IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.08.2017
CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2638 of 2016 & Cross Objection No.66 of 2017
& C.M.P.No.18807 of 2016

C.M.A.No.2638 of 2016

Royal Sundaram Alliance Insurance
Company Limited.,
Rep., by its Divisional Manager,
Having Office at "Subramaniam Building",
2nd Floor, No.1, Club House Road,
Anna Salai, Chennai-600 002. .. Appellant/2nd Respondent

Vs.

1.Anisa,
W/o Late Sirajjuddin

2.Rishwana (Minor)
D/o Late Sirajjuddin

3.Mohammed Wahid (Minor) ...Respondents 1 to 3/Claimants
S/o Late Sirajjuddin
(Respondents 2 and 3 Minors represented
mother and next friend 1st respondent)

4.D.Thavamani ..4th Respondent/1st Respondent

Cross Objection No.66 of 2017

1.Anisa,
W/o Late Sirajjuddin

2.Minor Rishwana
D/o Late Sirajjuddin
3.Minor Mohammed Wahid
S/o Late Sirajjuddin
(Minors represented by
mother and next friend 1st cross objector)
.. Cross Objectors/Petitioner

Vs.

1.The Divisional Manager,
Royal Sundaram Alliance Insurance
Company Limited.,
"Subramaniam Building",
2nd Floor, No.1, Club House Road,
Anna Salai, Chennai-600 002.

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2.D.Thavamani .. Respondents/Respondents

Appeal in C.M.A.No.2638 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.2 of 2012 dated 18.03.2016 on the file of Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

Cross Objection No.66 of 2017 is filed under Order XXXXI Rule 22 of C.P.C., against the judgment and decree in MCOP No.2 of 2012 dated 18.03.2016 on the file of Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For appellant in C.M.A.No.2638 of 2016 & 1st respondent in Cross Obj. No.66 of 2017 : Mr.M.B.Gopalan

For Respondents 1 to 3 in C.M.A.No.2638 of 2016 & Cross Objectors in Cross Obj. No.66 of 2017 : Mr.R.Nalliyappan

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

C.M.A.No.2638 of 2016 is preferred by the Insurance company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore, in MCOP No.2 of 2012 dated 18.03.2016.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore, in MCOP No.2 of 2012 dated 18.03.2016, the claimants have filed Cross Objection No.66 of 2017.

3. Since the present appeal and cross objection have been filed questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore, in MCOP No.2 of 2012 dated 18.03.2016, it is not necessary for this Court to deal with other aspects of the award.

4. The claimants are the wife, minor daughter and minor son of the deceased Sirajjuddin. The case of the claimants before the Tribunal was that the deceased was working as Electrical Supervisor in a shoe company at the time of accident and earning a sum of Rs.10,000/- per month. Though no documentary evidence was produced by the claimants to prove the age of the deceased Sirajjuddin at the time of accident, the Tribunal taking into consideration Ex.P6-Post Mortem Certificate, fixed

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his age as 34 years. In order to prove his income, the Employer of the deceased was not examined. However, based on the evidence of P.W.1, who had stated in her evidence that the deceased was working as electrical supervisor in a show company in Gulf country, the Tribunal has fixed the monthly income of the deceased as Rs.6,500/- and calculated the annual income at Rs.78,000/-(6,500 x 12). Considering the age of the deceased, the Tribunal added 50% of the income towards future prospects and arrived at the annual income as Rs.78,000 +39,000 = Rs.1,17,000/-. From the said amount, the Tribunal deducted 1/3 amount towards personal and living expenses of the deceased and arrived at the annual income as Rs.1,17,000-39,000=Rs.78,000/-. Thereafter, considering the age of the deceased as 34 years, the Tribunal applied the multiplier '16' and fixed the loss of income at Rs.78,000 x 16 =Rs.12,48,000/-. That apart, the Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of love and affection to the minor children, Rs.50,000/- towards loss of estate, Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transport expenses, Rs.2,000/- towards damages to cloths and articles and awarded a sum of Rs.15,30,000/- as compensation.

5. The learned counsel appearing for the Insurance company submitted that in the absence of any proof in respect of monthly income of the deceased, the Tribunal ought not to have fixed a sum of Rs.6,500/- as monthly salary of the deceased. Therefore, the calculation made by the Tribunal by fixing a sum of Rs.6,500/- as monthly salary has resulted in awarding exorbitant compensation.

6. Per contra, the learned counsel appearing for the respondents 1 to 3/claimants submitted that P.W.1, who is the wife of the deceased, adduced evidence before the Tribunal that the deceased was earning a sum of Rs.10,000/- per month. That apart, she has also marked Ex.P10 - xerox copy of the passport of the deceased to show that earlier, the deceased was working in a foreign country. In such circumstances, the Tribunal ought to have fixed the monthly salary of the deceased as Rs.10,000/- as claimed by the respondents 1 to 3 and hence, prays for enhancement of the compensation.

7. We have heard the learned counsel appearing for the parties and carefully perused the entire materials available on record.

