

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2690 of 2013
and M.P.No.1 of 2013
and Cross Objection No.18 of 2014

C.M.A.No.2690 of 2013:-

United India Insurance Co.Ltd.,
No.266, Kapila Tower, 2nd floor
Opp. To Saibaba Temple
Mettupalayam Road
Coimbatore -641 043

...Appellant/III Respondent

Vs.

1.Maragatham
2.Nagasundari(Minor)
3.Naga Sundararajan (Minor)
4.Ramasamy
5.Palaniammal
Minors 2 and 3 represented by mother
1st respondent.

..Respondents 1 to 5/
Petitioners 1 to 5

6.Ismail
7.Principal
SBOA Matric Higher Secondary School
Chokkanpudur, Coimbatore

..Respondents 6 and 7/
Respondents 1 and 2

(Respondents 6 & 7 Exparte before lower
Court Hence notice may be dispensed with)

Cross objection No.18 of 2014:-

1.Maragatham
2.Nagasundari(Minor)
3.Naga Sundararajan (Minor)
4.Ramasamy
5.Palaniammal
Minors 2 and 3 represented by mother
1st respondent.

..Cross Objectors/ Respondent 1 to 5/
Petitioner 1 to 5

Vs

1.United India Insurance Co.,Ltd.,
No.266, Kapila Tower, 2nd floor
Opp. To Saibaba Temple
Mettupalayam Road, Coimbatore

...1st Respondent/ Appellant/
3rd Respondent

2.Ismail

3. Principal
SBOA Matric Higher Secondary School
Chokkanpudur, Coimbatore.

..Respondents 2 to 3 /
Respondent 6 & 7/Respondent 1 & 2

(Respondents 2, & 3 remained exparte before the
Tribunal Hence notice may be dispensed with
in this cross Appeal)

Prayer in CMA.No.2690/2013 and Cross Objection No.18 of 2014:-

Appeal and Cross Objection filed against the award and
decree dated 10.02.2009 passed in M.C.O.P.No.751 of 2006 on the
file of Motor Accidents Claims Tribunal, Additional District
Court, Special Court for E.C.Act cases, Coimbatore.

For appellant/Insurance company :: Mr.N.Vijayaraghavan
for Respondents 1 to 5/Cross Objectors:: Mr.MA.P.Thangagel

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

C.M.A.No.2690 of 2013 is filed by the Insurance Company and
Cross Objection No.18 of 2014 is filed by the Cross
Objectors/Petitioners, challenging the judgment and decree dated
10.02.2009 passed in M.C.O.P.No.751 of 2006 on the file of Motor
Accidents Claims Tribunal, Additional District Court, Special
Court for E.C.Act cases, Coimbatore.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. It is a
fatal case. The case of the petitioners is that on 09.11.2005 at
about 8 a.m., as the deceased Venkatesh was riding Auto bearing
Reg.No.TAG-8490 near Bharathi Park Cross Road-2 in Coimbatore,
the 2nd respondent bus bearing Reg.No.TN-59-T-6039 came at high
speed, dashed against the Auto which the deceased was driving,
causing fatal injuries on his head which subsequently resulted
in his death. The Petitioners 1 to 5 who are the legal heirs of
the deceased were dependant on the income earned by the deceased
Venkatesh. Hence, they sought for compensation of Rs.6,00,000/-
from the respondents.

3. On the other hand, opposing the claim of the Petitioners,

by filing counter, the 3rd respondent-Insurance company disputed the claim of the Petitioners about the manner in which the accident occurred. The claim of the petitioners about the age, avocation and income of the deceased is disputed. As the accident occurred only due to negligence of the auto driver viz., the deceased, the 3rd respondent is not liable to pay any compensation. The petitioners have to prove that the offending vehicle-bus bearing Reg.No.TN-59-T-6039 was insured with the 3rd respondent and the driver of the bus possessed valid driving licence. Thus, the 3rd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.9 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. After careful analysis of the evidence, the Tribunal held that negligence of the 2nd respondent bus driver alone caused the accident and passed award for a sum of Rs.5,80,000/- payable by the respondents 2 and 3 to the Petitioner. Aggrieved over the said finding of the tribunal, the 3rd respondent-Insurance company has come forward with CMA.No.2690 of 2013, whereas, not being satisfied with the quantum of award, the claimants/petitioners have come forward with Cross Objection No.18 of 2014.

5. The learned counsel for the 3rd respondent-Insurance company contends that the Tribunal wrongly fixed negligence on the 1st respondent driver and awarded higher amount as compensation without any basis. The multiplier adopted by the tribunal is not correct. The Tribunal also fixed the notional income very high. Thus, the appellant sought for setting aside the award passed by the Tribunal by entertaining the appeal.

6. On the other hand, the learned counsel for the Petitioners contends that the tribunal, after correctly fixing negligence on the 2nd respondent bus driver erred in awarding very meagre amount as compensation. The deceased worked as auto driver and was earning Rs.6000/- per month, but, the Tribunal wrongly fixed the notional income at Rs.5000/-. The Tribunal failed to provide for future prospects and awarded very meagre amount under different heads. Thus, the Petitioners sought for enhancing the quantum of award amount by allowing the Cross Objection.

