IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1435 of 2006
and C.M.P.No.6451 of 2006
and Cross Objection No.119 of 2011

The National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai - 600 002. ... Appellant in CMA No.1435 of 2006 and
1st Respondent in Cross Objection No.119 of 2011

Vs

1.Mrs.S.Akthar Jahan
2.Mr.B.Abdul Shukur Respondents in CMA No.1435 of 2006 and
Appellants in Cross Objection No.119 of 2011

3.Mr.P.Perumal 3rd Respondent in CMA No.1435 of 2006 and
2nd Respondent in Cross Objection No.119 of 2011

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree of the learned Motor Accident Claims Tribunal (Fast Track Court-2), Additional District & Sessions Judge, Madras in MACTOP No.1781 of 2001 dated 07.11.2003.

Cross Objection is filed under Order XLI, Rule 22 of CPC against the decree and judgment dated 07.11.2003, made in MCOP No.1781 of 2001, on the file of the Motor Accident Claims Tribunal, District & Sessions Judge (Fast Track Court-2), Madras.

For Appellant in CMA 1435/2006 & 1st Respondent in Cross Obj.119/2011	:	Mr.K.Suryanarayanan
For R1 & R2 in CMA 1435/2006 & Appellants in Cross Obj.119/2011	:	Mr.V.Mohan Chowdry

COMMON JUDGMENT

Since both the appeal as well as the cross objection arise against the same judgment and decree of the learned Additional District & Sessions Judge, (Fast Track Court-2), Motor Accident Claims Tribunal, Madras in MACTOP No.1781 of 2001 dated 17.11.2003, this common judgment is passed.

2. The appellant is the respondent and the respondents are the claimants in MACTOP No.1781 of 2001. The respondents/claimants who are the parents of the deceased filed claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of their son who died in the accident that took place on 04.01.2001.

3. According to the respondents, while the deceased was riding in his motor cycle bearing Regn.No.TN20 A 1472 in Periyar EVR Salai from east to west and entering Pulla Avenue Salai, a lorry bearing Regn.No.TN28 C 0880 came in rash and negligent manner from west to east and knocked down the motor cycle. In the said accident, the deceased sustained multiple injuries and succumbed to death. The third respondent as the owner of the lorry and appellant as Insurer are liable to pay the compensation to the claimants.

4. The appellant herein filed counter denying all the averments made by the respondents/claimants. It is also stated that the lorry involved in the accident has no valid vehicular documents, no valid insurance policy and the driver of the said vehicle had no valid licence at the time of the accident. Further, the vehicle had no permit and fitness certificate at the time of accident and as per the terms and conditions of the insurance policy the policy does not cover for violation of policy conditions and hence, they are not liable to pay any compensation to the respondents/claimants.

5. Before the Tribunal, the second respondent was examined as P.W.1, one T.Amaladoss was examined as P.W.2, Mr.T.Janakiraman was examined as P.W.3 and Mr.Senthilkumar was examined as P.W.4. Twenty documents were marked as Exs.P1 to P20. On the side of the appellants, no one was examined and no document was marked.

6. The Tribunal framed necessary points for consideration. On considering the pleadings, oral and documentary evidence, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the lorry belonging to the third respondent, insured with the

appellant insurance company and awarded a sum of Rs.4,97,000/- alongwith interest @ 9% per annum from the date of petition till the date of deposit. Aggrieved by the said order, the appellant insurance company filed CMA No.1435 of 2006 and the respondents/claimants filed Cross objection No.119 of 2011 for enhancement.

7. The learned counsel for the appellant/insurance company in CMA No.435/2006 would contend that the notional income of the deceased fixed by the Tribunal is on the higher side, as the accident took place in the year 2001. Further, the Tribunal ought to have deducted half of the income of the deceased towards personal expenses and that the award of the Tribunal is excessive and it is against the evidence placed before it.

