

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1292 of 2014 & M.P.No.1 of 2014
and Cross Objection No.57 of 2015

M/s Iffco Tokio General Insurance Co. Ltd.,
J.H. Tower, II Floor,
New No.24, LIC Colony Road
Salem 636 004
Rep. by its Branch Manager

... Appellant/1st Respondent in Cross
Objection

vs.

1.Kaliamoorthy
2. Amaravathi
3. Ramesh

..Respondents 1-3/Cross objectors in Cross
Objection No.57/15

4. R.Paramasivam
(4th Respondent and
2nd Respondent in Cross
Objection set exparte
in Lower Court)

..Respondent 4/respondent 2 in Cross
Objection

Civil Miscellaneous Appeal is filed under Section 173 of the
Motor Vehicles Act, 1988 against the award and decree dated
10.04.2013 passed in M.C.O.P.No.157 of 2011 on the file of the
Motor Accidents Claims Tribunal (Subordinate Court), Ariyalur.

Cross Objection filed under Order 41 Rule 22 of CPC against
the award dated 10.04.2013 passed in M.C.O.P.No.157 of 2011 on
the file of the Motor Accidents Claims Tribunal (Subordinate
Court), Ariyalur.

For Appellant in CMA
and 1st respondent
in Cross Objection : Mr.N.Vijayaraghavan

For Respondents
1 to 3 in CMA and
Cross Objectors in
Cross Objection : Mr.A.K.Kumarasamy
R4 in CMA set exparte before
the Tribunal below

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

While the Insurance Company has filed the Civil Miscellaneous Appeal, the claimants have preferred Cross Objections, both challenging the award dated 10.04.2013 passed in M.C.O.P.No.157 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Ariyalur.

2. It is a case of fatal accident. On 06.02.2011 at about 8.30 p.m., when the deceased Senthil Kumar, was riding his HeroHonda Motorcycle bearing Registration No.TN 31 s 6418 from his house and was proceeding on the main Road of Mavilanda Kottai, at that time, the 4th respondent's Mahindra Goods vehicle bearing Registration No.TN 34 F 5125 driven by its driver in a rash and negligent manner, dashed against the vehicle driven by the deceased Senthil Kumar, thereby causing fatal injuries all over his body and ultimately he succumbed to the injuries. The claimants, who are the parents and brother of the deceased have filed a claim for compensation for a sum of Rs.25,00,000/-.

3. In support of the claim, Kaliamoorthy was examined as P.W.1, One Anbarasam was examined as P.W.2 and one Sakthivel was examined as P.W.3 and Ex.P-1 to Ex.P.35 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR
P2	Postmortem certificate
P3	Inspection report of the Motor Vehicle
P4	Charge sheet
P5	Driving licence
P6	R.C.Book
P7	copy of the policy

Ex.No.	Details
P8	Medical bill
P9	Discharge summary
P10	Treatment summary I
P11	Treatment summary II
P12	Bills for medical expenses
P13	Rent receipt for ambulance
P14	Driving license of Senthilkumar
P15	Educational certificate
P16	Engineering diploma certificate
P17	Salary certificate
P18	MS Office education certificate
P19	Diploma education certificate
P20	Auto Cad education certificate
P21	Technology Diploma education certificate
P22	Passport
P23	Technology Diploma education certificate
P24	Module education certificate
P25	National ITE education certificate
P26	Module education certificate
P27	National ITE education certificate
P28	TAKENAKA CORPORATION identity card
P29	I.D. Card
P30	Diploma education certificate
P31	Certificate given to Senthilkumar for working as Technician
P32	Module education certificate
P33	Diploma certificate
P34	Bills for purchase of Medicines
P35	Copy of R.C.Book

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 4th respondent herein remained exparte.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came

to conclusion that due to the rash and negligent driving of the 4th respondent herein, the accident had occurred and he alone was responsible for the accident and consequently liability was fixed on the appellant, Insurer to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs.8,64,000/-
2	For Private treatment as per Ex.11	Rs.3,68,527/-
3	Medical expenses	Rs.1,06,662/-
4	Transport expenses	Rs. 150/-
5	Loss of Love and affection	Rs. 60,000/-
6	Funeral expenses	Rs. 10,000/-
	Total	Rs.14,09,339/-

6. The learned counsel for the appellant would submit that the awarding a compensation of a sum of Rs.14,09,339/- towards the death of a 30 year old Bachelor, in favour of his parents and brother is highly excessive and unsustainable. The Tribunal has erred in considering the monthly income of the deceased at Rs.6,000/- per month based on the certificate produced, without producing actual proof of receipt of the amount. Further, the Tribunal has erred in deducting 1/4th for personal expenses instead of 50% when the deceased was a bachelor. The learned counsel further pleaded that the Tribunal has erred in adopting a multiplier of 18 based on the age of the deceased instead of applying multiplier based on the mother's age. So far as medical bills are concerned, the Tribunal ought to have disbelieved the same as falsely fabricated for want of corroborative admissible evidence. Hence, the learned counsel for the appellant has sought for allowing of the Civil Miscellaneous Appeal.

7. On the other hand, the learned counsel for the cross objectors would submit that the compensation awarded by the Tribunal is not adequate and too low considering the age and occupation of the deceased. The Tribunal has erred in calculating the loss of income, based on the last drawn income, without considering the qualification, and the previous job held by the deceased. Further, while calculating the loss of income, the future prospects has not been taken into account. Thus, the learned counsel for the claimants has sought for enhancement of compensation.

8. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

9. Insofar as the award of compensation is concerned, based on the evidence adduced before the Tribunal, taking the income of the deceased at Rs.6,000/- and reducing 1/3rd towards the personal expenses of the deceased and adopting a multiplier of 18, a sum of Rs.8,64,000/- was arrived at under the head "loss of income". Though a plea was taken that 50% should be deducted in case of a bachelor, we are convinced that the contribution of the deceased to the family at Rs.4,000/- is fully satisfied and the compensation arrived at under the heading "Loss of income" is fully sustainable. Further, a perusal of the Judgment of the Tribunal reveals that the compensation granted under the other heads also appear to be reasonable.

10. There is no serious objection with respect the interest granted at 7.5% per annum.

11. In the above circumstances, finding no merit, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. Consequently, the Cross Objection filed by the claimants is also dismissed. Since this Court has already directed to deposit the entire award amount and permitted the claimants to withdraw 50% of their respective shares, the claimants are now permitted to withdraw the balance 50% of their respective shares by filing appropriate application before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

To

1.The Subordinate Judge,
(Motor Accidents Claims Tribunal)
Ariyalur.

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

+1cc to Mr.M.B.Gopalan, Advocate sr.14192
+1cc to Mr.A.K.Kumarasamy, Advocate Sr.13536

C.M.A.No.1292 of 2014 &
Cross Objection No.57 of 2015

tej (CO)
srg (28/03/2016)



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