IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

THE HONOURABLE Mr. JUSTICE N. KIRUBAKARAN

C.M.A.No.2501 of 2014

and M.P.No.1 of 2014

Cross Objection No.118 of 2014

The Oriental Insurance Co. Ltd.,
1 floor, Vadapalani, Chennai. ..Appellant/3rd respondent

.vs.

1.Devi @ Mohanasundari

2.K.Chidambaram

3.Sri Ayyappan Cylinders,
Krishnapuram,
Vijayamangalam,
Perundurai.

4.R.Mani

5.Manimekalai Respondents/petitioners Respondents 1,2,4 and 5

(2nd and 3rd respondents remained ex-parte before the trial Court and therefore, the summons to 2nd and 3rd respondent may be dispensed with)

Cross Objection No.118 of 2014

1.Devi @ Mohanasundari ..Cross Objector/1st respondent/petitioner

/vs/

1.The Oriental Insurance Co. Ltd.,
1 floor, Vadapalani, Chennai.

2.K.Chidambaram

3.Sri Ayyappan Cylinders,
Krishnapuram,
Vijayamangalam,
Perundurai.

4.R.Mani

5.Manimekalai ..Respondents/Appellant/ 3rd respondent & Respondents 1,2,4 and 5

(2nd and 3rd respondents remained ex-parte before the tribunal, hence, notice may be dispensed with in this cross appeal).

C.M.A.No.2501 of 2014: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 1st day of July 2013, made in M.C.O.P.No.1126 of 2009 on the file of Motor Accident Claims Tribunal and V Additional District and Sessions Court, Coimbatore.
Cross Objection No.118 of 2014: Cross Objection filed under Order 41, Rule 22 of C.P.C., praying to enhance the award amount in the decree and judgment dated 01.07.2013 made in M.C.O.P.No.1126 of 2009 on the file of MACT/V Additional District and Sessions Court, Coimbatore by allowing this cross objection with interest and costs.

C.M.A.No.2501 of 2014:

For Appellant :Mr.S.Manohar

For Respondents :Mr.Ma.Pa.Thangavel for R1
Mr.S.Kalimuthu for
Profexs Associates for R4 and R5

Cross Objection No.118 of 2014:

For Appellant : Mr.Ma.Pa.Thangavel

For Respondents : Mr.S.Manohar for
Insurance Company-R1

COMMON JUDGMENT

This appeal has been filed by the appellant-Insurance Company against the award of Rs.11,38,872/- for the death of Murugesan, aged about 33 years, who worked as Police Constable, Koilpalayam Police Station, in the accident that occurred on 05.10.2006.

2.The claim petition was filed by the widow of the deceased. On contest, the Tribunal found that there was negligence on the part of the lorry insured with the appellant-Insurance Company and awarded a sum of Rs.11,39,000/-. Against which, the present appeal has been filed by the Insurance Company questioning the liability stating that the investigation was not properly done and there was a collusion between the claimants and the investigating agency, as the deceased was a Police Constable. Not satisfied with the quantum awarded by the Tribunal, the claimant has also come before this court by way of Cross Objection No.118 of 2014.

3.Heard Mr.S.Manohar, learned counsel for the appellant, Mr.Ma.Pa.Thangavel, learned counsel for the first respondent and Mr.S.Kalimuthu for Profexs Associates, learned counsel for respondents 4 and 5/parents of the deceased in C.M.A.No.2501 of 2014.

4.Mr.S.Manohar, learned counsel for the appellant-Insurance Company would submit that the accident occurred on 05.10.2006 and in Ex.P1-First Information Report, it is categorically stated that the unknown vehicle is said to have knocked down the deceased. In Ex.P4-Alteration Report, dated 07.10.2006 also, it has been stated that the unknown vehicle hit the deceased, whereas in Ex.P14-Observation Mahazar dated 06.10.2006, it was shown that the vehicle insured with the appellant/Insurance Company has been named. When the investigating agency was able to find out the vehicle No.TCY 9079, there is no occasion for investigating agency to say that the unknown vehicle hit the deceased and prepared the alteration report- Ex.P4. Therefore, the investigation was not properly done and it was aimed to help the family of the deceased, as he was a Police Constable.

5.Further, Mr.Manohar, learned counsel for the appellant-Insurance Company would rely upon the evidence of P.W.2, who would state that the deceased was knocked down by a minidorauto when he was riding in his two wheeler and thereafter, while he was lying on the road, the vehicle, which was carrying gas cylinders namely, the offending vehicle, ran over the deceased and dragged the body up to 30 feet and thereafter, it was stopped. If that is the evidence of P.W.2, the statement found in the First Information Report Ex-P1 as well as the Alteration Report Ex.P4 are all false. By pointing out this discrepancy, he would submit that the offending vehicle was not at all involved in the accident and only to claim compensation, the vehicle has been deliberately roped in. In this regard, a complaint was given to the CBCID in the year 2011 and investigation is pending on the same. Therefore, he seeks to set aside the award passed by the Tribunal.

