



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.77 of 2011
and M.P.No.1 of 2011
and M.P.No.2 of 2011

M/s.United India Insurance
Company Ltd.,
No.38, Anna Salai
Chennai-600 002

...Appellant
/2nd Respondent.

Vs

T.Lakshmi (died)
1.T.Ravi

...1 & 2 Respondents`/Petitioners

2.E.Saravanan

(R1-died. R2-recorded as LR of the
deceased T.Lakshmi, vide court order
dated 22.03.2018 in CMP.No.10769/2017
in CMA.No.77 of 2011) ...3rd Respondent/1st Respondent

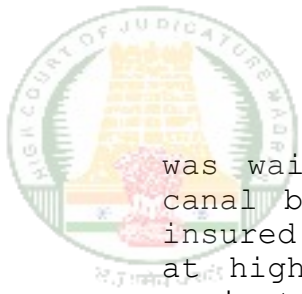
Civil Miscellaneous Appeal filed U/s. 173 of MV Act 1988,
against the judgment and decree dated 15.04.2010 passed in
M.C.O.P.No.2252 of 2006 on the file of Motor Accidents Claims
Tribunal, IV Judge, Court of Small Causes, Chennai.

For appellant : : M/s.M.B.Gopalan
M.Vijayaraghavan
for Respondents : : Mr.T.G.Balachandran for R1 & R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellant/Insurance Company, challenging the judgment and decree
dated 15.04.2010 passed in M.C.O.P.No.2252 of 2006 on the file
of Motor Accidents Claims Tribunal, IV Judge, Court of Small
Causes, Chennai.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. The case of
the petitioner is that on 28.04.2006 at about 5.30 hours, when
the deceased Thirumoorthi was proceeding in a tricycle in Sardar
Patel Road from west to east, opposite to E.B.Adyar Office, and



was waiting in the middle of the road, to turn right towards canal bunk road, a share auto owned by the 1st respondent and insured with the 2nd respondent bearing Reg.No.TN-02-D-3398 came at high speed, driven in a rash and negligent manner, dashed against the vehicle in which the deceased was waiting to take right turn, causing him fatal injuries resulting in his death subsequently in the hospital on 30.04.2006. The Petitioners who are wife and son of the deceased states that on the date of the accident, the deceased was aged 50 years and by working as vegetable vendor was earning Rs.250/- per day. Due to his sudden death, the petitioners have lost the love and affection of the deceased and also his economic contribution to the family. Thus, the petitioners sought for a sum of Rs.6,50,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petition, by filing counter, the 2nd respondent-Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. The rider of the tricycle, the deceased, only contributed to the accident by his negligence. The age, avocation and income of the deceased as claimed by the Petitioners is denied. The amount sought for is highly excessive. Thus the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.6 to prove their contention. On the other hand, the 2nd respondent produced neither oral nor documentary evidence. The Tribunal, on the basis of available evidence on record found that the negligence of the 1st respondent vehicle driver alone caused the accident and passed award directing the 2nd respondent to pay a sum of Rs.4,16,000/- as compensation to the petitioners. Aggrieved over the same, the 2nd respondent-Insurance company has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the 2nd respondent-Insurance company contends that the Tribunal erred in fixing the negligence on the part of the 1st respondent vehicle driver without any basis. The amount awarded by the Tribunal is exorbitant. The Tribunal ought to have applied multiplier 8 instead of 11. The amount awarded under different heads is highly excessive. Thus, the 2nd respondent/Insurance company sought for setting aside the award passed by the Tribunal by allowing the appeal.



7. Per contra, the learned counsel for the Petitioners/claimants contends that the Tribunal correctly fixed the negligence on the 1st respondent vehicle driver but awarded very meagre amount as compensation. The Tribunal failed to provide for any amount towards future prospects. Further, the Tribunal having fixed the age of the deceased as 50 ought to have applied multiplier 13, but wrongly applied multiplier 11. Further the Petitioner/Claimant contends that in appropriate case, even if there is no cross objection is filed, this court is empowered to award higher amount than the award passed by the Tribunal. In this connection, the learned counsel for the Petitioners relied upon the following decisions:-

(1) CDJ 2015 MHC 6642 [Universal Sompo General Insurance Co.Ltd., Mumbai Vs. Uma and others] C.M.A.No.306 of 2014.

(2) CDJ 2016 MHC 5387 [The New India Assurance Company Ltd., Versus S.Gnanaprakasam and Others];

(3) CDJ 2018 MHC 1333 [M/s.National Insurance Company Ltd., Erode Versus R.K.Kavitha and Others].

The learned counsel for the Petitioners submits that this Court, in the above cited decisions, has held that in fit cases, for enhancement of compensation, Order 41 Rule 33 CPC can be invoked even though claimants are not filing cross objection. Thus the learned counsel for the petitioner/claimant sought to enhance the quantum of award, even though no appeal or cross objection filed by them.

