IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2265 OF 2016
AND C.M.P.NO.15992 OF 2016
AND CROS.OBJ.NO.30 OF 2017

The Divisional manager
The Oriental Insurance Company Limited
DO Eswaran Koil Street,
Puducherry - 605 001. ... Appellant in CMA
1st Respondent in Cross Objection

Versus

1.Ezhilarasi @ Maheswari
2.Govindaraju ..Respondents 1 & 2 in CMA/
Appellants 1 & 2 in Cross Objection
3.J.Jayakumar ...3rd Respondent in CMA/2nd Respondent in Cross Objection

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2015, passed in MCOP No.2855 of 2012, by the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

Prayer in Cross Objection:
Cross Objection filed U/O XL1 R(22) of CPC in CMA 2265/16 on the file this Hon'ble Court which was served to the Cross Appellant on 17.10.2016 against the order and decree dated 29.06.2015 made in M.C.O.P. No 2855 of 2012 on the file of the Motor Accidents claims Tribunal(Principal District Judge), Cuddalore.

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

For Respondents 1 and 2 and Appellant in Cross Objection : Mr.D.Ravichandran

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Principal District Judge) Cuddalore, in M.C.O.P.No.2855 of 2012, dated 29.06.2015, insurance company has preferred the present appeal.

2. Record of proceeding shows that the Civil Miscellaneous Appeal was admitted and interim stay was granted on 17.10.2016 on condition that the appellant deposits a sum of Rs.60,00,000/- along with proportionate interest thereon.

3. On receipt of notice, respondent nos.1 and 2 have preferred the Cross Objection. Respondent nos.1 and 2 have also filed C.M.P.No.1348 of 2017 for exemption of court fee. Both the matters arising out of the same award were taken together and disposed of by a common order dated 22.03.2017.

4. The claimants before the Tribunal are the parents of the deceased. The deceased was riding a motorcycle bearing Registration No.PY01-BC-1645, from Puducherry to Chennai, on 22.06.2012 at about 10.30 hours. A Scorpio Car, bearing Registration No.TN05-J-0008, belonging to the third respondent, was driven at a great speed in a rash and negligent manner and dashed against the motorcycle in the opposite direction. The deceased sustained fatal injuries and died on the spot. FIR was registered at Cheyyur Police Station against the driver of the third respondent. At the time of accident, the deceased was 24 years of age. He was a B.Sc., Graduate (Nautical Science) and completed a Naval Course at International Maritime Institute at Noida. He was employed as a Marine Engineer in M.Sc. Ship Management (Hongkong) Ltd., Hongkong and was earning a sum of Rs.1,70,000/- per month (3,650 USD per month). He joined duty in the above company as 3rd Officer and was promoted as 2nd Officer and had prospects to be promoted as 1st Officer. At the time of accident, he was holding a valid driving license. With these facts, the claim petition was filed claiming compensation of Rs.2 Crores with interest and costs.

5.The claim was objected by the appellant insurance company stating that the deceased has driven the vehicle in a negligent manner and the compensation claimed is highly excessive and exaggerated.

6. To prove the claim, three witnesses were examined on the side of the claimants and one witness was examined on the side of the appellant / respondents. The claimants have marked Exs.P1 to P30 and no documents were marked on the side of the

respondents. Ex.X1 was marked as a Court document. The respondents have examined the driver of the vehicle as R.W.1.

7. The Tribunal has decided the claim on the issues of rash and negligence act, liability and quantum of compensation. The mother of the deceased had let in evidence as P.W.1. An eyewitness by name Ramesh was examined as P.W.2. The eyewitness has spoken about the negligent driving of the driver of the third respondent and the narration of the incident. The Tribunal after going through Ex.P1 - FIR, Ex.P2 - Motor Vehicle Inspector's report, has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent. Ex.P3 was the insurance policy, which is valid between 18.06.2012 and 17.06.2013, covering the date of accident also. Ex.P4 is the driving license and Ex.P7 is the RC book of the motorcycle. Based on the narration of event by the eyewitness and on the basis of the documents produced by the claimants, the Tribunal has held that the offending vehicle is covered by insurance and hence, the appellant insurance company is liable to pay the compensation.

8. In so far as the quantum of compensation is concerned, the Tribunal has gone through the Court document Ex.X1, copy of the account statement issued by Canara Bank, Puducherry, as the claimants have not produced any proof of employment. P.W.1 - mother of the deceased has deposed about the earning of her son. From the perusal of the statement of accounts, the Tribunal had found the account transactions from 03.08.2007 to 31.07.2008, 31.01.2009 to 31.07.2009, 05.04.2010 to 29.10.2010, 01.12.2010, 03.01.2011 to 31.01.2011, 03.02.2011 to 27.12.2011, 02.01.2012 to 31.07.2012 and from 31.01.2013 to 31.07.2014. Finally, the transactions from 31.01.2013 to 31.07.2014 were considered and the Tribunal has found that the deceased was employed as a Marine Engineer in a Ship for six or seven months per year and was earned a sum of Rs.1,50,000/- per month, on an average. Therefore, the Tribunal came to the conclusion that the monthly income of the deceased could be Rs.1,50,000/- and the period of employment was not less than five months per year on contract basis.

9. On the basis of the monthly income, the Tribunal has calculated the loss of earning at Rs.7,50,000/- (Rs.1,50,000 X 5). The Tribunal has deducted a sum of Rs.2,50,000/- as standard deduction and thereafter, imposed income tax on Rs.5,00,000/- and arrived at annual income as Rs.6,47,000/-. Again 1/3rd was deducted towards personal and living expenses and arrived at Rs.4,31,332/- as loss of contribution to the family. Multiplier 18 was applied as the deceased was 24 years of age at the time of accident. As such, the total loss of income was arrived at Rs.77,63,976/-. The Tribunal awarded a sum of Rs.50,000/- for love and affection, Rs.10,000/- for funeral expenses and Rs.10,000/- for transport expenses. Finally, total compensation of Rs.78,33,976/- was awarded by the Tribunal.