6.On the other hand, Mr.Ma.Pa.Thangavel, learned counsel for the first respondent/wife of the deceased would submit that after the accident, a person, who is witness in the accident, gave a complaint Ex.P1-First Information Report. P.W.2-R.Murugan, who was eye witness to the accident, deposed categorically that the deceased was knocked down by minidorauto and thereafter, he was ran over by lorry carrying gas cylinders. When such is the position, the death was caused because of the accident involving the vehicle insured with the appellant/Insurance Company. To counter the argument of Mr.Manohar, the learned counsel for the appellant-Insurance Company, P.W2 did not give a correct version.

7.Mr.Ma.Pa.Thangavel, the learned counsel for the first respondent relied upon the evidence of R.W.1, who admitted the involvement of the vehicle insured with the appellant/Insurance Company. Therefore, he would submit that the vehicle insured with the appellant/Insurance Company alone was responsible for the accident. Hence, he would seek to enhance the compensation as no future prospects was taken into consideration by the Tribunal, while determining the monthly income and loss of income. Hence, he seeks for enhancement of compensation.

8.It is the evident from the record, especially from Ex.P1-First Information Report and the other documents that the accident was caused by the unknown vehicle and after the investigation, it was found that the vehicle insured with the appellant/Insurance Company was involved. It has been categorically stated by P.W.2-R.Murugan eye witness to the accident in his evidence and that apart, the final report has also been laid against the driver of the vehicle insured with the appellant/Insurance Company. The driver of the offending vehicle surrendered before the police and he was remanded to custody as per Ex.P15-Remand Report, dated 07.11.2006. The Tribunal, taking note of all those materials, did not give any credence to the variation in the investigation and found that it would not go to the root of the matter rightly. Merely because certain discrepancies were pointed out by the Insurance Company, it is not capable for defeating the claim of the claimants that the offending vehicle alone caused the accident. That apart, R.W.1 has categorically admitted in his evidence that the offending vehicle insured with the appellant/Insurance Company alone was involved in the accident. When such admission made by the Insurance Company witness is available on record, the other evidences on the part of the claimants have become unnecessary even looking from other angles. Therefore, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the vehicle insured with the appellant/Insurance Company.

9.Moreover, the fate of the complaint given by the Insurance Company to the CBCID is unknown and the complaint was not investigated properly. The appellant/Insurance Company should have taken appropriate proceedings for speedy investigation on the complaint given by them. Admittedly, no such steps have been taken by the Insurance Company. In that event, neither the Tribunal nor the claimants can not wait, since the result of investigation is unknown. Therefore, the pendency of the said complaint before the CBCID cannot be a bar for the Tribunal to dispose of the matter. As already stated, the Tribunal rightly found that the accident was caused because of the offending vehicle insured with the appellant/Insurance Company. The said finding is based on the evidence and the same cannot be set aside.

10.The deceased was a police constable as proved by Ex.P5-Income Certificate; Ex.P9-Service record of the deceased and Ex.P12-Pay certificate dated 11.03.2006. As per the salary certificate, the deceased was earning about Rs.8,312/- as monthly income and after deducting 1/3rd amount towards personal expenses, the Tribunal determined a sum of Rs.5,541/- as monthly income. Since the deceased was aged 33 years, the right multiplier was "16" and the same was adopted and hence, a sum of Rs.10,63,872/- was awarded by the Tribunal towards loss of income. No doubt, as rightly pointed out by Mr.Ma.Pa.Thangavel, learned counsel for the first respondent, no future prospects was awarded, while determining the monthly income, as per the judgments of the Hon'ble Supreme Court in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (6) Supreme Court Cases 121 and Santhosh Devi vs. National Insurance Company Limited reported in 2012(6) SCC 421. However, due to the peculiar circumstances of the case, this Court is not inclined to add 50% of future prospects. Therefore, the amount of Rs.5,541/- determined by the Tribunal as monthly income and a sum of Rs.10,63,873 determined by the Tribunal as loss of income are hereby confirmed.

11.Similarly, Rs.5,000/- awarded towards funeral expenses; Rs.20,000/- awarded towards Medical expenses; Rs.30,000/- awarded towards loss of love and affection; and Rs.20,000/- awarded towards loss of consortium are low as per the law laid down by the Hon'ble Supreme Court recently. For the peculiar circumstances of the case, this Court is not inclined to enhance the same. Hence, the award of Rs.11,38,872/-, which was rounded to Rs.11,39,000/- passed by the Tribunal is hereby confirmed along with the interest at the rate of 7.5% p.a., from the date of petition till the date of realization and costs. Consequently, the Civil Miscellaneous Appeal filed by the Insurance Company and the Cross Objection filed by the claimant are dismissed. The connected Miscellaneous Petitions are dismissed. No costs.

12.Since it is represented by the appellant/Insurance Company that the entire award amount has already been deposited before the Tribunal, the claimants are entitled to withdraw their respective share amount along with interest, as apportioned by the Tribunal, after adjusting the amount, if any, already withdrawn by them.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The V Additional District and Sessions Court,
(Motor Accident Claims Tribunal)
Coimbatore.

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

+1 cc to M/S.ProfexAssociats Advocate (SR.32308)
+1 cc to M/S.Mr.P.Thangavel Advocate (SR.32188)
+1 cc to Mr.S.Manoha,Advocate (SR.32175)

RT(CO)
cp 07.08.2015

C.M.A.No.2501 of 2014 and
Cross Objection No.118 of 2014