

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and

The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.2837 of 2015
and

Cross Objection SR No.535 of 2016
and

C.M.P. Nos.6547 of 2016 in C.M.A.No.2837 of 2015
and

C.M.P. No.7339 of 2017 in Cross Objn. SR No.535 of 2016

C.M.A. No.2837 of 2015

Branch Office

National Insurance Company Limited

Salem - 1

... Appellant/3rd respondent

Vs.

1.Padmeswarna

2.Minor Rishi Krishna

3.Minor Aswath Krishna ...1 to 3 Respondents/Petitioners 1-3

4.Dhanapackiam ...Respondent/Respondent

5.Rajendra Kumar

6.K.Subramaniam Pillai ...Respondents 5 & 6/
1st and 2nd Respondents

(R2 & R3 are minor represented by
their mother and their next friend R1)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.12.2014, passed in M.C.O.P.No.70 of 2007, by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

For Appellant : Mrs.N.B.Surekha

For Respondents: Mr.U.M.Ravichandran
for C.Veeraraghavan

Cross Objection No.SR535 of 2016

1.Mrs.Padmaswarna

2.Minor Rishikrishna

3.Minor Aswathkrishna .. Appellants in Cross Obj/
Respondents in Appeal

(minors 2 and 3 are rep.by their
mother & next friend 1st appellant

Vs.

1.Branch Office

National Insurance Company Limited

Salem - 1

...Respondent in Cross Obj/

Appellant in Appeal

2.Rajendrakumar

...Respondent in Cross obj/

Respondent in Appeal

Prayer: Cross objection filed under Order LX1 Rule 22 of the CPC r/w Section 173 of the Motor Vehicles Act, 1988 in C.M.A. No.2837 of 2015 against the judgment and decree dated 10.12.2014 made in M.C.O.P. No.70/2007, on the file of the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Tiruppur.

For Petitioners : Mr.U.M.Ravichandran
for C.Veeraraghavan

For Respondents : Mrs.N.B.Sureka for R3

COMMON JUDGMENT

(Made by M.GOVINDARAJ, J.)

Challenging the award made by Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruppur, in M.C.O.P. No.70 of 2007 dated 10.12.2014, National Insurance Company, Salem, has preferred the appeal on the grounds of liability and quantum of compensation. This court has ordered notice of motion on 04.01.2016. On receipt of notice, claimants have filed Cross Objection S.R. No.535 of 2016 and a petition to amend the claim petition for enhancement of compensation. By consent of both the learned counsel, both the matters have been taken up together for disposal.

2. Case of the claimants is that, Sureshkumar, sole breadwinner of the claimants, was owner of three banian factories. For his business avocation, he went to Salem on 25.02.2005, and while returning from Tiruppur, in his car bearing Registration No.TN-39 S-8771, near IOC Petrol bunk in Perundurai - Coimbatore Main Road, a lorry bearing Registration No.TN-30 Y-4974, driven in a rash and negligent manner, without adhering to the traffic rules, dashed against the car. Due to the multiple injuries sustained in the accident, Sureshkumar, husband of the first respondent and father of the respondents 2 and 3, died on the spot. Legal representatives of the deceased filed a Claim Petition, claiming a compensation of Rs.1,01,13,000/- and the same was restricted to Rs.75,00,000/-.

3. The appellant/insurance company has filed a counter affidavit denying the accident, negligence and liability to pay compensation.

4. Based on the pleadings, the Tribunal has framed three issues, as follows:

(1) Whether Rajendrakumar, drove the lorry bearing Registration No.TN-30 Y-4974, with speed in a rash and negligent manner and dashed against the car driven by Sureshkumar and caused the accident?

(2) Whether the respondents are liable to pay compensation to the claimants?

(3) What is the compensation to be paid to the claimants by the respondents?

5. In order to prove the claim, the claimants have examined three witnesses as PWs.1 to 3 and marked 20 documents, namely Exs.P1 to P20. On the side of the insurance company, three witnesses were examined as RWs.1 to 3 and five documents were marked Exs.R1 to R5.

6. On the issue of negligence, wife of the deceased, adduced evidence. PW2, an eyewitness, who accompanied the deceased in his car, has let in evidence and marked Ex.P1 - First Information Report, Ex.P6 - Observation Mahazar in the criminal case, Ex.P7 - Rough sketch and Ex.P8 - Charge sheet. After perusing the evidence of RW1, driver of the offending vehicle, RW2, owner of the vehicle, the Tribunal came to a conclusion that the driver of the lorry, was rash and negligent, and caused the accident.

7. Insofar as the liability is concerned, the 6th respondent herein/owner of the vehicle has insured the vehicle with the appellant/National Insurance and the contract of insurance, was in subsistence and therefore, the Tribunal held that the insurance company was liable to pay compensation.

