IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1557 of 2014
and Cros.Obj.No.120 of 2014
and MP.No.1 of 2014

C.M.A.No.1557 of 2014:-
National Insurance Company Ltd,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002. ..Appellant/2nd Respondent

Versus

1.M.Rasu
2.R.Amudha
3.R.Ishwarya (Minor)
4.R.Revathi (Minor)
5.R.Chitra (Minor)(Minors 3 to 5 are rep.by their Father & N.R M.Rasu)
6.P.Velmurugan
(6th respondent is set exparte in Lower Court)

..Respondents/Petitioner 1-5/1st Respondent

Cross Objection.120 of 2014:-
1.M.Rasu
2.R.Amudha
3.R.Ishwarya (Minor)
4.R.Revathi (Minor)
5.R.Chitra (Minor) .Cross Objectors

Versus

1.National Insurance Co.Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai -600 002.

2.P.Velmurugan ..Respondents

Prayer in CMA.No.1557 of 2014: Civil Miscellaneous Appeal filed against the judgment and decree dated 10.12.2013 made in M.C.O.P.No.974 of 2012 on the file of the Motor Accident Claims

Tribunal, II Judge, Court of Small Causes, Chennai.

Prayer in Cross Objection: Cross Objectors file this memorandum of cross objections under Rule 22 of Order 41 of the Code of Civil Procedure 1908 pleased to enhance the compensation from Rs.12,72,000/- to Rs.24,00,000/- with higher rate of interest and costs.

For Appellant
In C.M.A.No.1557 of 2014 : Mr.R.Ravichandran
In Cross Objection : Mr.M.Swamikkannu

For Respondents
In C.M.A.No.1557 of 2014 : Mr.M.Swamikkannu[for R1 to R5]
In Cross Objection : Mr.R.Ravichandran

J U D G M E N T

The above Civil Miscellaneous Appeal and Cross Objection are filed against the judgment and decree dated 10.12.2013 made in M.C.O.P.No.974 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 02.11.2011 at about 9.30 hours when the deceased R.Saravana Kumar @ Murugesh was proceeding in the lorry bearing Registration No.KA-01-MF-6070 from Nagra Village to Bakhankheri Village in Nagra Road near CH Civil Hospital, Batnagar, on seeing the High Tension electric wire blocking the road, the driver of the said lorry asked the deceased to get down from the Lorry and to lift the High Tension wire so as to enable the lorry to go further. In furtherance of the said direction, as the deceased was getting down from the lorry, he came into contact with the high tension wire, suffered heavy electric shock and died on the spot. According to the Petitioners, the accident occurred due to the negligence of the driver of the said lorry. As such the respondents who are the owner and insurer of the lorry are liable to pay compensation. It is also stated that the deceased was aged 19 years and by working as coolie he was earning Rs.75,000/- for 10 months in the rig operation and Rs.15,000/- as mason for two months. The petitioners, who are the parents and sisters of the deceased seek a sum of Rs.24,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company denied the allegation of the petitioners about the manner in which the accident occurred. The 1st respondent lorry owner did not possess any valid permit and the driver had no valid license, and as such, there is violation of policy conditions. Hence, the 2nd respondent is not liable to pay any compensation. The correct Registration Number of the lorry is KA-07-MF-6070 as per their enquiry. Even though, the driver stopped the lorry well before the spot where high tension electrical wire was noticed, the deceased suddenly got down from the lorry on his own and tried to remove the wires, in that process, he got electrocuted and died. The incident occurred only due to the negligence of the deceased. The driver of the lorry is no way responsible for the occurrence. Hence, the 2nd respondent/Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exs.P.1 to P.7 documents to prove their contention. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials on record, found that both the 1st and 2nd respondents are jointly and severally liable to pay compensation and awarded a sum of Rs.12,72,000/- to the petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal. While being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the Cross Objection.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal fixed the monthly income of the deceased very high and as a labourer in the rig lorry, his monthly income has to be fixed only at Rs.4,000/- per month. The Tribunal has awarded high amounts under different heads. Further, there is no negligence on the part of the driver of the lorry, resulting in the accident. Hence, the 2nd respondent/Insurance Company seeks to set aside the award by entertaining the appeal.

