BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 05.04.2017
Delivered on : 05.06.2017
CORAM:
THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN
C.M.A.(MD)No.284 of 2011
&
M.P.(MD)Nos.1, 3 and 4 of 2011
and
Cross.Obj.(MD)No.2 of 2012

C.M.A.(MD)No.284 of 2011:

The Divisional Manager,
The National Insurance Company Ltd.,
92, Thevarpuram,
Tuticorin. ... Appellant / Respondent No.2

Vs.

1.M.Maheswari
2.Minor M.Sivasankar
3.S.Gnanasundari
4.C.Subbaiah
... Respondents 1 to 4 / Petitioners
5.V.Mathavan
(R2 represented by his
mother and Guardian R1) ... Respondent / Respondent No.1

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.02.2010 in M.C.O.P.No.1090 of 2005 passed by the Motor Accident Claims Tribunal, I Additional District Judge, Tirunelveli.

For Appellant : Mr.P.Athimoolapandian
For Respondents : Mr.V.Balaji for R1 to R4
No appearance for R5

Cross.Obj.(MD)No.2 of 2012:
1.M.Maheswari
2.Minor M.Sivasankar
3.S.Gnanasundari
4.C.Subbaiah

(Minor 2nd Cross Objectors represented
by his mother and Guardian
1st Cross Objectors) ... Cross objectors / Respondent 1 to 4
Vs.

1. The Divisional Manager,
   The National Insurance Company Ltd.,
   92,Thevarpuram,
   Tuticorin.
   ... Respondent / Respondent No.2
2. V.Madhavan ... Respondent No. 2 / Respondent No.5

PRAYER: The Cross Objection filed under Order 41 Rule 22 r/w Section 96(1) & (2) of C.P.C., against the judgment and decree dated 10.02.2010 in M.C.O.P.No.1090 of 2005 passed by the Motor Accident Claims Tribunal, I Additional District Judge, Tirunelveli.

For Cross Objectors : Mr.V.Balaji
For Respondents : Mr.P.Athimoolapandian for R1
No appearance for R2

COMMON JUDGMENT
(The Judgment was delivered by P.VELMURUGAN,J.)

The Civil Miscellaneous Appeal is filed by the appellant / Insurance Company against the judgment and decree dated 10.02.2010 passed in M.C.O.P.No.1090 of 2005 by the Motor Accident Claims Tribunal, First Additional District Judge, Tirunelveli.

2.The Cross Objection is filed by the petitioners / claimants against the judgment and decree dated 10.02.2010 passed in M.C.O.P.No.1090 of 2005 by the Motor Accident Claims Tribunal, First Additional District Judge, Tirunelveli.

3.The brief facts which are necessary to decide the issue involved in this appeal are as follows:

On 01.08.2004 at about 8.00 p.m., the deceased namely, P.M.Jegan @ Muthuselvan along with his friend was riding his TVS Centra motor cycle bearing registration No. TN-69/U-0283 at Alankulam to Tirunelveli main road near Vallavankottai Vilakku and at that time, a TATA Sumo bearing registration No.TN-69/B-8033 coming in the opposite direction in a rash and negligent manner, without following traffic rules and dashed against the said motor cycle. The deceased namely, P.M.Jegan @ Muthuselvan sustained grievous injuries in the said accident. Immediately, he was taken to Medical College Hospital, Tirunelveli and admitted as inpatient and thereafter, he was admitted as inpatient in a private hospital and after 20 days, due to the injuries sustained by him in the accident, he died on 21.08.2004. A criminal case in Crime No.612 of 2004 under Sections 279, 337, 338 and 304(a) IPC was registered against the driver of the TATA Sumo. The legal heirs of the deceased claimed a sum of Rs.40 lakhs as compensation before the Motor Accident Claims Tribunal.

