

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 17.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.2537 of 2014 & Cross Objection No.119 of 2014

M/s.Shriram General Insurance

Company Limited,

No.66, 2nd floor, City Centre Complex,

Thirumalai Pillai Road,

T.Nagar, Chennai - 17.

... Appellant in CMA.2537/14

1st respondent in Cr.Obj.119/14

Vs

1.Dillirani

2.Minor Vedhaavalli

(Minor rep.by her mother
and guardian Dillirani

3.Varalakshmi

4.Janakiraman

... Respondents 1 to 4 in CMA 2537/14

& Cross Objector in Cr.Obj.119/14

5.Habibullah Sheik

6.Khaleel Basha

... Respondents 5 & 6 in CMA.2537/14

& Respondents 2 & 3 in Cr.Obj.119/14

C.M.A.No.2537 of 2014 is filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 06.02.2013, made in MCOP No.692 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge-IV, Ponneri.

Cross Objection No.119 of 2014 is filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the award in judgment and decree dated 06.02.2013, made in MCOP No.692 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge-IV, Ponneri.

CMA No.2537 of 2014

For Appellant : Mr.B.Murugavel
For R1 to R4 : Mr.F.Terry Chellaraaj
R5&6 : Not Ready in Notice

Cross Obj.No.22 of 2010

For Cross Objector : Mr.F.Terry Chellaraaj

For R1 : Mr.B.Murugavel
For R2&3 : Not Ready in Notice

COMMON JUDGMENT

C.M.A.No.2537 of 2014 is preferred by the appellant-Insurance Company against the award dated 06.02.2013, made in MCOP No.692 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge-IV, Ponneri.

2.Cross Objection No.119 of 2014 is filed by the claimants against the award dated 06.02.2013, made in MCOP No.692 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge-IV, Ponneri.

3. Background of the facts in a nutshell are as follows:

On 08.11.2010 at about 09.00 hrs. while the deceased-Babu was riding a motorcycle bearing Registration No.TN-05-R-2775, near Thondiarpet, Chennai, a lorry bearing Registration No.AP-27-U-9456, insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, dashed against the motorcycle and as a result, the deceased died on the spot. The claimants are wife, parents and his only minor daughter. They claimed a sum of Rs.20,00,000/- as compensation. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the fifth respondent-Habibullashaik and awarded a sum of Rs.9,93,000/- with interest at 7.5%. Aggrieved by that award, the Insurance Company as well as the claimants have filed the present appeal and cross objection respectively.

4. Learned counsel appearing for the appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and the Tribunal ought not to have fixed Rs.6000/- as the monthly income of the deceased, when there was

no documentary evidence to substantiate the same. Therefore, the award passed by the Tribunal is not in accordance with law and the same is liable to be set aside.

5. Learned counsel appearing for the respondents/claimants, who are the Cross Objectors in Cross Objection No.119 of 2014, submitted that the Tribunal ought to have awarded the compensation as claimed by the claimants and the amount awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing the award. Hence, it is a fit case for enhancing the compensation.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. At the time of accident, the deceased was 26 years old as seen from Ex.P3-death certificate. Before the Tribunal, P.W.1-wife of the deceased deposed that the deceased was working as a driver in BGD Lorry service and was earning a sum of Rs.10,000/- per month. However, in the absence of documentary evidence, the Tribunal considered the notional income of the deceased at Rs.6000/- per month. By taking note of the fact that there were four members in the family of the deceased, the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased from the monthly income and computed the loss of dependency at Rs.4,500/- per month and calculated the loss of dependency per annum at Rs.54,000/-. Having regard to the fact that the age of the deceased was 26 years, the Tribunal has rightly applied a multiplier of 17 as per SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997 and accordingly computed the total loss of dependency at Rs.9,18,000/- (54000 x 17). Therefore, in my view, such approach adopted by the Tribunal in calculating the loss of dependency does not call for any interference by this Court.

8. Further, the Tribunal has also awarded a sum of Rs.25000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses, which, in my view, are just and reasonable compensation, for, due to the sudden demise of the deceased, now his family is left to lurch and had the deceased not died in the accident, he would have lived for full span of his life and would have contributed substantially to his family by working hard. Thus, on this score, I do not find any merit in the appeal filed preferred by the appellant Insurance Company to interfere with the award passed by the Tribunal.

9. Hence, for the reasons stated above, the appellant Insurance Company is directed to deposit the entire award amount

of Rs.9,93,000/- with interest at 7.5% per annum, as awarded by the Tribunal, less the amount already deposited if any, to the credit of MCOP No.692 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional District Court-IV, Ponneri, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the claimants are permitted to withdraw the amount as apportioned by the Tribunal, on making proper application.

10. In view of the above, the Civil Miscellaneous Appeal is dismissed and Cross Objection is disposed of. No costs.

rkm

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Additional District Court-IV, Ponneri.

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

1 cc to Ms.M.Malar, Advocate, sr.68127

C.M.A. No.2537 of 2014 &
Cross Objection No.119 of 2014

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kra 23.06.2016

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