IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1914 of 2016 & Cross Objection No.70 of 2016

United India Insurance Company Ltd.,
No.38, Anna Salai, Chennai - 2.
B.O.No.23/81, Nainiappan Naicken Street,
Chennai - 3. .. Appellant in CMA.1914/16
& 1st respondent in Cr.Obj.70/16

Vs

1.Elumalai
2.Vasantha
3.Anitha
4.Mukilan (minor)
rep by his Mother and next
friend the 3rd Respondent
.. Respondents 1to4 in CMA.1914/16
& Cross Objectors 1to4 in Cr.Obj.70/16

5.Navajothi ... 5th respondent in CMA 1914/16
.. 2nd respondent in Cr.Obj.70/16

C.M.A.No.1914 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 02.04.2016, made in M.C.O.P.No.1825 of 2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

Cross Objection No.70 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 02.04.2016, made in M.C.O.P.No.1825 of 2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

CMA No.1914 of 2016

For Appellant : Mr.D.Bhaskaran
For R1 to R4 : Mr.F.Terry Chella Raja

Cross Obj.No.70 of 2016

For Cross Objectors : Mr.F.Terry Chella Raja

For R1 : Mr.D.Bhaskaran

COMMON JUDGMENT

C.M.A.No.1914 of 2016 is preferred by the appellant-Insurance Company against the award dated 02.04.2016, made in O.P.No.1825 of 2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

2.Cross Objection No.70 of 2016 is filed by the claimants against the award dated 02.04.2016, made in O.P.No.1825 of 2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

3. On 05.01.2006, at about 10.10 hrs., while the deceased was riding his bike bearing Registration No.TN-22-W-1536 on the extreme left side of the road, near by Nethaji Nagar, Opposite to Sanco, Ennur, a lorry bearing Registration No.TSB-1497 belonging to the fifth respondent / Navajothi and insured with the appellant Insurance company, driven by its driver in a rash and negligent manner, hit against the deceased, as a result, he died on the spot. Immediately after the accident, a case was registered against the driver of the lorry in Crime No.8 of 2006 on the file of the Ennur Police Station, Chennai. Subsequently, the claimants, being the parents, wife and minor son of the deceased, have filed the claim petition claiming a sum of Rs.36,00,000/- as compensation.

4. 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 and awarded a sum of Rs.18,02,000/- with interest at 7.5% per annum. Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeal and cross objection respectively.

5. Learned counsel appearing for the appellant Insurance Company submitted that though the Tribunal has observed that no material was produced to prove the income of the deceased, unfortunately, it has fixed wrongly a sum of Rs.6000/- as his monthly income, that too, without taking note of the fact that the accident had occurred in the year 2006. Apart from this, he contended, the Tribunal has added 50% of his income towards future prospects in the absence of any proof for avocation and income. It is also further submitted that instead of deducting 1/3rd towards his personal expenses, it has wrongly deducted 1/4th and thereby it has awarded an exorbitant sum of Rs.13,77,000/- towards loss of contribution to the family. Again, it has awarded a sum of Rs.1,00,000/- towards loss of estate without any reason. He further questioned the compensations awarded under the heads of loss of consortium and loss of love affection, as the Tribunal has exorbitantly awarded a sum of Rs.1,00,000/- and Rs.2,00,000/- respectively. Thus, on

these grounds, he prayed for modification of the compensation awarded by the Tribunal.

6. Learned counsel appearing for the respondents/claimants, who are the Cross Objectors in Cross Objection No.70 of 2016, submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded only insufficient compensation, therefore, by enhancing the award amount, a just, fair and reasonable compensation can be granted. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. At the time of accident, the deceased was 28 years old as could be seen from the death certificate, marked as Ex.P7 and the postmortem certificate, marked as Ex.P8. It is deposed by the P.W.2, father of the deceased, that the deceased was earning a sum of Rs.8,000/- per month by doing business in the name and style of "Malar Electronics". However, the claimants have not produced any document to substantiate the same. Therefore, the Tribunal has fixed a sum of Rs.6000/- as the monthly income of the deceased. It is the contention of the learned counsel for the appellant Insurance Company that in the absence of any material evidence to substantiate the monthly income of the deceased, the Tribunal ought to have fixed a sum of Rs.4500/- as the monthly income. Such contention, in my view, cannot be sustained in view of the judgment of the Hon'ble Apex Court in Syed Sadiq and others v. Divisioanl Manager, United India Insurance Co. Ltd. [2014 ACJ 627], wherein the Apex Court in the case of vegetable vendor had fixed Rs.6500/- as the notional monthly income in the absence of any documentary evidence. Therefore, in my view, the Tribunal ought to have fixed a sum of Rs.6500/-, instead of Rs.6000/- as the monthly income of the deceased.

9. Further, the Tribunal, by taking note of the fact that the deceased was 28 years old and that dependents of the deceased are 4 members, has rightly adopted multiplier '17' and again, it has rightly deducted 1/4th towards his personal expenses, by following the judgment of the Hon'ble Apex Court in Sarala Varma and others v. Delhi Transport Corporation and another [2009 (2) TNMAC 1 (SC)] and thereafter, it has awarded a sum of Rs.13,77,000/- towards loss of dependency, after adding 50% towards future prospects. In fact, it should have fixed Rs.6500/- as the monthly notional income of the deceased as per the judgment of the Hon'ble Apex Court in Syed sadiq's case (cited supra). However, since such amount has not been fixed, another contention of the learned counsel for the Insurance Company that the Tribunal has awarded a sum of Rs.1,00,000/-

towards loss of estate cannot be sustained, as the said amount would rectify the mistake committed by the Tribunal while computing loss of dependency.

10. Apart from the above, the Tribunal has also awarded a sum of Rs.2,00,000/- towards loss of love and affection, by apportioning a sum of Rs.1,00,000/- to his minor son and Rs.50,000/- each to the parents. Again, it has awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. Such compensations awarded by the Tribunal by following the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others [2013 (3) CTC 883] cannot be questioned now by the learned counsel for the Insurance Company, for, had the deceased been alive, he would have taken care of his family by working hard and he would have given good education to his minor son. Besides, at the time of death, the wife of the deceased was aged only 24 years, therefore, on taking note of the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years, this Court is unable to find any error in the just and reasonable compensation awarded by the Tribunal.

11. Thus, for the reasons stated above, the Civil Miscellaneous Appeal filed by the Insurance Company stands dismissed and the Cross Objection filed by the claimants stands allowed to the extent mentioned above. Consequently, the appellant Insurance Company is directed to deposit the entire award amount as awarded by the Tribunal along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of O.P.No.1825 of 2006, on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 to 3 are permitted to withdraw their respective shares as apportioned by the Tribunal by moving necessary application before it. In respect of the minor's share, the same shall be deposited in any nationalized bank till he attains the majority. The third claimant is also permitted to withdraw the interest accrued in the deposit of the minor's share once in three months on making proper application. CMP.No.13967 of 2016 is closed. No Costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.

+1 cc to M/s.Malar, advocate,sr.68396

+1 cc to M/s.D.Bhaskaran,advocate,sr.68374.

mp(co)
krd 23/1