4.Before the Tribunal, the claim was resisted by the 5th respondent / 1st respondent/owner of the TATA Sumo vehicle, stating that there was no negligence on the part of the driver of the TATA Sumo and that the charge sheet laid against him is not sustainable. It is further stated that the deceased had ridden the two wheeler in a rash and negligent manner and in order to avoid dashing with the opposite vehicle, the driver of the TATA Sumo, turned the vehicle on the left side and dashed on the cement pipe. Therefore, the appellant/ 2nd respondent/Insurance Company was not liable to pay compensation.

5.The appellant / 2nd respondent / Insurance Company filed counter statement questioning the manner of accident as alleged by the claimant and contended that the TATA Sumo never involved in the accident, since in the FIR itself it is averred that one vehicle was involved in the accident. Further, the owner of the TATA Sumo sold the vehicle to one Chellamurugan on 09.08.2002 and thereafter, he sold the vehicle to one Kannan. However, no steps were taken for effecting name transfer in the policy and hence, the policy stands in the name of the 5th respondent / 1st respondent / original owner of the TATA Sumo vehicle. Taking advantage of these facts, the claimants and the driver of the said vehicle, namely, Mathesh colluded each other and further, both the claimants, the driver and owner of the vehicle are well known to each other and they are relatives. It is further stated in the counter statement that after a period of 194 days from the date of accident, the Inspector of Police filed the charge sheet on 10.02.2005 against the driver of the TATA Sumo vehicle namely, Mahesh and the deceased namely, Jegan himself was negligent and hence, he alone is liable for the accident and prayed for the dismissal of the claim petition.

6.Before the Tribunal on the side of the claimants, two witnesses were examined as P.W.1 & P.W.2 and totally 23 documents were marked as Exs.P1 to P23. On the side of the respondents, two witnesses were examined as R.W.1 & R.W.2 and 7 documents were marked as Exs.P.1 to P7.

7.The Tribunal has framed the following points for consideration:

> "(i) Whether the driver of the 1st respondent drove the TATA Sumo car bearing Registration No.TN-69/B-8033 in a rash and negligent manner and caused the accident?
> (ii) Whether the petitioners are entitled to get compensation from the respondents,if so what is the quantum of compensation?"

8.After analysing oral and documentary evidences, the Tribunal fixed the liability on the 5th respondent / 1st respondent / owner of the TATA Sumo vehicle and also the appellant

/ 2nd respondent / Insurance Company and awarded a sum of Rs.12,09,390/- with interest at the rate of 7.5% per annum as compensation, which is as follows:

S.No.	Description	Award amount
1.	Loss of income	10,80,000
2.	Loss of consortium	20,000
3.	Mental stress and shock	20,000
4.	Loss of love and affection	20,000
5.	Funeral expenses	5,000
6.	Medical bill	64,390
	Total compensation	**12,09,390**

9.Aggrieved over the same, the appellant / Insurance Corporation is before this Court by filing the present Civil Miscellaneous Appeal, questioning the liability and the claimants have also filed Cross Objection for enhancement of compensation.

10.The learned counsel for the appellant / Insurance Company would submit that the accident had occurred due to rash and negligent riding of the deceased and the driver of the TATA Sumo vehicle colluded with the claimants falsely implicated the 2nd respondent / 1st respondent. He would further submit that the Head Constable of the concerned Police Station deposed that the deceased while riding the motor cycle, in order to avoid dashing against the opposite vehicle, turned the vehicle and hit in barricade of the road. He would further submit that the name of the driver and also the name of the offending vehicle were not mentioned in the FIR and in the absence of the same, the Tribunal wrongly fixed the liability on the appellant / Insurance Company and hence, the same is liable to be set aside.

