IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2017

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal Nos.1445 and 1448 of 2014
and Cross Objection Nos. 56 and 59 of 2014
and M.P.Nos. 1 of 2014 (two petitions)

The New India Assurance Company Limited,
No.514 and 515 Gandhi Road,
Kancheepuram. ..Appellant in CMA 1445/2014/ 1st Respondent in Cross-Objection No.56/2014/3rd respondent in MCOP.522/2014

..vs..

1.V.S.Ekambaram
2.E.Gayathri
R2 declared as major and R1 discharged from guardianship vide order of court dt.12.11.2014 made in MP.NOs.2 and 3 of 2014 in CMA.1445 of 2014 ..Respondents 1&2 in C.M.A.1445/2014/ Cross-Objectors in 56/2014

3.C.R.Sugumar .. 3rd Respondent in CMA 1445/2014/ 2nd Respondent in Cross Objection No.56/2014

4.Magesh .. 4th Respondent in CMA 1445/2014/ 3rd Respondent in Cross Objection No.56/2014

The New India Assurance Company Limited,
No.514 and 515 Gandhi Road,
Kancheepuram. ..Appellant in CMA 1448/2014/ 1st Respondent in Cross-Objection No.59/2014/3rd Respondent in MCOP.420/2000

..vs..

1.Tmt.Maragatham Ammal
2.Tmt.Padmakamakshi
3.Tmt.Sugasini
4.Tmt.Vimala Ammal (deceased)

.. Respondents 1 to 4 in C.M.A.No.1448/2014/ Cross Objectors 1 to 4 in Cross Objection in 59/2014/ Petitioner in MCOP.420/2000

5.C.R.Sugumar .. 5th Respondent in CMA 1448/2014/ 2nd Respondent in Cross Objection No.59/2014/1st Respondent in MCOP.420/2000 and 522/2004

6.Magesh .. 6th Respondent in CMA 1448/2014/ 3rd Respondent in Cross Objection No.59/2014/2nd Respondent in MCOP.420/2000 and 522/2004

7.V.S.Ekambaram
8.V.S.Sai Narayanan
9.V.S.Ramakrishnan
(RR7 to 9 brought on record as LRs. of deceased 4th respondent vide order of Court dated 03.08.2017 made in C.M.P.Nos. 12521& 12522 of 2017 in CMA No.1448/2014 & vide order dated 16.03.2017 in CMP No.3386 of 2017 in Cross Objection No.59/2014)

.. Respondents 7 to 9 in CMA No.1448/2014 Cross Objectors 5 to 7 Cross Objection in 59/2014

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988.,

C.M.A.No.1445 of 2014 has been filed by the New India Assurance Company Limited, Kancheepuram, against the decree and judgment dated 15.03.2013 passed in M.C.O.P.No.522 of 2004, by the Motor Accident Claims Tribunal, (Subordinate Judge) Kanchipuram, seeking to reduce the compensation of Rs.45,64,270/- awarded by the Tribunal whereas the Cross Objection No.56 of 2014 had been filed by the Claimants to enhance the compensation awarded by the Tribunbal.

C.M.A.No.1448 of 2014 has been filed by the New India Assurance Company Limited, Kancheepuram, against the decree and judgment dated 15.03.2013 passed in M.C.O.P.No.420 of 2000, by the Motor Accident Claims Tribunal, (Subordinate Judge) Kanchipuram, seeking to reduce the compensation of Rs.38,97,422/- awarded by the Tribunal whereas the Cross Objection No.59 of 2014 had been filed by the Claimants to enhance the compensation awarded by the Tribunbal.

For Appellant : Mr.R.Neethe Perumal

For Respondents
R1 to R4 and R7 to R9 : Mr.M.Nirmal Kumar
(in CMA.1448/2014)
For R1 & R2 in CMA.NO.1445/14

COMMON JUDGMENT

(Judgment of the Court was delivered
by A.D.JAGADISH CHANDIRA ,J.,)

Both the Civil Miscellaneous Appeals have been filed by the third Respondent/Insurance Company against the decree and judgment dated 15.03.2013 passed in M.C.O.P.Nos.522 of 2004 and 420 of 2000, by the Motor Accident Claims Tribunal, (Sub-Judge) Kanchipuram.

