

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.571 of 2018 and CMP No.5031 of 2018

and Cross Objection No.58 of 2018

The Manager,
The Oriental Insurance Company Ltd.,
Oriental House, No.216, 2nd Floor,
Prakasam Salai, Broadway,
Chennai 600 108. ... Appellant in CMA 571 of 2018 &
2nd Respondent in Cross Obj. 58/2018

-vs-

1. B.Devika
2. Minor B.Janai
3. Minor B. Lokesh
Minors 2 & 3 are rep by their mother
1st Respondent ... Respondents 1 to 3 in CMA 571 of 2018
& Cross Appellants in Cross Obj.58/2018
4. M/s. Ragas School of Nursing,
No.2/102, East Coast Road,
Uthandi, Chennai 600 119. ... 4th Respondent in CMA 571 of 2018
& 1st Respondent in Cross Obj.58/2018

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in M.C.O.P.No.155 of 2015 on 01.07.2017 on the file of the learned (Subordinate Judge Court) The Motor Accident Claims Tribunal at Tiruttani, Thiruvallur District.

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation amount awarded in the Judgment and decree in M.C.O.P.No.155 of 2015 on 01.07.2017 on the file of the learned (Subordinate Judge Court) The Motor Accident Claims Tribunal at Tiruttani, Thiruvallur District.

For Appellant : Mr. J.Chandran
for Appellant in CMA 571/18
& 2nd Respondent in Cross Obj 58/2018

For Respondents : **(*)Mr.K.R.Ponnusamy for**
M/s.Anand and Suryas
for Respondents 1 to 3 in CMA 571/18
& Cross Appellants in Cross Obj 58/2018

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

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.30,87,000/- as compensation for the death of one M.Bhoopathy, in a motor accident that occurred on 18.05.2015, is the appellant.

2. According to the claimants, who are the wife and children of the deceased, while the deceased was riding two-wheeler bearing Registration No.AP-03-BA-5429 on the left side of Tiruttani - Arakkonam road, near Tiruttani Bus stand at about 8 a.m. on the fateful day, the School Bus owned by the 4th respondent herein and insured with the appellant Insurance Company was driven in a rash and negligent manner in the opposite direction and hit against the two-wheeler. As a result of the impact, the said Bhoopathy suffered grievous head injuries and died at the Government General Hospital, Chennai, on 23.05.2015. Terming the negligence on the part of the bus driver as the cause of the accident, the claimants sought for compensation. The claimants would further contend that the deceased was working as a catering assistant and earning about R.750/- per day. The claimants would therefore quantify the loss at Rs.40,00,000/-.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was contended that the deceased was not having a valid driving license and it was his own negligence which was the cause of the accident. The quantum of compensation was also disputed by the Insurance Company.

4. The Tribunal which heard the Original Petition held that the accident occurred due to the rash and negligent driving of the bus. In coming to the said conclusion, the Tribunal relied upon the FIR marked as Ex.P1, the final Report marked as Ex.P2

and the Charge Sheet which was marked as Ex.P4. The Tribunal also faulted the Insurance Company for not letting in any evidence to show that there is no negligence on the part of the bus driver. Since the existence of the Insurance Cover was not disputed, the liability to pay the compensation was fastened on the Insurance Company.

5. On the quantum, the Tribunal relying upon the evidence of P.W.3, who was the employer, concluded that the deceased would have earned at least Rs.18,000/- per month. Deducting $\frac{1}{4}$ towards personal expenses, the Tribunal fixed the loss of dependency at Rs.25,92,000/- [Rs.18,000/- - 4,500/- x 12 x 16]

6. The Tribunal also awarded the following amounts under the conventional heads

S.No.	Heads	Amount
1.	Dependency	Rs.25,92,000/-
2.	Loss of Consortium	Rs. 1,00,000/-
3.	Loss of Love & affection (Rs.75,000/- x 3)	Rs. 2,10,000/-
4.	Mental Agony	Rs. 25,000/-
5.	Funeral Expenses	Rs. 10,000/-
6.	Loss of Happiness	Rs. 1,50,000/-
	TOTAL	Rs.30,87,000/-

7. We have heard Mr.J.Chandran, learned counsel appearing for the Insurance Company and (*)**Mr.K.R.Ponnusamy**, learned counsel appearing for M/s.Anand & Suryas, for respondents 1 to 3/claimants. The 4th respondent owner of the bus remained ex-parte before the Tribunal and hence, notice to it, in this appeal is dispensed with.