7. On the other hand, the learned counsel for the petitioners/claimants who have preferred the Cross Objection contends that the Tribunal wrongly fixed the monthly income at Rs.9,000/- and also erred in deducting 50% of the income towards his personal expenses. The Tribunal awarded very meagre amount under different heads. The Tribunal ought to have provided for

higher compensation keeping in mind the number of dependants of the deceased and other attendant circumstances. Hence, the petitioners/claimants seek enhancement of the award amount by allowing the Cross Objection.

8. Heard both sides and perused the available materials on record.

9. The petitioners/claimants examined eye-witness to the occurrence as P.W.2 and he clearly stated that he is also employed in the lorry involved in the accident as Senior operator and the deceased was working as Assistant driller in the said lorry. According to P.W.2, on the fateful day, when they were proceeding near C.H.Civil Hospital, Bat Nagar, the lorry came into contact with high tension electric wire and at that time to go further there was no way in the road. Hence, the driver of the lorry asked the deceased to get down and lift the high tension wire. As the deceased put his leg on ground without any precautions, he suffered heavy electric shock and died. The police also registered Ex.P.1 - F.I.R against the driver of the lorry only. On the other hand, the 2nd respondent has not let in any contra evidence to disprove the version stated by P.W.2 who witnessed the occurrence in person. In such circumstances, the finding of the Tribunal that the negligence on the part of the 1st respondent lorry driver alone resulted in the accident is perfect and the same needs no interference.

10. The petitioners claimed that the deceased was aged 19 years at the time of the accident; the copy of School Transfer Certificate of the deceased is produced as Ex.P.7 and the Post Mortem certificate is produced as Ex.P.2. On the basis of the same, the age of the deceased is fixed as 17 by the Tribunal. The same is not disputed by the 2nd respondent/Insurance Company. As such, the age of the deceased fixed at 17 is just and proper.

11. The Tribunal fixed the notional monthly income of the deceased at Rs.9,000/-. However, there is no proof produced for the same. In such circumstances, considering the fact that the deceased worked as helper in the rig lorry, it will be appropriate to fix the monthly income at Rs.8000/-. Considering the age of the deceased was 17 and he was employed, 40% of the income has to be added towards future prospects and the deceased being bachelor 50% of the income is to be deducted towards his personal expenses. Further, as the deceased was aged 17 years, the multiplier is to be applied is '18'. Thus, the loss of dependency is calculated as follows:-

[(Rs.8000 + 40%) - 50% x 12 x 18] = Rs.12,09,600/-

12. The same is awarded as loss of income including future prospects. As such, the sum of Rs.1,00,000/- awarded by the Tribunal towards loss of expectation is liable to be set aside. Similarly, the amount granted towards loss of love and affection is also unsustainable and the same is set aside.

13. In respect of awarding compensation under conventional heads, following the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], this court is inclined to grant a sum of Rs.15,000/- towards funeral expenses.

14. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.9,72,000.00	Rs.12,09,600.00
2	Funeral Expenses	Rs.25,000.00	Rs. 15,000.00
3	Loss of Love and Affection	Rs. 1,50,000.00	-
4	Loss of Expectation	Rs.1,00,000.00	-
5	Transportation Charges	Rs.25,000.00	-
6	Total	Rs.12,72,000.00	Rs.12,24,600.00

15. In the result,

(i) The C.M.A.No.1557 of 2014 filed by the Insurance Company is Allowed by reducing the award to Rs.12,24,600/- from Rs.12,72,000/-. The Cross Objection filed by the petitioners/claimants is dismissed.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above reduced award amount, the appellant/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(iv) The apportionment of the award amount to the Petitioners/Respondents 1 to 5 is as under:-

1st Petitioner/father = 35%
2nd Petitioner/mother = 35%

Petitioners 3 to 5/siblings = each 10%.

On such deposit, the petitioners 1 and 2 are permitted to withdraw their respective share amount by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application. Insofar as Minor Petitioners 3, 4 and 5 are concerned, their shares shall be invested in a Fixed Deposit in a Nationalised Bank, till they attain majority. The interest accrued from the minors share shall be withdrawn by their father, once in three months.

No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes, Chennai.

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

+1cc to Mr.M.Swamikannu, Advocate SR.No.19323

C.M.A.No.1557 of 2014
and Cross Objection
No.120 of 2014

SKV(CO)
GN(09/05/2018)