2. Brief facts leading to the filing of this appeal are as follows:- On 1.6.1999, at about 3.00 pm. 1) Sivaraj Mudaliar, 2) V.S.Sangupani Mudaliar, 3) Manimegalai, 4) Saravanan, 5) Sunitha @ Gajalakshmi, 6) Abdhul Rashaq and 7) E.Gayathiri have travelled in a Tata Sumo car bearing Reg.No.TN21 J 9999 along with family members proceeding from Kanchipuram to Pondicherry, on 1.6.1999 at about 4.30 PM, when the car was nearing at Thimmavaram Modern Rice Mill, Chengalpattu Taluk, a Tanker lorry bearing Reg.No.TDV 3727 insured with the Appellant/Respondent belonging to the 6th respond herein and driven by the 5th respondent herein came from the opposite direction in a rash and negligent manner and dashed against the above said Tata Sumo vehicle and as a result, the above said 1) Sivaraj Mudaliar, 2) Sangupani Mudaliar, 3) Manimegalai, 4) Saravanan, 5) Sunitha @ Gajalakshmi, 6) Abdhul Rashaq died on the spot and a minor Gayathiri got seriously injured. The above accident had occurred due to the rash and negligent act of the 5th respondent while driving the vehicle belonging to the 6th respondent. The 6th respondent's vehicle was insured with the appellant the New India Assurance Company. The legal heirs of one of the deceased Gajalakshmi has filed claim petition in M.C.O.P.No.391/1999, in which the Tribunal had held that the accident had occurred only

due to the rash and negligent act of the driver of the Tanker Lorry bearing Reg.No.TDV 3727 and further these aspects were also recorded in favour of the claimants in the above petition and the appellant insurance company has also not seriously disputed about the accident and the appellant/Insurance Company had disputed only the quantum of compensation. Hence, the learned Tribunal taking into consideration of the observations made in the earlier claim petition in M.C.O.P.No.391/1999, came to the conclusion that the accident had occurred purely due to the rash and negligent act of the driver of the Tanker Lorry which belonged to the 6th respondent i.e. 5th respondent, which was also upheld by the High Court in CMA No.566 of 2005 dated 15.02.2010 and ultimately, the Tribunal came to the conclusion that the appellant/Insurance Company is liable to pay the compensation to the petitioners.

3. The respondents 1 and 2 in C.M.A.No.1445 of 2014 are the husband and daughter of the deceased Manimegalai and they had filed the petition claiming compensation of Rs.1.00 Crore against the appellant, Respondents 5, 6 herein and the New India Assurance Company Limited, Chennai, the insurer of the vehicle for the loss of life of one Manimegalai in a road traffic accident at about 4.30 pm., 1.6.1999 at at Thimmavaram Modern Rice Mill, Chengalpattu Taluk.

4. The respondents 1 and 3 in C.M.A.No.1448 of 2014 are the wife, and daughters of the deceased V.S.Sangupani and the 4th respondent (deceased) is the mother and they had filed the petition claiming compensation of Rs.1,75,00,000 Crore against the appellant, Respondents 5, 6 herein, for the loss of life of one V.S.Sangupani in a road traffic accident at about 4.30 pm., 1.6.1999 at Thimmavaram Modern Rice Mill, Chengalpattu Taluk.

5. In the counter filed on behalf of the appellant/third respondent permission was sought to take defence of negligence and other defencce on behalf of the owner of the vehicle under Section 170 of the M.V. Act when the owner of the vehicle namely the 5th and 6th respondents herein. The respondent denied the age, occupation, income, legal heirship, dependency and loss of income of the deceased. The respondent further denied the allegation that they have performed the obsequies of the deceased at the costs of Rs.1,25,000/- and that there are four deaths in the said family in the same accident and performed all the deaths by incurred a common expenses. The respondents/claimants have claimed a huge compensation without any calculation of loss of income or any documentary proof of income tax assessment. It was further contended by the Insurance Company that the claim of compensation in the heads of cremation expenses, mental shock and agony, loss for life and loss of income of the deceased family are purely imaginary calculation and exorbitant one and that the respondents/claimants are

entitled to claim future interest only at 6% per annum as per prevailing ratio of interest fixed in FDR by the Reserve Bank of India. The driver of the Tanker lorry is not having any valid driving licensee to drive the vehicle and that the appellant/third respondent questioned the validity of insurance policy and for this ground also, this respondent is not liable to pay any compensation. Hence, the appellant/3rd respondent prays for dismissal of the appeal.

