IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1011 of 2008
&
CROSS OBJECTION NO.78 OF 2008

The New India Assurance Company Ltd.,
Thiruvannamalai Divisional Office,
Rep. By Deputy Manager-Legal. ...Appellant in CMA.No.1011 of 2008/2nd respondent in Cross Obj.78 of 2008

Vs

1. Mrs.Mangavaratha
2. Mr.Rajagopal
3. Mr.Venkatesh
4. Ms.Anchulacham
5. Ms.Rajeswari
6. Mr.Ramesh
7. Minor.Vijaya
   represented by next friend
   and mother 1st respondent. ... Respondents 1 to 7 in CMA.1011 of 2008/ Cross Objectors in Cross Objection No.78/2008

8. M/s.S.R.M.Easwari Travels & Tours (P) Ltd.,
   No.2, Veerasamy Street,
   West Mambalam,
   Chennai. ... Respondent No.8 in CMA.No.1011 of 2008 / 1st respondent in Cross Objections No.78 of 2008

Prayer in CMA.No.1011 of 2008 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal, Principal District Judge, Villuppuram in MACTOP.No.43 of 2004 dated 03.01.2006.

Prayer in Cross Objections No.78 of 2008: Cross Objection filed under Or.41, Rule 33 of CPC against the disallowed portion in the fair order and decreetal order in MCOP No.43 of 2004 on the file of the Principal District Judge, Villupuram dated 3.1.2006.

For Appellant in CMA.No.1011 of 2018 2nd respondent in Cross Objection	:	Mr.S.Sundaresan
For Respondents in CMA.No.1011 of 2018 For For Cross Objectors	:	Mr.N.Suresh for R1 to R7
		R8 in CMA and R1 in Cross Objection- No Appearance

COMMON JUDGMENT

The instant appeal has been filed challenging the Award dated 03.01.2006 passed by the Motor Accidents Claims Tribunal, Principal District Judge, Villuppuram in MACTOP.No.43 of 2004.

2. For the sake of convenience, the parties herein are referred to as per the array of parties in CMA.No.1011 of 2008.

3.The brief facts leading to the filing of the instant appeal are as follows:

(i)The respondent Nos.1 to 7 are the dependents of the deceased Ramachandran who died on 10.08.2003 as a result of an accident caused by a lorry bearing Registration No.TN-09-T-9779 insured with the Appellant and owned by the 8th respondent.

(ii) The respondents Nos.1 to 7 who are the dependents of the deceased Ramachandran preferred a claim before the Motor Accidents Claims Tribunal in MACTOP.No.43 of 2004. The Motor Accidents Claims Tribunal by its Award dated 03.01.2006 in MACTOP.No.43 of 2004, directed the Appellant Insurance Company and the 8th respondent herein jointly and severally to pay the respondents No.1 to 7, a sum of Rs.2,61,600/- together with interest at the rate of 7.5%, per annum from the date of the claim till the date of realisation and also awarded costs.

(iii) Aggrieved by the Award dated, 03.01.2006 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.43 of 2004, the Appellant Insurance Company has filed the instant appeal disputing the quantum of compensation.

(iv) On receipt of the notice in this appeal, the respondents No.1 to 7 have also filed a Cross Objection No.78 of 2008 before this Court seeking for enhancement of compensation.

4.Heard, S.Sundaresan, learned Counsel for the Appellant and Mr.N.Suresh, learned Counsel for the respondent Nos.1 to 7 and the Cross Objector.

5. According to the learned Counsel for the Appellant, the grounds raised for challenge in the instant appeal is as follows;

a) The Tribunal has erroneously applied 13 years as multiplier while arriving at the compensation and has also erroneously awarded a sum of Rs.10,000/- for loss of estate.

6. Per Contra, the learned Counsel for the respondent Nos.1 to 7 /Cross Objector would submit that the compensation awarded by the Tribunal is very low and is not in accordance with the settled principles of law.

7.According to the learned Counsel for the respondent Nos.1 to 7/Cross Objector, the Tribunal has erroneously assessed the monthly income of the deceased at Rs.2,400/-. Even though in the oral evidence of PW1, the mother of the deceased was categorically stated that her son was earning a monthly income of Rs.7,500/- at the time of the accident and further the driving license for heavy vehicles standing in the name of the deceased was also marked as Ex.P5 before the Tribunal.

8. According to him, there was no contra evidence produced by the Appellant to disprove the claim of the respondents 1 to 7/Cross Objector. According to him, the Appellant also did not cross examine on the veracity of the statement made by the respondent Nos. 1 to 7/Cross Objectors that the deceased was earning a monthly salary of Rs.7500/- at the time of the accident.

