IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2644 of 2011
and
M.P.No.1 of 2011
and
Cross Objection No.147 of 2011

CMA.No.2644 of 2011 in

The United India Insurance Co. Ltd.
No-33, Whites Road, 3rd Floor,
Royapettah,
Chennai - 600 014. .. Appellant/2nd Respondent

..Vs..

1.Dorothy
2.Anandhi
3.Shanti
4.Minor Vasanthi
5.Minor Preeti
(Minors represented by their mother
Dorothy) .. 1 to 5 Respondents/Claimants

6.Palani .. 6th Respondent/1st Respondent
(R6 Exparte in Lower Court)

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Cross Objection No.147 of 2011

1.Dorothy
2.Anandhi
3.Shanthi
4.Minor. Vasanthi
5.Minor.Preeti ..Cross Appellants/Respondents 1 to 5
(Minors rep.by their mother Dorothy)

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Vs.

1.The United India Insurance Co.Ltd.,
No.33, Whites Road, 3rd Floor,
Royapuram, Chennai 14.

2.Palani. .. Respondents/Appellant and VI Respondent

Prayer in CMA.No.2644 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 4th March, 2010 passed in M.C.O.P.No.674 of 2008, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri.

Prayer in Cross.Obj.No.147 of 2011: Cross Objection Appeal filed against the decree and judgment dated 4th March, 2010 passed in M.C.O.P.No.674 of 2008, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri.

For appellant in CMA.No.2644/2011 : Mr.G.Udayasankar

For respondents in CMA.No.2644/2011 : Mr.F.Terry Chellaraj for R1 to R5
R6- Exparte

For appellants in Cross Objection No.147/2011 : Mr.F.Terry Chellaraj

For Respondents in Cross Objection No.147/2011 : Mr.G.Udayasankar

C O M M O N J U D G M E N T

The United India Insurance Company Limited filed an appeal in CMA.No.2644 of 2011 against the award passed in M.C.O.P.No.674 of 2008 dated 04.03.2010 passed by the Motor Accidents Claims Tribunal, Ponneri. The claimant filed a Cross Objection No.147 of 2011 seeking for enhancement of compensation awarded by the Trial Court.

2. The first claimant is the wife of the deceased M.Edwin and claimants 2 to 5 are his children.

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3. The brief facts of the case of the claimants are as follows:

On 17.09.2008, the deceased was travelling in an auto bearing Registration No.TN-02-C-1798 along with his wife/first claimant and they were proceeding to a hospital from their home. At that time another auto bearing Registration No.TN-20-AM-0310 came rashly and negligently and hit the auto, in which the first claimant and her husband were travelling, as a result of which, the husband of the first claimant, i.e., deceased M.Edwin, sustained grievous injuries and subsequently died on the way to hospital.

4. According to the claimants, the rash and negligent driving of the driver of the auto bearing Registration No.TN-20-AM-0310 belonging to the first respondent in MCOP.No.674 of 2008 was the cause of the accident and since the said auto was insured with the United India Insurance Company Limited both of them are jointly and severally liable to pay compensation of Rs.5,00,000/- to them. The United India Insurance Company filed a counter denying all the allegations of the claimants.

5. The trial Court after analysing the evidence on record, awarded a sum of Rs.4,71,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal and the claimants have filed Cross Objections. The various heads under which the tribunal had awarded compensation is extracted hereunder:-

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Damage to Clothes	1,000/-
2.	Loss of Income (2,500x12x11)	3,30,000/-
3.	Transport expenses	5,000/-
4.	Mental Agony	20,000/-
5.	Loss of love and affection	40,000/-
6.	Loss of consortium	20,000/-
7.	Funeral Expenses	15,000/-
8.	Loss of happiness	20,000/-
Total		Rs.4,71,000/-

