IN THE HIGH COIURT OF JUDICATURE AT MADRAS

DATE : 22.03.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.106 of 2014
and
Cross Objection No.16 of 2018

C.M.A.No.106 of 2014

The Divisional Manager,
M/s.United India Insurance Co.Ltd.,
having office at Katpadi Road,
Vellore. ... Appellant

Vs.

1.Tmt.Saraswathi
2.Y.R.Sowmy

3.The Secretary,
K.B.Matriculation Higher Secondary School,
Melvisharam, Walaja Taluk, Vellore District. ... Respondents

Cross Objection No.16 of 2018

1.Tmt.Saraswathi
2.Y.R.Sowmy ... Cross Objectors

Vs.

1.The Divisional Manager,
M/s.United India Insurance Co.Ltd.,
having office at Katpadi Road,
Vellore.

2.The Secretary,
K.B.Matriculation Higher Secondary School,
Melvisharam, Walaja Taluk, Vellore District. ... Respondents

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Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 and the cross-objection has been filed under Order 41 Rule 22 of CPC, against the judgment and decree dated 11.02.2013 in M.C.O.P.No.30 of 2011 passed by the Motor Accident Claims Tribunal (Principal District Judge) at Vellore.

Appearance

Mr.J.Chandran, for appellant in the appeal and
for 1st respondent in the cross-objection

Mr.M.Sivakumar, for the R1 & R2 in appeal and
for cross objectors in cross-objection

No appearance for R3 in CMA.106/2014 & R2 in Cross.Ob.16/2018

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JUDGMENT

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

Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal (Principal District Judge) at Vellore, in and by award dated 11.02.2013 in M.C.O.P.No.30 of 2011, the Insurance Company has filed the present appeal.

2.Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present cross-objection, seeking enhancement of the compensation amount.

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3.The cross-objectors are the claimants before the Tribunal and they are the mother and sister of the deceased Chandrasekaran, who died in a motor accident that had occurred on 02.06.2009 involving the bus bearing Reg.No.TN-29-C-1555 insured with the appellant/Insurance Company. It is the specific case of the claimants that on 02.06.2009 at 13.00 hours, when the said Chandrasekar, along with his friend one Vishnu Praveen, was travelling in a two-wheeler bearing Reg.No.AP-03-D-8995, from Tiruttani to see the Golden Temple at Ariyur, the bus bearing Reg.No.TN-29-C-1555 insured with the appellant/Insurance Company, came in rash and negligent manner and dashed against the two wheeler, as a result of which the said Chandrasekaran sustained fatal injuries and died. At the time of accident, the deceased Chandrasekaran was aged 22 years and he was working as Computer Engineer in a private company and earning a sum of Rs.20,000/- per month. On that basis, the claimants have made a claim for a sum of Rs.50 lakhs as compensation.

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4.Before the Tribunal, in order to prove the income earned by the deceased, on the side of the claimants, the 2nd claimant/sister of the deceased examined herself as P.W.1 besides examining two other persons as P.W.2 & P.W.3 and marked 12 documents as Ex.P.1 to Ex.P.12. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent driving of the driver of the bus insured with the appellant/Insurance Company. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.23,08,060/-. Aggrieved over the same, the Insurance Company has filed the appeal and the claimants have filed the cross-objection.

6.It is the submission of the learned counsel for the appellant/Insurance Company that it is the case of the claimants before the Tribunal that the deceased Chandrasekaran was working as a Computer Engineer in a private concern viz., The Success Solution BPO, Tirupathi, and earning a sum of Rs.20,000/- per month. They have also examined the Manager of the said company as P.W.2. Though Salary Certificate was marked as Ex.P.12 through the Manager of the said Company, the appointment order of the deceased Chandrasekaran was not produced before the Court. Hence, according to the learned counsel for the Insurance Company, in the absence of the appointment order, the Tribunal ought not to have relied upon the salary certificate-Ex.P.12 to fix the sum of Rs.19,000/- as monthly income of the deceased. Thus, the learned counsel for the Insurance Company submitted that by fixing a lessor amount, the compensation amount awarded by the Tribunal has to be modified.