8. Mr.J.Chandran, learned counsel appearing for the Insurance Company would make a faint attempt to address arguments on the question of negligence, when it was pointed out that the Insurance Company has not let in evidence to prove the absence of negligence on the part of the driver of the School

bus or negligence on the part of the deceased Bhoopathi, Mr.J.Chandran would restrict his arguments to the quantum of compensation only. Mr.J.Chandran would vehemently contend that the Tribunal erred in fixing the monthly income at Rs.18,000/-. He would rely upon the claim Petition, wherein, the occupation of the deceased Bhoopathi is shown as "Catering Worker". Relying upon the above description, Mr.J.Chandran would submit that a catering worker would not be paid Rs.750/- per day as wages. His further argument is that he would not get employment all through the month, since the catering service itself is a seasonal business. Mr.J.Chandran would also fault the Tribunal for awarding conventional damages at higher rates than what is prescribed by the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331.

9. Contending contra, (*)**Mr.K.R.Ponnusamy** learned counsel would submit that catering service cannot be termed as a seasonal basis. Inviting our attention to the evidence of P.W.3 wherein he had deposed that he was paying Rs.750/- per day to the deceased, and he was working for almost 25 days in a month, (*)**Mr.K.R.Ponnusamy**, would submit that the fixation of Rs.18,000/- towards monthly income is just and reasonable. The learned counsel would also point out that the Tribunal has not added any amount towards future prospects. Even assuming that the monthly income could be reduced, the non addition for future prospects would make the award just and reasonable.

10. We have considered the rival submissions.

11. There is no documentary evidence to show the income of the deceased. However, P.W.3, the employer has deposed that the deceased has been working as cook, for nearly 5 years before the accident, and he was earning a sum of Rs.750/- per day. The said witness would also add that the deceased worked for at least 25 days in a month. The evidence of P.W.3 cannot be taken on its face value. P.W.3 has not produced any material to show that he had offered work to the deceased for 25 days in a month. Considering the nature of the work, we are of the opinion that the deceased would have earned at least Rs.15,000/- per month.

12. The deceased was aged about 32 years at the time of the accident and the addition of future prospects should be at 40%. Adding 40% towards future prospects, the monthly income for the purposes of calculating the loss of dependency would be Rs.21,000/-. The deceased had left behind his widow and two minor children. Therefore, 1/3 has to be deducted towards

personal expenses. This leaves a sum of Rs.14,000/- as monthly loss of dependency. Applying a multiplier of 16 as suggested by the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756, the total loss of dependency would be Rs.26,88,000/-

13. As rightly contended by Mr.J.Chandran, learned counsel appearing for the Insurance Company, the award of the Tribunal under the conventional heads namely loss of consortium, loss of love and affection etc., is definitely on the higher side. Hence the same requires modification and the same is modified as follows:

S.No.	Heads	Amount
1.	Dependency	Rs.26,88,000/-
2.	Loss of Consortium to the wife/1 st respondent	Rs.40,000/-
3.	loss of love and affection to the two minor children at Rs.40,000/- each	Rs.80,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral Expenses	Rs.25,000/-
6.	Transportation	Rs.5,000/-
	TOTAL	Rs.28,53,000/-

14. The award of mental agony and loss of happiness cannot be sustained and hence the same is set aside. Thus the total award works out to Rs.28,53,000/-. The award will carry interest at 7.5% per annum from the date of petition till date of payment.

15. In fine, the appeal is partly allowed. Cross Objections is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

16. The award is apportioned as follows among the claimants.

1. The 1st claimant wife will be entitled to Rs.12,53,000/-

with proportionate interest and entire costs

2. The two minor children will be entitled to Rs.8,00,000/- each with proportionate interest.

17. The Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimant namely, the 1st respondent will be entitled to withdraw her share of the compensation. The Tribunal is directed to deposit the share of the minors, namely the claimants 2 & 3/ respondents 2 & 3, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 1st respondent is permitted to withdraw quarterly interest from the fixed deposit for the maintenance of the minor children.

Sd/-

Assistant Registrar
(Dated : 28.01.2019)

(*) Amended as per order dated
08.03.2019 made herein

Sd/-

Assistant Registrar
(Dated : 19.03.2019)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Motor Accidents Claims Tribunal, (*) To be substituted
Subordinate Judge Court, the order already
Tiruttani, Thiruvallur District. despatched on
12.03.2019
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.Anand And Suryan, Advocate, S.R.No. 75017
+1cc to Mr.J.Chandran, Advocate, S.R.No. 74429

CMA.No.571 of 2018 and CMP No.5031 of 2018
and Cross Objection No.58 of 2018

PPA (CO)
GN(31/01/2019)
CSL/21.03.2019