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6. Mr.G.Udayasankar, the learned counsel appearing for the United India Insurance Company would contend that when the wife of the deceased has stated in the First Information Report (Ex.P1) that her husband was indisposed for three years and the appellants/claimants have not also proved that death was the proximate to the cause of the accident, the Insurance Company is not liable to pay any compensation to the claimants. He also relied on the decision in Oriental Insurance Company Limited Vs. Premlata Shukla and Others reported in 2007 (2) TN MAC 106 (SC), and contended that once a part of contents of document is admitted in evidence, the party bringing the same on record cannot be permitted to turn around and contend that other contents contained in the remaining part thereof had not been proved. As far as the instant case is concerned, though it is sated in the FIR that the first claimant's husband was indisposed for three years, the details of illness is not stated and the Insurance Company has also adduced no evidence to show that the deceased died naturally and not on account of the road accident that took place on 17.09.2008. Further more, a perusal of the post mortem certificate shows that the deceased sustained the following injuries:-

> "1) Brown irregular abrasions: a) 3 x 1.5-1 cms, on the inner aspect of left knee: b) 2 x 1.5 cm, on the back of right elbow; c) 12 x 1.5-0.5 cms, vertically oblique, on the upper two third of right forearm;
>
> 2) On reflection of the scalp: Dark red bruising 5 X 4-3 X 0.5 cms, on the left side of frontal region of the scalp; Dark red bruising 6 X 5-3 X 0.5 cm, on the left side of occipital region of the scalp."

7. In the facts and circumstances, I hold that the death was proximate cause of the road accident that took place on 17.09.2008. Another contention of the learned counsel appearing for the United India Insurance Company Limited is that since there was head on collision between two autos, the trial Court is wrong in fixing the responsibility on the auto which belonged to the first respondent. It is to be pointed out that the deceased was traveling as a passenger in the auto bearing Registration No. TN-20-AM-0310. Even assuming that the drivers of both the vehicles were rash and negligent in driving their vehicles, the claimants can always proceed against one of the tort feasors and therefore, the claim petition filed against the first respondent is maintainable.

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8. Mr.F.Terry Chellaraja, the learned counsel appearing for the claimants would contend that since the deceased had more than five dependants, the trial Court should not have deducted 1/3rd towards his personal expenses and that the monthly income of the deceased fixed at Rs.3,000/- is very low. According to him, the deceased was working as a watchman earning a sum of Rs.5,000/- per annum. Since no income proof is filed the monthly income of the deceased is fixed as Rs.4,500/-

9. Applying the principles laid down in the decision rendered by National Insurance Co. Vs. Pranay sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards future prospects of the deceased. Therefore, the total income is Rs.4950/- (Rs.4,500/- + Rs.450/-(10% of Rs.4,500/-)). Since the age of the deceased was 55 years, proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, loss of dependency is calculated as follows:

= Rs.4,950/- (-) 1/4 deduction (1238)
= Rs.4,950-1238 = 3712/-
= Rs.3712 x 12 x 11 = 4,89,984/-

10. Apart from the above amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses. The details of the amount awarded to the claimants are as follows:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.4,89,984/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs.5,59,984/-

11. Thus, the claimants are entitled to a sum of Rs.5,59,984/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

12. The United Insurance Company is directed to deposit the enhanced claim amount less the amount deposited by them along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the appellants/claimants are at liberty to withdraw the same, as per the apportionment passed by the Tribunal. The

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claimants are directed to pay the additional Court fee for the enhanced compensation amount and the decree shall be drafted only on receipt of balance Court fee.

13. In the result,

(i) the Civil Miscellaneous Appeal filed by the United Insurance Company is dismissed.

(ii) and the Civil Miscellaneous Appeal filed in Cross Objection is partly allowed enhancing the compensation amount to Rs.5,59,984/-. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsi/dna

To

1. The Subordinate Judge (Motor Accidents Claims Tribunal),
Ponneri.

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

+1 cc to Mr.G.Udayasankar, Advocate SR.No.81719
+1 cc to M/s.M.Malar, Advocate SR.No.81645

CMA.No.2644 of 2011
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AK(CO)
CSL/14.02.2019

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