6. The learned Tribunal taking into consideration the age of the deceased Manimegalai as 30 years at the time of accident and she was a business woman and and at the time of the accident she was Partner of M/s. Sangupani Timber Depot; Dealer in Dalmia Cements and carrying on business of Tiles & Light Roofing Asbestos Sheets and Saw-Mill and came to the conclusion that she was earning a sum of Rs.1,50,000/- per month, after deducting for personal expenses, the contribution of the deceased Manimegalai to the family was calculated at Rs.25,000/- per month and thereby the annual loss of dependency to the family is calculated at Rs.25,000/- x 12 = 3,00,000/-. Further, the Tribunal came to the conclusion that the claimants are entitled to get conventional expenses along with loss of income, approximately Rs.79,16,000/- towards loss of love and affection, funeral expenses, damages to the clothes, transport charges as prayed for them and ultimately the Tribunal has awarded compensation of Rs.45,64,270/-. Aggrieved by the same, the Insurance Company has filed the present appeal to reduce the compensation awarded by the Tribunal. Not being satisfied with the compensation awarded by the Tribunal, the claimants have filed Cross Objection to enhance the compensation.

7. The learned Tribunal taking into consideration the age of the deceased V.S.Sangupani as 47 years at the time of accident and that he was sole Proprietor of 1) M/s. Sangupani Agencies 2) M/s. Sangupani Transport 3) M/s. Sangupani Traders and 4) Chairman, Agro Carbonic Gas Pvt. Limited and was earning a sum of Rs.1,50,000/- per month, after deducting for personal expenses, the contribution of the deceased V.S.Sangupani to the family was calculated at Rs.50,000/- per month and thereby the annual loss of dependency to the family is calculated at Rs.50,000/- x 12 = 6,00,000/-. Further, the Tribunal came to the conclusion that the claimants are entitled to get conventional expenses along with loss of income, approximately Rs.1,18,16,000/- towards loss of love and affection, funeral expenses, damages to the clothes, transport charges as prayed for them and ultimately the Tribunal has awarded compensation of Rs.38,97,422/-. Aggrieved by the same, the Insurance Company has filed the present appeal to reduce the compensation awarded by the Tribunal. Not being satisfied with the compensation awarded by the Tribunal, the claimants have filed Cross Objection to enhance the compensation.

8. Learned counsel for the appellant has submitted that the claimants failed to produce even a single document to show that the deceased Manimegalai, was a partner in M/s. Sangupani Timber Depot and the learned Tribunal without proper documentary evidence has accepted the plea of the claimants that the deceased Manimegalai was a partner of M/s. Sangupani Timber Depot and awarded huge compensation to the claimants. It was Further contended that the deceased Manimegalai was not assessed to any income tax in her own name, which goes to show that her income can only be taken at notional value and not at the turnover of the company and contended that the assessment of the Tribunal taking the turnover of the company for assessing the income of the deceased Manimegalai is totally unacceptable, when especially the deceased Manimegalai being not connected with the company. The judgment relied on by the Tribunal is for a person who is the partner of the company on record whereas in the given case, the Tribunal has wrongly applied the ratio laid down in the decision for assessing the income of the deceased Manimegalai Therefore, the conclusion of the Tribunal that the deceased Manimegalai would have earned a sum of Rs.4,23,927/- as annual income is totally baseless and cannot be accepted by any stretch of imagination. The compensation of Rs.45,64,270/- awarded by the Tribunal under the Heads Loss of income by taking into account the turnover of the firm is unjust and disproportionate and it is liable to be reduced.

9. The learned counsel for the appellant further has submitted that the deceased V.S.Sangupani was not the proprietor of the company as mentioned by the claimants and that the said V.S.Sangupani is not assessed for any income tax in his own name, which goes to show that his income must be taken at notional value and not at the turnover of the company. The turnover of the company for assessing the income of the said V.S.Sangupani is totally unacceptable more so when he is not connected with the company. The judgment relied on by the Tribunal is for a person who is the partner of the company on record whereas in the given case, the Tribunal has wrongly applied the ratio laid down in the decision for assessing the income of the deceased V.S.Sangupani. The conclusion of the Tribunal that the deceased V.S.Sangupani would have earned a sum of Rs.2,72,494/- as annual income is totally baseless and cannot be accepted by any stretch of imagination. The compensation of Rs.38,97,422/- awarded by the Tribunal under the Heads Loss of income by taking into account the turnover of the firm is unjust and disproportionate and it is liable to be reduced.