11.The learned counsel for the respondents 1 to 4 / cross objectors / claimants would submit that though the name of the driver and registration number of the offending vehicle were not mentioned in the FIR, subsequently, during investigation, the Investigation Officer found that the driver of the said TATA Sumo only has caused the accident and the registration number of the vehicle was TN-69/B-8033 and filed the charge sheet to that effect and therefore, after considering the same, the Tribunal has correctly fixed the liability on the 5th respondent / 1st respondent / owner of the TATA Sumo vehicle and the said vehicle was insured with the appellant / Insurance Company and hence, directed them to pay the compensation. He would further submit that at the time of accident, the deceased was doing textile export and import business and was earning Rs.20,000/- per month, however, the Tribunal has not considered the evidence of Exs.P.14, P16 to P.20

to arrive at a conclusion that the deceased was doing textile export and import business and hence, the income of the deceased has to be enhanced. He would also submit that the award amount in respect of all other heads have to be enhanced.

12.Heard the learned counsel for the appellant / Insurance Company, learned counsel for the respondents 1 to 4 / cross objectors / claimants and perused the entire records and also considered the submissions made on either side.

13.The points for consideration in this appeal and cross objection are that,

> "(i) Whether the finding of the Tribunal that the offending vehicle viz., TATA Sumo bearing registration No. TN-69/B-8033 has involved in the accident and also due to the negligent on the part of the driver of the TATA Sumo the accident had occurred is justifiable?
>
> (ii) Whether the award passed by the Tribunal is just and reasonable?"

14.As per the averments in the Accident Register relating to Murugan, who was the pillion rider in the said two wheeler, the two wheeler was hit and run by a TATA Sumo at 9.00 p.m. It is seen that the accident had occurred on 01.08.2004 and FIR was registered only on 02.08.2004, whereas, the Accident Register was prepared by the Doctor on 01.08.2004 itself, i.e. on the same day. Further, the complainant namely, Murugan, who was admitted in the hospital on 01.08.2004 at 10.05 p.m., has clearly stated that a TATA Sumo vehicle dashed the two wheeler and caused the accident. Further, P.W.2 during his evidence has mentioned the registration number of the TATA Sumo vehicle and about manner of the accident. To disprove the same, on the side of the appellant / Insurance Company, R.W.1 and R.W.2 were examined, however, both are not eye witnesses to the accident. Of course, even though the appellant / Insurance Company would state that P.W.2 was not examined in the criminal case to prove the case beyond any reasonable doubt and since because the prosecution had not taken any steps for examining P.W.2, the claimants cannot be mulcted for the same. Therefore, from the evidence of P.W.2 and in view of specific mention about the offending vehicle the Accident Register and Charge Sheet (Ex.P.4), this Court found that the accident had occurred due to rash and negligent driving of the driver of the TATA Sumo vehicle and hence, the Tribunal has correctly fixed the liability on the owner of the TATA Sumo and the said vehicle was insured with the appellant / Insurance Company, the Tribunal directed the appellant / Insurance Company to pay the compensation. The point no.i is answered accordingly.

15. As far as the quantum of compensation is concerned,the claimants have stated before the Tribunal that at the time of accident, the deceased was exporting ready made garments under the name and style of A.J.Exports and Imports at Chennai and earning Rs.20,000/- per month. In order to prove the income of the deceased, on the side of the claimants Exs.P.14 to P.22 were marked. However, none of the documents have clearly stated about the monthly income of the deceased. Therefore, the Tribunal fixed the notional income of the deceased at Rs.7,500/- per month. Even though the claimants produced Ex.P.20 Permanent Account Number (PAN) Card, they have not produced income tax returns to show the annual income of the deceased. Hence, in the absence of the same, the notional income of the deceased is fixed at Rs.6,500/- per month.

16.As per the provisional certificate of the deceased (Ex.P.21), the date of birth of the deceased is 17.06.1974 and the accident took place on 01.08.2004, hence, the age of the deceased was 30 years at the time of accident. Therefore, the correct multiplier is 18. The wife, minor child, and the parents of the deceased are the dependents of the deceased. In view of the decision of ***Sarla Verma and others Vs. Delhi Transport Corporation and another,*** reported in ***2009 ACJ 1298,*** one fourth of income towards personal expenses has to be deducted and that the monthly contribution to the family of the deceased would be Rs.6,500 - 1/4 = Rs. 4,875/-. In view of the above, the ***loss of income*** is 4,875 x 12 x 18 = 10,53,000/-.