8. Insofar as the quantum is concerned, PW1-widow deposed that the deceased was a partner in Spring Apex and Evergreen International companies. She claimed that, at the time of accident, the deceased was aged about 38 years. However, based on Ex.P9, 10th Standard Mark Sheet of the deceased, wherein the year of birth of the deceased mentioned as 1966, the Tribunal fixed the age as 38 years.

9. PW3, Auditor, has given a certificate (Ex.P20) that the deceased earned Rs.8,14,448/- during the Financial Year 1999-2000, Rs.9,62,675/- in 2000-2001 and Rs.12,31,737/- during 2001-2002. According to PW3, at the time of accident, the deceased earned Rs.12,00,000/- per annum. The Tribunal considered Exs.P10, 11, 12 and found that the deceased was a partner, in the firms stated supra. In Ex.P20, no separate business was mentioned. Therefore, based on Ex.P18, the Tribunal found that the deceased had 30% share in Spring Apex and 33% share in Evergreen International. Accordingly, the Tribunal observed that the deceased earned 1/3rd of the profit, as per the partnership agreement.

10. For fixing the income of the deceased, the Tribunal has relied on the Income Tax returns filed by the deceased vide Ex.P15 - Saral form. The accident occurred on 25.02.2015. Therefore, the Tribunal relied on income tax documents, filed prior to the date of accident and death of Sureshumar. Based on Ex.P15, the annual income of the deceased was fixed as Rs.1,36,000/-. As the age of the deceased was fixed as 39 years, following the judgment in Santosh Devi vs. National Insurance Co. Ltd. reported in (2012) 4 SCC 353, 50% of the income was added towards future prospects. Following the judgment of Sarla Verma and others vs. Delhi Transport Corporation, the multiplier was fixed as 15%. After deducting 1/4th of income towards personal and living expenses of the deceased, based on the above details, loss of contribution to the family was computed. Thus the Tribunal has arrived Rs.22,95,000/- as the loss of contribution to the family.

11. Apart from above, following the judgment of Rajesh vs. Rajbir Singh reported in 2013 9 SCC 544, a sum of Rs.1,00,000/- has been awarded, as loss of consortium to the first respondent and Rs.1,00,000/- each, for loss of love and affection to the minor children. Rs.25,000/- for funeral expenses. Totally, a sum of Rs.26,29,000/- was awarded. However, while passing the decree, the Tribunal once again added Rs.7,65,000/-, computed towards 50% of the future prospects. Thus a sum of Rs.30,95,000/- was awarded, as total compensation with interest at the rate of 7.5% and cost.

12. The appellant/insurance company, has contended that Ex.P15 filed by the first claimant/wife, was after the death of Sureshkumar. Therefore, on the basis of the income tax returns filed after death, contribution to the family, ought not to have been computed. The appellant/insurance company, has contended that the driver of the vehicle insured with them, was not negligent and that therefore, the company is not liable to pay compensation. Award of Rs.1,00,000/- towards consortium, and Rs.2,00,000/- towards love and affection were excessive.

13. Per contra, learned counsel for the petitioner in the cross objection, contended that the income of the deceased should have been calculated on the basis of Ex.P20. The deceased was running export industries and earned huge profits. Hence, seeking enhanced compensation of Rs.1,01,13,000/-, she has filed a petition in C.M.P. No.6547 of 2016 in C.M.A. No.2837 of 2015, to amend the claim. According to the cross objectors, average income, received by the deceased, as well as Income Tax Returns of the companies, in which, the deceased was a partner, ought to have been considered by the Tribunal and accordingly, monthly income should have been calculated and consequently, the annual income, but the Tribunal erred, without considering Ex.P20.

We have considered the rival contentions.

14. Insofar as the negligence is concerned, it is well established by the evidence of PW2, eyewitness, PW1, wife of

the deceased and Ex.P1 - First Information Report, Ex.P6 - observation mahazar, Ex.P7 - rough sketch and Ex.P8 - charge sheet, that driver of the lorry was negligent. On the side of the respondent, though RW1, driver of the vehicle, deposed that he was not negligent, there is a categorical admission by him, that due to the accident, the victim died and RW2, owner of the vehicle, has not denied the accident. In such circumstances, finding of the Tribunal that the accident occurred only due to the negligence of the driver of the lorry, is well founded and does not require any interference. Hence, appellant/insurance company is liable to pay compensation.