7. The appeal is quantum appeal. Both sides have not advanced any arguments in respect of negligence aspect. The Tribunal, on careful analysis of oral evidence of P.W.1 and 2 and also considering the contents of Ex.P.1-FIR and Ex.P.2-Final Report wherein the driver of the 2nd respondent alone is stated to be the cause for the accident, concluded that the negligence

of the 2nd respondent vehicle driver alone caused the accident. The same is corroborated by Ex.P.5-copy of Rough sketch of the accident spot. It is clear from Ex.P.3-MVI Report that the vehicle involved in the accident did not have any mechanical defect. On the other hand, the respondents have not let in any evidence to contradict the version of the petitioners about the manner in which the accident occurred. Even though the respondents contended that the deceased also contributed to the accident, there is no material to substantiate the same. As such, the conclusion of the Tribunal that the negligence of the 2nd respondent bus driver alone is the cause for the accident is just and proper and the said conclusion need not be interfered with.

8.(i) The Petitioners contend that the deceased was working as Auto driver and produced copy of his driving licence as Ex.P.9. According to the petitioners, the deceased was aged 46 years and by working as Auto driver he was earning Rs.6000/- per month. It is very clear from Ex.P.6-Post Mortem Certificate as well as Ex.P.7-Death certificate that the deceased was aged 46 years. As such, his age is fixed as 46. Even though the petitioner produced a copy of the driving licence of the deceased as Ex.P.9 and contended that the deceased by working as auto driver was earning Rs.6000 per month, there is no proof to substantiate the same. Hence, the Tribunal is justified in fixing the monthly income at Rs.5000/-.

(ii) As the deceased was stated to be 46 years old, it will be appropriate to add 25% towards Future Prospects. Further for that age, the correct multiplier to be applied is 13.

(iii) As the number of dependants are 5, 1/4th of the income has to be deducted towards personal expenses of the deceased. Thus the loss of dependency to the family of the deceased is computed as follows:-

Monthly salary - 5000

Add: 25% future prospects (1250)

5000 + 1250 = Rs.6250/-

Deduction 1/4th towards personal expenses of the deceased.

6250 - 1/4th (1562) = 4688

4688 x 12 x 13 = 7,31,328/-

Thus a sum of Rs.7,31,328/- is awarded under the head "loss of dependency".

9. The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Venkatesh, the petitioners 2 and 5 who are aged 13 and 11 years at the time of the accident, lost love and affection of their father. He relied upon the Ruling of the Kerala High Court reported in 2017

SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.FR.Joseph Vattakalam, and 3. The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010] and contended that the sum of Rs.20,000/- awarded by the Tribunal under the Loss of Love and affection to petitioners 2 and 3 is very meagre and the same may be enhanced.

10. Considering the fact that the petitioners 2 and 3 are minor children at the time of the accident and they lost guidance, love and affection of their father, under the head "Loss of love and affection", this court is inclined to award Rs.40,000/- each to Petitioners 2 and 3 (in total Rs.80,000/-). Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court. That apart, it will be appropriate to award Rs.5,000/- under the head "Transport expenses" instead of Rs.1000/- awarded by the Tribunal. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	5,46,000/-	7,31,328/-
2.	Loss of consortium	10,000/-	40,000/-
3.	Loss of love and affection to petitioners 2 and 3	20,000/-	80,000/-
4.	Transport charges	1,000/-	5,000/-
5.	Funeral expenses	3,000/-	15,000/-
6.	Loss of estate	---	15,000/-
	Total	5,80,000/-	8,86,328/-

11. In the result,

(i) Civil Miscellaneous Appeal No.2690 of 2013 filed by Insurance company is dismissed. Cross Objection No.18 of 2014 is Allowed;

(ii) The award amount is enhanced from 5,80,000/- to 8,86,328/-

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) This Court, by order dated 27.11.2013 in M.P.No.1 of 2013 in CMA.No.2690 of 2013 directed the Appellant/Insurance company to deposit the entire award amount along with

proportionate interest and cost. Therefore, the Insurance company is now directed to deposit the modified award amount together with accrued interest and cost less the amount already deposited.

v) The Petitioners 1, 4 and 5 in MCOP.No.751 of 2006/Cross Objectors 1, 4 and 5 are entitled to withdraw the award amount along with accrued interest in the following apportionment:-

1st Petitioner - 40%

Petitioners 2 and 3 - 20% each

4th and 5th petitioner - 10% each

The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. In respect of minors (2nd and 3rd Petitioners), their share shall be invested in a Fixed deposit in a Nationalised Bank, till they attain majority and the accrued interest therein, shall be withdrawn by the 1st Petitioner/mother once in three months.

(vi) The Cross Objectors are directed to pay the required court fee for the enhanced award amount, within a period of one week from the date of receipt of copy of the judgment. No costs. Consequently connected CMP is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Court,
Special Court for E.C.Act cases,
The Motor Accident Claims Tribunal, Coimbatore.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.30645

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.30455

C.M.A.No.2690 of 2013

and M.P.No.1 of 2013

and Cross Objection No.18 of 2014

KGK(CO)

GSP(30.07.2018)