IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.90 of 2012

and Cros.Obj.No.113 of 2013

and M.P.No.1 of 2012

C.M.A.No.90 of 2012

The Oriental Insurance Company Ltd.,
Branch Manager,
New Delhi. ..Appellant/2nd respondent

1.Mrs.Saradha
2.Minor S.Dhanumathya
3.Minor S.Jeevittesh
(2nd and 3rd respondents, being minors, rep. by their mother the first respondent)
4.Rajagopal
5.Mrs.Janaki ..Respondents 1 to 5/Petitioners
6.M/s.Chettard Logistics Ltd.,
Faridabad, Haryana State. ..6th Respondent/1st Respondent
(6th respondent remained exparte before the Tribunal)

Cross Objection No.113 of 2013
1.Mrs.Saradha
2.Minor S.Dhanumathya
3.Minor S.Jevittesh
(minors rep. by their mother Mrs.Saradha)

4.Rajagopal
5.Mrs.Janaki ..Cross Objectors/ Petitioners

vs.

1.The Oriental Insurance Company Limited,
Branch Office,
New Delhi.

2.M/s.Chettard Logistics Ltd.,
Faridabad, Haryana State. .. Respondents/Respondents
(2nd respondent remained exparte before the Tribunal)

Prayer in C.M.A.No.90 of 2012: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 05.09.2008 made in M.C.O.P.No.223 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

Prayer in Cross Objection No.90 of 2012: Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code to enhance the award amount in the degree and judgment dated 05.09.2008 made in M.C.O.P.No.223 of 2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Dharapuram.

For Appellant / Insurance Company	:	Mr.S.Manohar
For Respondents	:	Mr.Ma.P.Thangavel for R1 to R5 R6 - Notice dispensed with vide Court Order
For Cross Objectors	:	Mr.Ma.P.Thangavel
For Respondents	:	Mr.S.Manohar in Cross Objection No.113 of 2013

COMMON JUDGMENT

[Order of the Court was made by M.Sathyanarayanan, J.]

The second respondent-Insurance Company in M.C.O.P.No.223 of 2007 on the file of the Motor Accident Claims Tribunal, Sub-Court Dharapuram, aggrieved by the quantum of compensation, had filed this appeal. The respondents 1 to 5 had filed the said claim petition stating among other things that the husband of the first respondent/first claimant was aged about 44 years and he was the proprietor of M/s.Falcon Tex, M/s.Sri Ram Conversion and M/s.Sri Rangammal Textiles and the said concerns were engaged in the business of textile conversion, manufacturing etc., and he was earning a monthly income of Rs.25,000/-. It is further stated that on the fateful day i.e., on 09.12.2006, the husband of the first claimant/first respondent was driving a two wheeler bearing Reg.No.TN37 AR 5484 and he entered the petrol bunk through northern entrance for the purpose of putting fuel and at that time, a lorry bearing Reg.No.HR-39J-8261 proceeding from North to South dashed against the motor cycle and dragged him for some distance and as a consequence, husband of the first respondent/first claimant suffered grievous injuries on the head and throughout the body and he died on the spot. The deceased was aged about 44 years and was a graduate and the first claimant is her wife and the claimants 2 and 3 are the minor daughter and son and claimants 4 and 5 are the parents and on account of his demise, the family has been left in lurch. It is further stated in the claim petition that the deceased had also availed loan and on account of the sudden demise, the first claimant is unable to pay the loan and therefore, claimed compensation under the following heads:

Particulars of Loss	Amount (Rs.)
a. Loss of earning for 26 years	78,00,000
b. Partial Loss of earning from to..... to the net rate of Rs..... a day by week	-----
c. Transport to hospital	5,000
d. Extra nourishment	------
e. Damage to clothing and articles	45,000
f. Others 1.Medical Expenses 2.Loss of love and affection 3.Funeral expenses 4.Loss of consortium	 --------- 2,00,000 5,000 45,000
Total	81,00,000

3. The first respondent remained exparte and the insurer of the offending vehicle had filed counter statement denying the averments made in the claim petition and would contend that everything put forward in the claim petition is subject to proof and explanation and the amount of compensation claimed is exorbitant and prays for dismissal of the claim petition.

4. During the course of trial, the first claimant examined herself as PW1 and the eye-witness to the accident was examined as PW2 and Exs.P1 to P26 were marked. On behalf of the second respondent-Insurance Company, Income Tax Officer was examined as RW1 and no document was marked.

5. The Tribunal, on consideration of the oral and documentary evidence, found that the driver of the offending vehicle, on account of the rash and negligent driving, had caused the accident and the second respondent-Insurance Company, being the insurer, is liable to indemnify the insured. On the question of compensation, the Tribunal had taken into consideration the various factors and has awarded a sum of Rs.22,76,000/- with interest @ 7.5 p.a. from the date of claim petition till the full and final settlement, vide impugned judgment and decree 05.09.2008 and challenging the quantum of compensation, the second respondent/Insurance Company had files this appeal.

6. The respondents 1 to 5/claimants, aggrieved by inadequacy of the quantum of compensation, had filed Cross Objection No.113 of 2013.