15. Insofar as the quantum is concerned, contention of the appellant requires serious consideration. Upon perusal of Exs.P15 to P20, we could see that Ex.P15 is the only document, relating to the deceased. As per the Income Tax Returns, of the deceased, income shown is very less and nil income tax returns have been filed. However, for the year 2004 - 2005, Income Tax Returns has been filed showing annual income as Rs.1,35,616/-. Thus income was taken as Rs.1,36,000/- by the Tribunal and on the basis of which, the Tribunal has calculated the loss of contribution to the family. The contention of the cross objectors that income should have been fixed based on Ex.P20, as the deceased was owner of three banian companies and partner of industries, cannot be countenanced. The Tribunal has considered Exs.P16 to P19, Income Tax Returns filed by the companies. It is rightly considered by the Tribunal that the deceased was only a partner having 30 and 33% share, in the said companies. Income Tax returns would only show the income and extent of the tax paid and would not indicate the profit made in the business. The deceased was a 30% shareholder, and hence he would have obtained only 1/3rd of the profit, earned by the company. There is no clear evidence as to what was the profit earned by the company and the annual income of the deceased. In such circumstances, we find that the Tribunal has rightly relied on Ex.P15, the individual Income Tax returns filed by the deceased. Therefore, the contention of the claimants that income should have been calculated on the basis of Ex.P20, does not augur well. Therefore, we are of the considered opinion that the Tribunal has rightly relied on the Income Tax returns filed, on behalf of the deceased, for the year 2005-2006. As per the public document, namely, the Income Tax Return, the total income was fixed at Rs.1,36,000/-, and that the same was correctly taken as the annual income by the Tribunal. On other aspects, the Tribunal was right in awarding 50% towards future prospects and application of multiplier 15, taking the age of the deceased as 39 years, based on Ex.P5 - S.S.L.C. certificate. The Tribunal has rightly deducted 1/4th towards the personal and living expenses and arrived at a total loss of contribution to the family, as Rs.22,95,000/-. The Tribunal has also awarded Rs.1,00,000/- under the head loss of consortium and Rs.1,00,000/- each, to the minor

children towards loss of love and affection. The Tribunal has awarded Rs.25,000/- for funeral expenses. The Tribunal has awarded loss of estate at the rate of Rs.10,000/- to all the four claimants. We do not find any excess in the quantum of compensation awarded by the Tribunal.

16. Apart from the above, we award a sum of Rs.25,000/- for transportation and Rs.2,000/- for conventional damages. We find that the Tribunal has not awarded any compensation under the head loss of love and affection to the mother of the deceased. Since the mother of the deceased, has lost her beloved son and his love and affection at her old age, we award a sum of Rs.50,000/- for the loss of love and affection to the mother of the deceased/respondent No.4. Split up particulars of the compensation awarded to the legal representatives of the deceased are as under:

Loss of contribution to the family : Rs.22,95,000/- (Rs.1,36,000/- + 50% x 3/4 x 15)	
Loss of consortium to wife	: Rs. 1,00,000/-
Loss of love and affection to minor children	: Rs. 2,00,000/-
Loss of love and affection to mother	: Rs. 50,000/-
Loss of estate	: Rs. 40,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 25,000/-
Conventional damages	: Rs. 2,000/-

Total	: Rs. 27,37,000/-

17. The total compensation is reworked to Rs.27,37,000/-. Due to arithmetical error, the Tribunal, has decreed a sum of Rs.30,95,000/- as total compensation with interest. Accordingly, award of Rs.30,95,000/- is corrected and modified as Rs.27,37,000/-. Compensation is reduced by Rs.3,58,000/-. Reduction shall be adjusted from the share of the mother and wife, in equal proportion.

18. It would not be proper to take into consideration documents, which do not have the evidenciary value, more particularly, when there is a possibility of preparing the same, for the purpose of enhancement of compensation, as the same were prepared by the Auditor, after the death of the assessee, in the accident. Therefore, claim for enhancement made by the cross objectors does not merit consideration and hence the same is dismissed.

19. Learned counsel for the appellant submitted that the entire award amount has been deposited with proportionate interest. In view of the modification, the appellant is entitled to get refund of Rs.3,58,000/- with proportionate interest at the rate of 7.5% per annum, as awarded by the

In the result, Civil Miscellaneous Appeal is partly allowed and the Cross objection filed by the claimants is dismissed. Civil Miscellaneous Petition No.7339 of 2017 filed for exemption of court fee, is dismissed. C.M.P. No.6547 of 2016 filed for enhancing the claim amount is also dismissed. No costs. The share of the minors shall be deposited in any one of the Nationalised Banks, proximate to the residence of the first claimant/mother, under a re-investment and interest fetching scheme, till they attain majority. The mother is entitled to withdraw interest accrued once in three months for the welfare of her children. Other claimants are entitled to withdraw their share on filing payment out application.

Sd/--

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Asr

To

The Motor Accident Claims Tribunal
Chief Judicial Magistrate
Tiruppur.

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.42604

+1cc to Mrs.N.B.Surekha, Advocate SR.No.42506

C.M.A. No.2837 of 2015
and

Cross Objn. No.SR535 of 2016

CNR(CO)

sm:19.1.2018

सत्यमेव जयते

WEB COPY