17.The age of the deceased, at the time of accident, was 30 years and therefore, definitely, some amount towards future prospects has to be added as per the decision of the Hon'ble Supreme Court, in the case of, ***Rajesh and others Vs. Rajbir Singh and others,*** reported in ***2013(9) Supreme Court Cases 54.*** Accordingly, the claimants are entitled to ***future prospects*** of Rs.5,26,500/- (4,875 x 18 x 12) x (50/100).

18.The Tribunal awarded Rs.20,000/- towards ***loss of consortium.*** The 1st claimant lost her husband at her young age and hence, the same is enhanced to Rs.1,00,000/-. The Tribunal awarded Rs.20,000/- for mental stress and shock. The same is set aside. The Tribunal awarded a sum of Rs.20,000/- towards loss of love and affection. The claimants have lost the love and affection of their husband, father and son respectively and hence, this Court is of the view that a sum of Rs.50,000/- is awarded to each of the claimants. Accordingly, the ***loss of love and affection*** would come to Rs.2,00,000/-. The Tribunal awarded Rs.5,000/- towards funeral expenses. This Court is of the view that a sum of Rs.25,000/- is reasonable towards ***funeral expenses.*** The Tribunal awarded a sum of Rs.64,390/- towards ***medical expenses*** based on medical bills. Hence, the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. Hence, this Court is of the view that a sum of Rs.5,000/- has to be awarded towards ***loss of estate***. Therefore, the respondents 1-4/ claimants are entitled to the total compensation of Rs.19,73,890 as given below:

Sl. No.	**Description**	**Amount awarded by**		**Award confirmed / enhanced / granted**
		Tribunal	**this Court**	
1.	Loss of income	10,80,000	10,53,000	Reduced
2.	Future prospects	--	5,26,500	Awarded
3.	Loss of consortium	20,000	1,00,000	Enhanced
4.	Mental stress and shock	20,000	--	Set aside
5.	Loss of love and affection	20,000	2,00,000	Enhanced
6.	Funeral expenses	5,000	25,000	Enhanced
7.	Medical bill	64,390	64,390	Confirmed
8.	Loss of estate	--	5,000	Awarded
	Total compensation	12,09,390	**19,73,890**	

19.Hence, the claimants are entitled to the enhanced compensation of Rs.19,73,890/- with 7.5% interest per annum. We are of the considered view that the same is just and reasonable compensation.

20.In the result, the award dated 10.02.2010 in M.C.O.P.No.1090 of 2005 passed by the learned Motor Accidents Claims Tribunal (I Additional District Judge), Tirunelveli is modified as above. The appellant / Insurance Company is directed to deposit the entire compensation, within a period of 8 weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the 1st claimant, wife as well as dependant of the deceased is entitled to Rs. 9,23,890/-, 2nd claimant the minor son as well as the dependant of the deceased is entitled to Rs. 5,00,000/- and 3rd claimant mother of the deceased is entitled to Rs.3,50,000/- and 4th claimant father of the claimant is entitled to Rs.2,00,000/-. Since the accident occurred in the year of 2004, The claimants 1,3 and 4 are permitted to withdraw their shares with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal and The Tribunal is directed to deposit the share of the minor child, in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until he attains majority. The first claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor child.

21.The Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed. No costs. Consequently, connected M.Ps.are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge,
   Motor Accident Claims Tribunal,
   Tirunelveli.

2. The Record Keeper,
   V.R. Section, Madurai Bench of
   Madras High Court, Madurai.

+1cc to A.K.Baskarapandiyan, Advocate Sr.No.58406
+1cc to Mr. V.Balaji, Advocate Sr.No.58459

NBI

VB/KP/SAR2/20.07.2017/8P/5C

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