

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA.No.1449 of 2014

and MP.Nos.1 and 2 of 2014

and Cross Obj.No.60 of 2014

CMA.No.1449 of 2014

The New India Assurance Company Ltd.,

No.514 and 515 Gandhi Road,

Kancheepuram

... Appellant

Vs.

1.Mrs.Vimala Ammal (deceased)

2.V.S.Ekambaram

3.V.S.Sainarayanan

4.C.R.Sugumar

5.Magesh

6.S.Maragatham

7.S.Padma Kamakshi

8.V.Suhasini

R6 to R8 brought on record as LRs of
deceased 1st respondent vide order dated
03.08.2017 in CMP.12522 of 2017.

9.V.S.Ramakrishnan

impleaded as party respondent vide
order of Court dated 18.09.2017
in CMP.16074 of 2017.

... Respondents

PRAYER : Appeal filed under Section 173 of Motor Vehicles Act,
1988 against the judgment and decree dated 15.03.2013 made in
MCOP.No.434 of 2000 on the file of the Motor Accident Claims
Tribunal, Subordinate Judge, Kancheepuram.

For appellant : Mr.R.Neethe Perumal

For respondents: Mr.Mr.M.Nirmal Kumar for R1 to R3
and R6 to R9.

Cross Obj.No.60 of 2014

1.Vimala Ammal (deceased)

2.V.S.Ekambaram

3.V.S.Sainarayanan

4.V.S.Ramakrishnan

5.S.Maragatham

6.S.Padmakamakshi

7.V.Suhasini

Cross objectors 4 to 7 are brought on record vide order of Court dated 16.03.2017 in CMP.3043/2017

... cross objectors

Vs.

1.The New India Assurance Company Ltd.,
No.514 and 515 Gandhi Road,
Kancheepuram.

2.C.R.Sugumar
3.Magesh

... Respondents

PRAYER : Cross Appeal is filed under Order 41 Rule 22 of CPC to enhance the compensation amount awarded in the judgment and decree dated 15.03.2013 made in MCOP.No.434 of 2000 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram by allowing this cross appeal in CMA.No.1449 of 2014.

For cross objector: Mr.M.N.Nirmal Kumar.

For respondents : Mr.R.Neethe Perumal for R1.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is filed against the order dated 15.03.2013 made in MCOP.No.434 of 2000 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram.

2. The case of the claimant before the trial Court that on 01.06.1999 at about 4.30pm when the deceased was proceeding to Pondicherry from Kancheepuram in a Tata sumo car bearing Reg.No.TN21 J 9999 along with his other family members, near Thimmavaram Village, Modern Rice Mill, Chengalpattu Taluk at about 4.30pm, the tanker lorry bearing Reg.No.TDV 3727 (i.e, the 1st respondent) belongs to the 2nd respondent driven the vehicle in a rash and negligent manner and collided with the said Tata Sumo, thereby caused death of the deceased and others on the spot. The Chengalpattu Taluk Police registered a case in Cr.No.334 of 1999. At the time of accident, the deceased was 70years business man and proprietor of 1)M/s.Sivarajan Agencies 2)M/s.Sangupani Transport 3)M/s.Sangupani Timber Depot and 4) Sivarajan Bus Service and earning a sum of Rs.1,50,000/-p.m. Hence, the wife and sons of the deceased filed the claim petition restricting the claim to the tune of Rs.75,00,000/-.

3. The case of the appellant/insurance company before the trial Court is that the owners of the vehicle bearing

Registration Nos.TDV 3727 & TN-21 J 9999 i.e, the respondents 1 and 2 remains exparte. The deceased Sivaraj Mudaliar was 70years at the time of accident, the claimants are the wife and sons of the deceased. The allegations stated in the petitions are false and invented for the purpose of claiming higher compensation from the respondents. The claimants have not filed sufficient documents to prove the ownership and partnership of the 1)M/s.Sivarajan Agencies 2)M/s.Sangupani Transport and 3) M/s.Sangupani Timber Depot. The first petitioner/wife alone is the dependent of the deceased and the sons are not entitled to get any compensation. The claimants have calculated the compensation without any documentary proof and claimed the compensation to the tune of Rs.1,30,25,000/- and restricted it to the tune of Rs.75,00,000/- and the claim is purely imaginary, highly excessive, unsustainable and exorbitant one.

4. In order to prove the case before the Tribunal, the claimants have examined four witnesses viz., PW1 to PW4 and marked Ex.1 to Ex.64 and the related document are Ex.26 to Ex.48. On the side of the respondent neither oral nor documentary evidence have been produced. Considering the materials available before the Tribunal and the oral and documentary evidence, awarded a compensation of Rs.19,24,435/-. Aggrieved against the above said compensation, the 3rd respondent/insurance company filed the present appeal before this Court.