7. Mr.S.Manohar, learned counsel appearing for the appellant-Insurance Company would vehemently contend that admittedly, Income Tax Returns pertaining to the deceased viz., Exs.P11 and P12 came to be filed after his demise and it is not even the case of the claimants that after the demise, the business of the deceased is not being carried out and therefore, Loss of Annual Income arrived at by the Tribunal for a sum of Rs.2,25,000/- is very much on the higher side and would further contend that the evidence of RW1 had also supported their case and therefore, prays for reduction of quantum of compensation.

8. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the respondents/claimants would contend that Exs.P11 and P12 would disclose that the income earned by the deceased was gradually increasing and that at the time of demise, he was carrying on three businesses and also own lands and for the purpose of improvement of business, he had also availed loan and on account of the sudden demise, the first claimant is unable to carry on the business and that apart, loan amounts to be settled to the bank and would further contend that as per the judgment in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC), $1/4^{th}$ ought to have been deducted but only $1/3^{rd}$ has been deducted and taking into consideration Ex.P12, higher income has been shown and some amount has to be awarded for enhancement of compensation and also prays for enhancement of the amount to the minor claimants for the Loss of Love and Affection as well as to the parents of the deceased and prays for enhancement of the compensation.

9. This Court paid its best attention to the rival submissions and also perused the entire documents placed before it as well as the original records.

10. The following questions arises for consideration:

(i) Whether the amount of compensation awarded by the Tribunal requires modification?

(ii) Whether the claimants are entitled to enhanced compensation?

Question No.(i)

11. Since the learned counsel appearing for the appellant-Insurance Company advanced his arguments mainly on the question of quantum of compensation, this Court is of the view that it is unnecessary to go into that aspect.

Question No.(ii)

12. The deceased was aged about 44 years at the time of accident and as per his Income Tax Returns marked as Exs.P11 and P12 coupled with Ex.P26 would disclose that his income was gradually increasing and Exs.P12 would disclose that the deceased was earning Rs.2,73,713/- p.a. Though the appellant-Insurance Company had examined the Income Tax Officer/RW1, his evidence is not helpful to the appellant and in fact, he supported Exs.P11, P12 and P26. Therefore, this Court is of the view that the fixation of annual income @ Rs.2,73,713/- by the Tribunal is in order. Insofar as the application of multiplier is concerned, the Tribunal had deducted the multiplier "15" and as per Sarla Verma case (cited supra), the multiplier to be adopted is "14". Thus applying the multiplier "14", the Loss of Annual Income would comes to Rs.23,62,500 [Rs.2,25,000 -1/3rd deduction =1,68,750 x 14].

13. The Tribunal has awarded a sum of Rs.5,000/- to the minor claimants towards Loss of Love and Affection. It is to be pointed out at this juncture that at the time of demise of their father, the minor claimants were aged about 10 years and 7 years respectively and at young age, they had lost the love and affection and support of their father and therefore, this Court is of the view that Rs.25,000/- to each of the minor claimants is to be awarded under the head Loss of Love and Affection. Insofar as the parents of the deceased are concerned, they were aged 74 years and 70 years respectively and at their old age, they lost the support of their son and therefore, they are entitled to a sum of Rs.10,000/- each. The Tribunal has awarded a sum of Rs.10,000/- towards Loss of Consortium. The first respondent/first claimant was aged about 37 years and apart from managing the business, she has to support her minor daughter and son, aged 10 years and 7 years and her aged father-in-law and mother-in-law, who were aged 74 years and 70 years respectively. The first respondent/first claimant had lost her husband at young age and therefore, she is entitled to a sum of Rs.50,000/- towards Loss of Consortium. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and it is enhanced to Rs.10,000/-. Insofar as transportation is concerned, Rs.5,000/- awarded by the Tribunal is just and reasonable. Insofar as original award passed by the Tribunal is concerned, apportionment has already been ordered by impugned judgment and decree dated 05.09.2008 made in M.C.O.P.No.223/2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Dharapuram and it does not require any modification.

14. Thus the claimants are entitled to a enhanced compensation as under:

Heads of compensation	Amount (Rs.)
a. Loss of Income [Rs.2,25,000 -1/3rd deduction =1,68,750 x 14 = Rs.23,62,500] rounded of to Rs.23,63,000	23,63,000
b. Loss of Love and Affection Minor Claimants (Rs.25,000 x 2) = 50,000 Parents (Rs.10,000 x 2) = 20,000	70,000
Loss of Consortium	50,000
Funeral Expenses	10,000
Total	24,93,000

15. Thus, the claimants are entitled to a enhanced compensation of Rs.24,93,000/- with interest @ 7.5 % per annum. This Court has awarded enhanced compensation of Rs.2,17,000/- and the appellant-Insurance Company is directed to deposit the enhanced compensation along with interest from the date of this judgment, to the credit of M.C.O.P.No.223 of 2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court Dharapuram, within a period of four weeks from the date of receipt of this judgment, failing which, they will have to pay interest at 12% p.a. and on such deposit, the first respondent/first claimant is entitled to withdraw the said enhanced compensation by moving appropriate application before the Tribunal.

16. In the result, the Civil Miscellaneous Appeal in C.M.A.No.90 of 2012 is dismissed and the Cross Objection No.113 of 2013 is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To
Motor Accident Claims Tribunal/
Sub-Court, Dharapuram.

+1 cc to M/s.Ma.P.Thangavel, advocate,sr.8634

+1 cc to M/s.S.Manohar,advocate,sr.8080.

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