10. Per contra, the learned counsel appearing for the respondents/Cross-Objectors has submitted that the Tribunal ought to have appreciated the income of the deceased Manimegalai

on the basis of the evidence produced by the claimants. The Tribunal ought to have taken into consideration the Income-tax Returns produced in this case for exhibiting and proving the income of the deceased Manimegalai, the Tribunal has calculated the income of the deceased Manimegalai as Rs.2,82,618/- per annum erroneously relying upon a judgment wherein no income tax return was filed. The Tribunal ought to have taken 5% of the turnover of the concerns of the deceased Manimeglai for calculating the reasonable and correct income of the deceased for awarding reasonable compensation to the claimants. The Tribunal ought to have considered the future increased income and prospects of the deceased Manimegalai for calculating the monetary loss caused to the claimants. The reasons given by the Tribunal for awarding meager amount as compensation to the claimants is not correct and unsustainable in law and on facts and therefore prayed for enhancement of the compensation amount awarded by the Tribunal.

11. The learned counsel for the respondents/Cross-Objectors has submitted that the Tribunal ought to have appreciated the income of the deceased V.S.Sangupani, on the basis of the evidence produced by the claimants. The Tribunal ought to have taken into consideration the Income-tax Returns produced in this case for exhibiting the income of the deceased V.S.Sangupani, the Tribunal has calculated the income of the deceased V.S.Sangupani, as Rs.2,72,494/- per annum erroneously relying upon a judgment wherein no income tax return was filed. The Tribunal ought to have taken 5% of the turnover of the concerns of the deceased V.S.Sangupani, for calculating the reasonable and correct income of the deceased for awarding reasonable compensation to the claimants. The Tribunal ought to have considered the future increased income and prospects of the deceased V.S.Sangupani, for calculating the monetary loss caused to the claimants. The reasons given by the Tribunal for awarding meager amount as compensation to the claimants is not correct and unsustainable in law and on facts and therefore prayed for enhancement of the compensation amount awarded by the Tribunal.

12. We have considered the rival submissions. During the course of arguments, the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the Cross-Objectors/Claimants, have agreed to modify the compensation awarded by the Tribunal to the extent indicated below:-

C.M.A.NO.1445 of 2014

Name of the deceased : Manimegalai aged 35 years.

Monthly income is arrived at	..	Rs.	20,000/-
1/3rd deduction towards personal expenses	..	Rs.	6,667/-
Loss of monthly income is arrived at	..	Rs.	13,333/-

Future loss monthly income @ 50%	.. Rs.	6,667/-
Total loss of monthly income	.. Rs.	20,000/-
Loss of Annual income Rs. 20,000 x 12	.. Rs.	2,40,000/-
Loss of income by applying multiplier 16	.. Rs.	38,40,000/-
Loss of love and affection	.. Rs.	1,00,000/-
Total Compensation arrived	.. Rs.	39,40,000/-

C.M.A.No.1448 of 2014

Name of the deceased: V.S.Sangupani, aged 47 years.

Monthly income is arrived at	.. Rs.	25,000/-
1/3rd deduction	.. Rs.	8,334/-
Loss of monthly income	.. Rs.	16,666/-
Future loss of monthly income @ 30%	.. Rs.	5,000/-
Total Loss of monthly income	.. Rs.	21,666/-
Loss of Annual Income Rs.21,666 x 12	.. Rs.	2,59,992/-
Loss of income by applying multiplier of 13	.. Rs.	33,79,896/-
Loss of love and affection for wife	.. Rs.	50,000/-
Loss of love and affection for daughter	.. Rs.	50,000/-
Loss of love and affection for mother	.. Rs.	25,000/-
Total compensation arrived	.. Rs.	35,04,896/-

13. Taking into consideration the mutual agreement between the appellant Insurance Company and the Cross-objectors/Claimants, to modify the compensation awarded by the Tribunal, C.M.A.No.1445 of 2014 is partly allowed modifying the compensation awarded by the Tribunal for a sum of Rs.39,40,000/-. The Cross-Objection No.56 of 2014 is dismissed and the Appellant Insurance Company is directed to pay compensation of Rs.39,40,000/- to the Cross-Objectors/Claimants with interest at the rate of 7.5% per annum from the date of petition till the date of payment. No costs.

14. C.M.A.No.1448 of 2014 is partly allowed modifying the compensation awarded by the Tribunal for a sum of Rs.35,04,896/-. The Cross-Objection No.59 of 2014 is dismissed and the Appellant Insurance Company is directed to pay compensation of Rs.35,04,896/- to the Cross-Objectors/Claimants with interest at the rate of 7.5% per annum from the date of petition till the date of payment. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Copy to

1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Kanchipuram.

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

+4cc to M/s.Nirmal Kumar, Advocate sr.65343,65344

C.M.A.Nos.1445 and
1448 of 2014
and Cross Objection
Nos. 56 and 59 of 2014

cnr(co)
ss(23/10/2017)