9. He drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of Mamta and others Vs. National Insurance Co. Ltd reported in CDJ 2009 SC 1656 and submitted that applying the said judgment, when the mother of the deceased PW1 has deposed that her son was earning a monthly salary of Rs.7500/- at the time of the accident and the Appellant having not cross examined the PW1, with regard to this statement, it can be inferred that the claimants have conclusively established that the deceased was earning a monthly salary of Rs.7500/- per month at the time of the accident.

10. According to the learned Counsel for the respondents No.1 to 7/Cross Objectors, the Appellants/Claimants having filed a driving license of the deceased which will establish that the deceased was a lorry driver and the accident having taken place in the year 2003, the assessment of the monthly salary at Rs.2400/- by the Tribunal is very low and Rs.7500/- ought to have been fixed.

11. Learned Counsel for the respondent Nos. 1 to 7/Cross Objector also further contended that the Tribunal ought to have

applied 18 multiplier as the age of the deceased at the time of the accident was 30 years. Further he contended that the Tribunal ought to have granted a higher compensation towards the funeral expenses and loss of estate. He prayed that the compensation be enhanced to a sum of Rs.5,00,000/-.

12. This Court after considering the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following:

a) It is an undisputed fact that the deceased Ramachandran, was a lorry driver at the time of the accident and was holding a valid heavy vehicle license to drive a lorry which is also marked as Ex.A5 before the Tribunal.

b) It is also an undisputed fact that the deceased Ramachandran died as a result of the accident caused by a vehicle insured with the Appellant.

c) The accident happened on 10.08.2003. The Tribunal has assessed the monthly income of the deceased at the time of the accident at Rs.2400/-. In the considered view of this Court, the assessment of monthly income of the deceased at the time of the accident by the Tribunal is not commensurate with the wages payable to a lorry driver at the time of the accident. Even though the respondent Nos.1 to 7 had claimed that the deceased was earning a monthly income of Rs.7500/- at the time of the accident, no documentary evidence was produced by them before the Tribunal to establish that he was earning such a salary.

13. In the considered view of this Court, a sum of Rs.4000/- per month will be a reasonable salary as a lorry driver during the period 2003.

14. In view of the decision rendered by the Hon'ble Supreme Court in the case of (Sarla Verma and others Vs. Delhi Transport Corporation and another), reported in 2009 ACJ 1298 and the constitutional Bench judgment of the Hon'ble Supreme Court reported in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017(2) TN MAC 609(SC) the correct multiplier which ought to have been applied to the deceased who was aged 30 years at the time of the accident is 17 and not 13 as erroneously fixed by the Tribunal under the impugned Award.

15.Admittedly, the deceased was a bachelor at the time of the accident. Therefore, applying the ratio laid down by the Hon'ble Supreme Court in the above referred decisions, 50% will have to be deducted towards the personal expenses and the compensation for loss of dependency will have to be assessed only for the balance amount. Under the impugned Award only Rs.2,000/- has been granted towards the funeral expenses.

16. Hence by taking into account Rs.4000/- as the monthly income of the deceased and adding 40% of his monthly income towards his future prospects, the monthly income of the deceased would be Rs.5,600/-. After deducting 50% towards the personal expenses of the deceased, the total monthly contribution towards his family would be Rs. 2800/-. After applying 17 multiplier, the total loss of income would be calculated as 2800 x 17 x 12=5,71,200/-.

In all this Court enhances the compensation awarded by the Tribunal in the following manner.

Sl. No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Loss of income (after adding future prospects)	Rs. 2,49,600/-	Rs.5,71,200/-
2	Loss of love and affection	Rs. --	Rs. 40,000/-
3	Loss of estate	Rs. 10,000/-	Rs. 15,000/-
4	Funeral Expenses	Rs. 2000/-	Rs. 15,000/-
5	Transportation	--	Rs. 10,000/-
6	Total	Rs. 2,61,600/-	Rs.6,51,200/-

17. Accordingly the Civil Miscellaneous Appeal is dismissed. No costs. Cross Objection No.78 of 2008 is partly allowed. No costs.

18.The compensation awarded by the tribunal is enhanced from Rs.2,16,600/- to Rs.6,51,200/-. The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

19. The Appellant Insurance Company and the 8th respondent are jointly and severally directed to deposit the compensation amount as awarded by this court along with interest as stated above to the credit of MCOP within a period of four weeks from the date of receipt of a copy of this order and on such amount being deposited, the respondents 1 to 7 are permitted to withdraw their shares as per the ratio apportioned by the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arb/msr

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Villuppuram.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.Mr.S.Sundaresan, Advocate, S.R.No.60816
+1cc to Mr.N.Suresh, Advocate, S.R.No.61219

C.M.A.No.1011 of 2008
& CROSS OBJECTION NO.78 OF 2008

sai(co)
nr 17/10/2018