7.Per contra, the learned counsel for the claimants submitted that in

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order to prove the income earned by the deceased, the Manager of the concern, in which the deceased Chandrasekaran was working, was examined as P.W.2 who had categorically stated in his evidence that the said Chandrasekaran was earning a sum of Rs.19,000/- per month and Salary Certificate was marked as Ex.P.12. In the cross-examination of P.W.2, no favourable reply in support of the defence of the Insurance Company was elicited. Under such circumstances, the sum of Rs.19,000/- fixed by the Tribunal as monthly income of the deceased cannot be found fault with. It is further submitted by the learned counsel for the claimants that the Tribunal has failed to add any amount towards future prospects. Further, the compensation amounts awarded by the Tribunal under other heads also on the lower side. Thus, the learned counsel for the claimants prayed that by adding 40% amount towards future prospects and enhancing the amounts under other heads, the compensation amount awarded by the Tribunal could be enhanced.

8.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record and We find that as contended by the learned counsel for the claimants, in order to prove the income earned by the deceased, the Manager of the company, in which the deceased Chandrasekaran was working, was examined as P.W.2 and he had categorically stated in his evidence that the deceased Chandrasekaran was earning a sum of Rs.19,000/- per month. Salary Certificate was also marked as Ex.P.12 through P.W.2. In the absence of any favourable reply to the defence of the Insurance Company in the cross-examination of P.W.2, We do

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not find any valid reason to reject the evidence of P.W.2. Hence, the sum of Rs.19,000/- fixed by the Tribunal as monthly income of the deceased cannot be found fault with. At the same time, We find that the Tribunal has not awarded any amount towards future prospects. Therefore, We are of the opinion, 40% amount has to be added towards future prospects. If the sum of Rs.19,000/- is taken as monthly income and 40% amount is added towards future prospects, then the total works out to Rs.26,600/- (19,000 + 7,600), which could be taken as monthly income of the deceased. Then, the annual income of the deceased would come to Rs.3,19,200/- (26,600 x 12). Income Tax exemption available for the individual during the period 2011-2012 is upto Rs.2,50,000/-. Hence, 10% of the amount towards Income Tax has to be deducted over and above the sum of Rs.2,50,000/-. The amount over and above Rs.2,50,000/- works out Rs.69,200/- (3,19,200 - 2,50,000). 10% in Rs.69,200/- comes to Rs.6,920/-, which sum has to be deducted towards income tax. If so deducted, the balance amount works out to Rs.3,12,280/- (3,19,200 - 6,920). Since the deceased was a bachelor at the time of accident, 50% amount has to be deducted towards personal expenses. If so deducted, the balance amount would come to Rs.1,56,140/-, which could be taken as annual loss of contribution to the family. The deceased was aged 22 years at the time of accident. Hence, the correct multiplier that has to be applied in this case is 18. If multiplier 18 is applied, the total loss of income works out to Rs.28,10,520/- (1,56,140 x 18). Hence, the compensation amount of Rs.22,80,060/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to

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Rs.28,10,520/-.

9.That apart, it is seen that the Tribunal has awarded only a meagre sum of Rs.5,000/- for funeral expenses. Hence, the same is hereby enhanced to Rs.15,000/-. Further, the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. As the sum of Rs.15,000/- for love and affection and the sum of Rs.3,000/- for transportation awarded by the Tribunal appear to be reasonable, the same are confirmed. Consequently, the total compensation amount of Rs.23,08,060/- awarded by the Tribunal is hereby modified and enhanced to Rs.28,58,520/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of income	=Rs.28,10,520 /-
Loss of love and affection	=Rs. 15,000/-
Loss of estate	=Rs. 15,000/-
Transportation	=Rs. 3,000/-
Funeral expenses	=Rs. 15,000/-
Total	=Rs.28,58,520/-

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10.In the result, the Civil Miscellaneous Appeal is dismissed and the Cross-Objection is allowed in part and the total compensation amount of Rs.23,08,060/- awarded by the Tribunal is hereby modified and enhanced to Rs.28,58,520/-. The Insurance Company is directed to deposit the entire

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enhanced compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st claimant is entitled to withdraw Rs.22 lakhs with proportionate interest and the 2nd claimant is entitled to withdraw the balance amount with interest, by making necessary application before the Tribunal. No costs.

(R.P.S.J.,) (P.D.A.J.,)
22.03.2018

Internet : Yes / No
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To,
The Motor Accident Claims Tribunal
(Principal District Judge) at Vellore.

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(ssv)

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