the extent that the monthly income was taken to be Rs.15,000/- on the basis of the claim that batta of Rs.100/- per day was paid. The monthly income ought to have been taken as Rs.12,000/-.

11. If monthly income is taken as Rs.12,000/- and an addition of 30% towards future prospects is made, the total income would come to Rs.15,600/-. If 50% of the same is deducted towards personal expenses, the loss of income would come to Rs.7,800/-. Since the age of the deceased was 20, the Tribunal applied the correct multiplier of 18. Therefore, the amount payable towards loss of dependency would come to Rs.17,34,800. To this amount, a sum of Rs.1,30,000/- (Rs.20,000/- towards funeral expenses, Rs.1 lakh towards loss of love and affection and Rs.10,000/- towards transportation charges) are to be added. If so, the amount payable would come to Rs.18,64,800/-.

12. The learned counsel for the appellant also raised an objection on the ground that the driver of the vehicle did not have a valid licence for driving TATA vehicle.

13. But, the said contention will not advance the cause of the appellant. As a matter of fact, the Insurance Company did not dispute the fact that the deceased

was employed by the transporter. On the contrary, their only claim in the counter filed before the Tribunal was that the claimants ought to have gone only before the Workmen's Compensation Commissioner. Moreover, this is a point, on which, the Insurance Company can claim the amount from the owner of the vehicle. But, they cannot deprive the legal heirs of the deceased from claiming compensation.

14. Therefore, leaving it open to the Insurance Company to pay and recover against the owner, the civil miscellaneous appeal and the cross objection are disposed of to the following effect :

(i) The amount payable shall be Rs.18,64,800/- (Rupees eighteen lakhs sixty four thousand and eight hundred only), which shall be paid in the same proportion as ordered by the Tribunal, together with interest and costs.

(ii) Since the entire amount has already been deposited, the claimants are permitted to withdraw their respective shares and

(iii) If there is any excess amount lying to the credit of the claim petition, the same shall be refunded to the Insurance Company.

No costs. Consequently, the above MPs are closed.

24.6.2015

Internet : Yes

To
The Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

RS

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

RS

CMA(NPD)No.2344/2014 and
M.P.Nos.1 of 2014 & 1 of 2015
&Cross Objection No.112/2014

24.6.2015