5. Heard the rival submissions made on both sides and perused the available records.

6. According to the appellant/insurance company, the deceased Sivaraj Mudaliar was aged about 70years at the time of accident, the claimants are the wife and sons of the deceased. The claimants submits that the deceased was sole proprietor of 1)M/s.Sivarajan Agencies and partner of 2)M/s.Sangupani Transport 3)M/s.Sangupani Timber Depot and earning a sum of Rs.1,50,000/-p.m. The first petitioner/wife alone is the dependent of the deceased and the sons are not dependants and therefore they are not entitled to get any compensation. The claimant without any materials or any documentary proof claimed the compensation to the tune of Rs.1,30,25,000/- and restricted to the tune of Rs.75,00,000/- and the claim is purely imaginary, highly excessive, unsustainable and exorbitant one.

7. In the case of Sivagami and others v. The Managing Director, Tamil Nadu State Transport Corporation, Erode, Andavar Textiles, 9 Ramakrishanapuram, 50feet Road, Karur reported in 2011 (1) TNMAC 151 (DB), this Court held that for arriving the income of the Company, the total turnover should be taken into account. In order to prove the business transaction of the deceased, Exs.P27 to P35 would reveal the entire transaction of

the Firms and the Exs.P36 to P42 relating to the income tax returns of the deceased firm M/s.Vasudev Agencies for the years 1991-1998. Ex.P47 pertains to the bank transaction statement of the deceased. This Court in the case cited supra stated that 4% or 5% of the total turnover of the business has to be taken into account. The Tribunal calculated the turnover of M/s.Sivarajan Agencies, M/s.Vasudevan Agencies and M/s.Sivarajan Timber Depot (Rs.9,48,961 (Ex.P40) + Rs.10,48,616/- (Ex.P41) + Rs.1,05,98,164/- (50% of Ex.P61 turnover Rs.2,11,96,328/-) = Rs.1,25,95,741/- and 25% of the same is Rs.5,03,830/- is calculated as Annual Income of the deceased Sivaraj Mudaliar. After deducting 1/3rd of the personal income of the Sangupani Mudaliar i.e, Rs.1,67,943/-, the remaining 2/3rd is taken up for loss of income for Sivaraj Mudaliar per year is arrived at Rs.3,35,887/-. As per Section 163A of the Motor Vehicles Act, the multiplier adopted is 5. Therefore, a sum of Rs.3,35,887 x 5 = Rs.16,79,435/- is awarded as compensation towards pecuniary loss and loss of dependency to the family of the deceased.

8. On perusal of the entire records, there is no dispute with regard to death of the deceased due to the accident and loss of income from the partnership firms. The objection raised is that the Tribunal has wrongly calculated the income from the partnership firm at 4%. The deceased is the husband of the first claimant and father of the other claimants who is doing business and no documents have been produced for the partnership firm. Whereas, it is clearly proved that the deceased is the business man and there is no documents produced to prove the proprietorship concern, the deceased is one of the partner in the firms and having more experience in the relevant field and engage himself in the day to day activities of the firm. Had he alive, definitely he would have given valuable business advice, out of his rich experience to his family members, but due to accidental death of the deceased his family members have lost the same. The compensation awarded towards pecuniary loss and loss of dependency to the family of the deceased for Rs.16,79,435/- is not on higher side. The Tribunal has awarded Rs.4,000/- towards transport expenses, Rs.1000/- towards damages to clothes, Rs.40,000/- towards loss of love and affection (Rs.1000 for each claimants) and Rs.10,000/- for funeral expenses. Further, the Tribunal awarded a sum of Rs.2,00,000/- as compensation towards loss of consortium to the 1st petitioner/wife of the deceased. In all the Tribunal has awarded a sum of Rs.19.24.435/- as compensation to the claimants.

9. Considering the facts and circumstances and the available records, the award passed by the Tribunal under the head of pecuniary loss and loss of dependency is not on higher side and we feel, the award passed by the Tribunal is just and reasonable and does not warrant any interference and the appeal filed by the appellant/insurance company is liable to be dismissed.

10.In the result, the Civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed. In view of the judgment passed in CMA.No.1449 of 2014, also taking into consideration that the first claimant is the wife of the deceased died during the pendency of the civil miscellaneous appeal, the cross objection filed by the claimant in Cross Obj.No.60 of 2014 is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Accident Claims Tribunal,
Subordinate Judge,
Kancheepuram.

2.The Section Officer
VR Section High court
Madras

+2 ccs to Mr.R.Neethi Perumal Advocate sr 70521

CMA.No.1449 of 2014
and Cross Obj.No.60 of 2014

aa17/11/2017

सत्यमेव जयते

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