Challenging the same, the appellant insurance company came up on appeal on the grounds that the compensation awarded was totally exaggerated and there was no proof of employment and income and as the deceased was employed on a contract basis, he is not entitled to a huge compensation as claimed by the claimants.

10. The claimants have filed Cross Objection against the appeal filed by the insurance company claiming the balance amount of compensation. According to the claimants, they are entitled to Rs.2 Crores, as the income was more than Rs.1,70,000/- per month and the deceased was employed for more than 6 to 7 months. The Tribunal has restricted the income up to five months, which is not correct. Therefore, Cross Objection has been filed on the grounds that the Tribunal has not considered the future prospects of the deceased of getting promotion as a First Officer in his employment. Further, compensation was not granted under the head loss of estate and the award under the head loss of love and affection is very meagre.

11. We have considered the submissions made on either side and perused the materials available on record.

12. It is not in dispute that the deceased was 24 years at the time of accident and he was employed as a Marine Engineer and was earning around Rs.1,50,000/- per month. The fact that he was contributing to the family is also not disputed as the statement of accounts shows that he was regularly sending money to his parents. The calculation arrived at by the Tribunal shows that there was a slight error in the same. The Tribunal has deducted Rs.2,50,000/- being 1/3rd of the total income towards living expenses. Thereafter, income tax was calculated on Rs.5,00,000/-. After deducting the income tax once again, a sum of Rs.2,15,666/- was deducted towards personal and living expenses. As such, the Tribunal has deducted 1/3rd of the income twice towards personal and living expenses. Since the deceased was a Bachelor, 50% of the amount must have been deducted towards personal and living expenses, as per law. Further, as rightly contended by the learned counsel for the respondent Nos.1 and 2/claimants, no amount has been awarded under the head future prospects. Hence, 50% of the monthly income of the deceased shall be given towards future prospects, as the deceased was only 24 years of age, at the time of accident.

13. The Tribunal has awarded Rs.77,63,976/- towards loss of income and had given Rs.50,000/- for loss of love and affection, Rs.10,000/- for funeral expenses and Rs.10,000/- for transportation. Thus, a sum of Rs.78,33,976/- has been awarded as total compensation.

14. In view of the wrong deduction made by the Tribunal twice under the same head and erroneous calculation

without applying future prospects, we are constrained to rework the award of compensation, as under:

Loss of income	-	Rs.1,50,000/-
50% Future prospects	-	Rs.75,000/-

Income for five months-		Rs.2,25,000/- X 5= Rs.11,25,000.00
Exemption u/s.80C, 80CCC and 80 CCD		= Rs. 1,00,000.00
		Rs.10,25,000.00

Tax rate:			
Upto Rs.2,00,000/-	Nil		
Rs.2,00,001/- to Rs.5,00,000/-		10%	30,000.00
Rs.5,00,001/- to Rs.10,00,000/-		20%	1,00,000.00
Above Rs.10,00,001/-	30%		7,500.00
	1,37,500.00		
Cess 3%	4,125.00		
	1,41,625.00		
Less Tax amount	Rs. 1,41,625.00		
	Rs. 8,83,375.00		
Less 50% living expenses	Rs. 4,41,688.00		
Annual income	Rs. 4,41,687.00		

Deceased aged about 24 years
Multiplier applied 18
Total loss of contribution to the family
(Rs.4,41,687 X 18)

Rs.79,50,366.00

Thus, loss of income is arrived at Rs.79,50,366.00 (Rs.4,41,687/- X 18). In so far as loss of love and affection is concerned, the Tribunal has awarded Rs.25,000/- each to the parents. This Court considers the award under this head as very less and therefore, it is modified as Rs.50,000/- each to both the claimants and accordingly, a sum of Rs.1,00,000/- is awarded under the head loss of love and affection. We increase the amount awarded under the head funeral expenses to Rs.25,000/-. A sum of Rs.10,000/- for transport expenses already awarded by the Tribunal is sustained. In addition to this, a sum of Rs.10,000/- is awarded for loss of estate and Rs.2,000/- towards conventional damages. Thus, a sum of Rs.80,97,366/- is awarded as total compensation, as under:

Loss of income	-	Rs.79,50,366.00
Loss of love and affection	-	Rs. 1,00,000.00
Funeral expenses	-	Rs. 25,000.00
Transport expenses	-	Rs. 10,000.00
Loss of estate	-	Rs. 10,000.00
Conventional damages	-	Rs. 2,000.00
Total compensation	-	Rs.80,97,366.00

15. In the result, C.M.A.No.2265 of 2016 preferred by the insurance company is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The cross objection filed by the respondents / claimants is partly allowed.

16. Consequent to the dismissal of the appeal, appellant - insurance company is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum, from the date of claim till payment along with costs of this appeal, less the amount already deposited, including the statutory deposit, to the credit of MCOP No.2855 of 2012 on the file of Motor Accidents Claims Tribunal (Principal District Court) Cuddalore, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to seek for withdrawal of the same, by making necessary applications before the Tribunal.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
   (Principal District Court)
   Cuddalore.

2. The Section Officer
   V.R. Section
   High Court, Madras

+1 CC to Mr.D. Ravichander, Advocate sr 18402
+1 cC to Mr.N. Vijyaraghavan, Advocate sr 18115

SCD(CO)
SP(10/07/2017)