8. The learned counsel for the respondents/claimants would submit that the deceased was earning a sum of Rs.12,000/- per month and the Tribunal without assigning any reasons had fixed Rs.4,000/- as monthly income of the deceased which is on the lower side. It is further contended that no amount was awarded towards loss of love & affection. It is also submitted that considering the age of the deceased, 50% of the income is required to be added towards future prospects and that the tribunal had erred in considering the age of the mother of the deceased for adopting multiplier method and hence prays for enhancement of compensation.

9. I have heard the rival submissions and perused the materials available on record.

10. The only question to be decided is the quantum of compensation awarded by the tribunal. The learned counsel appearing for the appellant/insurance company would submit that the deceased was a bachelor and therefore 50% of his income has to be deducted towards his personal expenses, however the tribunal had deducted only 1/3rd towards his personal expenses and therefore the said amount has to be modified accordingly.

11. A perusal of the records would show that though Rs.12,000/- was claimed as the monthly income of the deceased, since the salary of the deceased was not proved as per Exs.P19 & 20 through proper evidence, the tribunal had determined the monthly income as Rs.4,000/-. There is no reason to set aside the said order.

12. As rightly contended by the learned counsel for the appellant, the tribunal has deducted only 1/3rd towards personal expenses of the deceased instead of 50% as the deceased was a bachelor. However, no amount has been added towards future prospects and therefore deduction of 1/3rd from the salary fixed

by the tribunal is in order and there is no reason to modity the same. Similarly, the tribunal, taking into consideration the age of the mother of the deceased has adopted multiplier method which is unsustainable. In the facts and circumstances, it will be just and proper if the age of the deceased is taken for arriving at multiplier. Multiper of 17 is the proper multiplier based on the age of the decesaed. Therefore, taking into consideration Rs.4,000/- as the monthly income and deducting 1/3rd towards personal expenses and adopting multiplier 17, as per the age of the deceased, the award under the head loss of estate & income is calculated as follows -

Rs.4,000 x 12 x 2/3 x 17 = 5,44,000/-

Moreover, the tribunal has awarded Rs.20,000/- towards loss of expectation of life, Rs.5,000/- towards funeral expenses and Rs.2,000/- towards transportation expenses which appears to be reasonable. Hence, the same are confirmed. However, the tribunal has not awarded any amount towards loss of love & affection. The claimants had lost their son at his tender age and the same cannot be be compensated in anyway. However, in an endeavour to do justice, a sum of Rs.10,000/- each is awarded towards loss of love & affection. Thus, the award of the Tribunal is enhanced to Rs. 5,81,000/-, break-up follows -

Srl. No.	Particulars	Amt. awarded by the Tribunal - Rs.	Amt. Awarded by this Court - Rs.	Result
1	Loss of estate & income	4,80,000/-	5,44,000/-	Enhanced
2	Loss of expectation of life	10,000/-	10,000/-	Confirmed
3	Loss of Love & Affection	-	20,000/-	Awarded
4	Transportation	5,000/-	5,000/-	Confirmed
5	Funeral expenses	2,000/-	2,000/-	Confirmed
	Total	4,97,000/-	5,81,000/-	Enhanced

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, Cross Objection No.119 of 2011 is partly allowed enhancing the compensation awarded by the Tribunal to Rs.5,81,000/-. However, the rate of interest awarded by the Tribunal remains unaltered.

14. The appellant/insurance company is directed to deposit the enhanced award amount alongwith interest and costs, within a period of four (4) weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the respondents/claimants are permitted to withdraw their share amounts alongwith interest and costs, less the amount already withdrawn, if any.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District & Sessions Judge,
(Fast Track Court-2),
Motor Accident Claims Tribunal ,
Chennai.

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

+1 CC to Mr.K. Suryanarayanan, Advocate sr 20045
+1 cC to Mr.V. MohanChoudary, Advocate sr 19902
+1 cC to Mr.V. MohanChoudary, Advocate sr 19902(04/07/2017)

C.M.A.No.1435 of 2006 and
C.M.P.No.6451 of 2006
Cross Objection No.119 of 2011

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