8. It is represented that 1st petitioner/wife died during the pendency of the present appeal and the 2nd petitioner/son is the sole legal representative of the deceased. The learned counsel for the petitioner contends that the accident occurred on 28.04.2006 at about 5.30 a.m., due to negligence of the 1st respondent vehicle driver. The eyewitness to the occurrence who deposed as P.W.2 clearly stated that on the occurrence day at about 5.30 a.m., in Adyar Sardar Patel Road, while going from west to east, he saw a tricycle going ahead of him and when the rider of the tricycle crossed the road, a share auto bearing Reg.No.02-D-3398 came in a rash and negligent manner, dashed against the tricycle. The police also registered Ex.P1-FIR against the driver of the share auto only. The contents of Ex.P.1-FIR corroborates the version of evidence given by P.W.2-eyewitness to the accident. P.W.2 stated that the claim of the petitioner about the manner in which the accident took place is true. The Police also after investigation laid charge sheet against the driver of the share auto driver only. It is therefore clear from the oral evidence of P.W.2, contents of Ex.P.6 charge sheet and Ex.P.2 Rough sketch of the



occurrence/accident spot, that the negligence of the 1st respondent vehicle driver alone caused the accident. On the other hand, the 2nd respondent has not examined either the driver of the offending vehicle or any other witness to contradict the evidence let in by the Petitioners. As such, it is clear that the negligence of the 1st respondent vehicle driver alone caused the accident. It is not disputed that the 1st respondent is the owner of the vehicle and the same was insured with the 2nd respondent. Thus the respondents are liable to pay compensation to the petitioner.

9. As per the above averments, the deceased was aged 50 years and by working as vegetable vendor was earning Rs.250/- per day. There was no proof produced by the petitioner regarding age, avocation and income of the deceased. However, as per Ex.P.4-Post Mortem Certificate and Ex.P.3 Death Report, the age of the deceased is stated to be 50 years. In the absence of any other document to prove the age of the deceased on the basis of Ex.P.3 and Ex.P.4, the age is fixed as 50 years. The petitioners claim that the deceased by doing vegetable business and was earning Rs.250/- per day. In the absence of any proof for the same, the Tribunal fixed the notional income at Rs.4500/- per month. The same is just and proper. There is no need to modify the same. However, as rightly pointed out by the learned counsel for the petitioners the Tribunal has failed to provide any amount towards Future Prospects. Considering the Ruling relied upon by the petitioners, as mentioned above, when there is an error in awarding compensation by the Tribunal, to award just and fair compensation, this court is entitled to rectify the same and award reasonable compensation by invoking Order 41 Rule 33 of CPC, even though there is no appeal or cross objection filed by the claimants. In the case on hand, apparently, the Tribunal has not provided for future prospects and also wrongly applied multiplier 11 instead of multiplier 13 for the deceased whose age was 50 years. Therefore, this court is inclined to modify the award.

10. In the light of the above discussion, the loss of dependency for the family of the deceased is calculated as under:-

Monthly income - Rs.4500/-

Add : 10% for future prospects ; - $4500 + 10\% (450) = \text{Rs.}4950/-$

1/3 rd to be deducted - $4950 - 1/3 (1650) = \text{Rs.}3300$

$3300 \times 12 \times 13 = 5,14,800/-$



Thus, a sum of Rs.5,14,800/- is awarded under the head "loss of dependency". Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is awarded as under:-

Funeral expenses	- 15,000/-
Loss of consortium	- 40,000/-
Add: Loss of dependency	-5,14,800/-

Total =	Rs.5,69,800/-.

Accordingly, the compensation awarded by the Tribunal stands modified to Rs.5,69,800/- instead of Rs.4,16,000/- as shown below:-

Sl.N o.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1	Pecuniary loss	Rs. 3,96,000/-	Rs.5,14,800/-
2.	Loss of consortium to 1 st petitioner	Rs. 5,000/-	Rs. 40,000/-
3.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
4.	Loss of love and affection	Rs. 10,000/-	---
	Total	Rs.4,16,000/-	Rs. 5,69,800/-

11. In the result,

(i) This Civil Miscellaneous Appeal is Disposed of;
(ii) The award amount is enhanced to Rs.5,69,800/- from Rs.4,16,000/-;
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) It is seen from the order of this Court dated 24.01.2011 passed in MP.No.1 of 2011 in CMA.No.77 of 2011 that the Appellant/Insurance company was directed to deposit the entire award amount, less the amount, if any already deposited. Hence, the Appellant/Insurance company is directed to deposit the enhanced award amount along with proportionate interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a order copy.

(v) Since the 1st Petitioner/1st respondent/wife died and the 2nd respondent/son is the legal representative of R1, he is entitled



to the enhanced award amount. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure. In view of the enhanced award amount, the 1st respondent/sole petitioner/T.Ravi, shall pay the required court fee within one week from the date of receipt of a copy of the order.

(vi) No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
IV Judge, Court of Small Causes, Chenani.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to M/s.T.G.Balachandran, Advocate Sr.No.27009

+1cc to M/s.B.Gopalan, Advocate Sr.No.27382

NRI (CO)

sm:6.6.2018

C.M.A.No.77 of 2011