8. In the absence of any evidence by the employer to show that the deceased was earning a sum of Rs.10,000/- per month, we are not inclined to accept that the deceased was earning a sum of Rs.10,000/- as claimed by the respondents 1 to 3/claimants. At the same time, considering the age of the deceased i.e.,34 years at the time of accident and also the present cost of living, the Tribunal ought to have fixed the monthly income of

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the deceased notionally at Rs.8,000/- to arrive at a just and proper compensation without which the deceased could not have run a family consisting of his wife and two children. Accordingly, we are inclined to fix the monthly income of the deceased as Rs.8,000/- per month to arrive at a just compensation. If a sum of Rs.8,000/- is fixed as monthly income, the annual income works out to Rs.96,000/- (Rs.8,000 x 12). Considering the age of the deceased, if 50% of the income is added towards future prospects, the annual income works out to Rs.96,000/-+48,000/-=Rs.1,44,000/-. From the said about, if 1/3 of Rs.48,000/- is deducted as personal expenses, the annual income works out to Rs.1,44,000-48,000/- = Rs.96,000/-. Considering the age of the deceased as 34 years at the time of the accident, the multiplier applied by the Tribunal as 16 based on the dictum laid down in Sharla Verma's case is correct. Accordingly, if multiplier 16 is adopted, the loss of income shall be arrived at as Rs.96,000 x 16 = Rs.15,36,000/-.

9. The learned counsel appearing for respondents 1 to 3/claimants submitted that though the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium, having regard to the young age at which the first claimant/wife has lost her husband, we are inclined to increase it to Rs.1,50,000/-.

10. For loss of love and affection to the minor children, the Tribunal has awarded a sum of Rs.1,00,000/- at the rate of Rs.50,000/- each. This, in our opinion, require enhancement. The children have lost their father at a very young age and considering the same, we enhance the compensation under the head 'loss of love and affection' to Rs.2,00,000/- at the rate of Rs.1,00,000/- to each of the minor children as against the sum of Rs.1,00,000/- awarded by the Tribunal.

11. The Tribunal has awarded a sum of Rs.50,000/- towards loss of estate, which in our opinion require enhancement considering the young age at which the deceased died leaving behind his wife and two minor children to succeed to his estate. Accordingly, we award a sum of Rs.75,000/- as against the sum of Rs.50,000/- awarded by the Tribunal.

12. The Tribunal has awarded a sum of Rs.25,000/- towards Funeral expenses, Rs.5,000/- towards transportation and Rs.2,000/- towards damages to clothing and articles. The compensation awarded under these heads, in our opinion, are sufficient compensation and they warrant no interference in this appeal.

13. In the result, the compensation amount awarded by the Tribunal is modified by enhancing the compensation awarded by the Tribunal from Rs.15,30,000/- to Rs.20,00,000/-. The interest rate awarded by the Tribunal at 7.5% p.a from the date of petition, is very reasonable and the same is confirmed. The

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details of the enhanced compensation, as per the above discussion, are as under:-

Loss of income	Rs.15,36,000/-
Loss of consortium	Rs. 1,50,000/-
Loss of love and affection	Rs. 2,00,000/-
Loss of estate	Rs. 75,000/-
Funeral expenses	Rs. 25,000/-
Transport charges	Rs. 5,000/-
Damages to cloths and articles	Rs. 2,000/-
Total...	Rs.19,93,000/-
rounded off to	Rs.20,00,000/-

14. The claimants are entitled to the enhanced compensation as determined by us in this appeal with interest at 7.5% per annum from the date of petition. Out of the total compensation amount of Rs.20,00,000/-, the first claimant-wife of the deceased is entitled to Rs.10 lakhs and minor claimants 2 and 3 are entitled to Rs.5 lakhs each. The appellant in C.M.A.No.2638 of 2016-Insurance Company is directed to deposit the entire compensation amount, as determined by us in this appeal, less the amount already deposited, if any, with interest as awarded by the Tribunal, from the date of claim petition till the date of deposit to the credit of MCOP No.2of 2012 on the file of I Additional District Court, Vellore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is permitted to withdraw her share of Rs.10 lakhs with interest. Insofar as the shares of minor claimants 2 and 3 are concerned, the Tribunal is directed to deposit the same in a nationalised bank within a period of four weeks from the date of receipt of a copy of this order. The first claimant/mother is permitted to withdraw the accrued interest on the said amount once in three months.

15. Accordingly, Civil Miscellaneous Appeal No.2638 of 2016 is dismissed and Cross Objection No.66 of 2017 is allowed. No costs. Consequently, connected miscellaneous petition is also dismissed. It is needless to mention that the claimants shall pay the enhanced court fee proportionate to the enhancement of the award made in this appeal.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1.Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.
2. The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.M.B.Gopalan Associates, Advocate Sr.No.59134
+1cc to M/s.R.Nalliyappan, Advocate Sr.No.58324

C.M.A.No.2638 of 2016 &
Cross Objection No.66 of 2017

CNR(CO)
sm:12.12.2017

HIGH COURT OF JUDICATURE MADRAS
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