IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.3154 of 2013
and
M.P.No.1 of 2013, C.M.P.13255 of 2017 and Cros. Obj. 81 of 2017

M/s.United India Insurance Co. Ltd.,
Venkateswara Shopping Complex,
No.100, Southkar Street,
Chidambaram ... Appellant/ 1st Respondent in Cross-Objection

Vs

1.Revathi

2.Indumathi

3.Rajasekaran

4.Rajambal ...Respondents 1 to 4 in appeal/Cross-Objectors

5.Rajendran

6.Sri Ram General Insurance Company

7.Navaneethakrishnan ... Respondents 5 to 7 in appeal / Respondents 2 to 4 in Cross-objection

PRAYER : Civil Miscellaneous Appeal and the Cross Obejction filed against the judgment and decree passed in M.C.O.P.No.19 of 2011 on 22.03.2012 on the file of the learned Motor Accident Claims Tribunal (Principal District Judge) at Ariyalur District.

For Appellant/1st respondent in Cross-objection : Mr.J.Chandran

For Respondents 1 to 4
in appeal/Cross-objectors : Mr.A.A.Venkatesan
in Cross Objection

COMMON J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company against the award of compensation of Rs.30,50,000/- for the death of one Mr.Pandian, who was a B.T. assistant aged about 51 years earning about a sum of Rs.29,200/- per month, in the accident which occurred on 04.06.2010, when he was riding his two wheeler, which was hit down by the insured tractor trailer viz., the tractor insured with the 6th respondent/Sri Ram General Insurance Company and the trailer insured with the appellant.

2.Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.A.A.Venkatesan, learned counsel for respondents 1 to 4.

3.The accident and the manner of the accident are not questioned by Mr.J.Chandran, learned counsel appearing for the appellant. He would submit that originally in the FIR, it was stated that the tractor knocked down the two wheeler, causing the death of the deceased and subsequently the trailer, which is insured with the appellant has been added. According to him, if the trailer is also involved in the accident, it should have found place in the FIR itself and therefore, there is no liability on the part of the appellant/insurance company, which is the insurer of the trailer. Therefore, he seeks to set aside the portion of liability fastened on the appellant.

4.However, Mr.A.A.Venkatesan, learned counsel appearing for claimants would submit that at the time of registration of FIR, the tractor alone was given and after ascertaining that the tractor was also attached to trailer, trailer was also included. The accident occurred because of the involvement of the tractor as well as trailer and the same has been accepted by the Tribunal. Therefore, no interference is needed.

5.The award would reveal the contention of the appellant that the driver of the tractor-trailer was rejected and therefore, the liability has to be shared by the insurance company of the tractor as well as the insurance company of the trailer. It is surprising to note that the appellant/insurance company, which is the insurer of the trailer submitted that the driver of the tractor alone was responsible for the accident. The tractor and trailer should be taken as one vehicle as a whole. Without the tractor viz., the engine, the trailer cannot move. When that is the position, if the tractor is involved in the accident, then the trailer also would have run over the victim. As per the evidence of PW2, the Tribunal was right in holding that both the tractor insurer and the trailer insurer are liable for the accident. The trailer cannot at any point of time make any accident, unless it is driven by the tractor. Therefore, the finding in this regard, fixing liability both on the insurer of the tractor as well as trailer equally is well founded and based on evidence and it cannot be disturbed.

6.Further, the appellant cannot take advantage of the fact that initially in the FIR, tractor alone was included and not the trailer. In normal practice, even if the trailer is attached, people would only say that as the tractor as a whole and they would not say tractor and trailer and therefore, that will not help the appellant. The amount awarded by the Tribunal is based on evidence. Ex.A.7, pay certificate of the deceased and Ex.A.12, Transfer certificate of the deceased would prove that he was aged about 51 years. As per Ex.A7, the deceased was earning about Rs.29,200/-. As per the constitution bench judgment of the Honourable Apex Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 15% has to be added towards future prospects for persons aged between 50 and 60, if they are in permanent job. Since the deceased was a Government teacher, 15% has to be added towards future prospects. However, 40% has been added by the Tribunal as per law, which was in force at that point of time. In view of the change of law due to the judgment of the Constitution Bench of the Honourable Apex Court, 40% towards future prospects is reduced to 15%. After adding 15% towards future prospects, the monthly income of the deceased comes to Rs.33,580/- (Rs.29,200/- + 15 % of 29200). 10% has to be deducted towards income tax. After deducting 10% towards income tax, the monthly income of the deceased comes to Rs.30,222/- (Rs.33,580/- (-) 10% of Rs.33,580/-).

7.The Tribunal wrongly deducted 1/3rd towards personal expenses, especially when the family consists of four members. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/4th has to be deducted towards personal expenses and hence, "Monthly Contribution to the family" comes to Rs.22,667/- (30222/- - ¼ of 30222).

8.The right multiplier "11" was adopted by the Tribunal as per the judgment of the Honourable Supreme Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), Therefore the loss of income can be calculated as follows:

Total Loss of income = Rs.22,667/- X 12 X11 = Rs.29,92,044/-.

9.Loss of consortium:

The Tribunal awarded a sum of Rs.18,000/- towards “Loss of Consortium”, which is not in consonance with Constitution Bench's judgment of the Honourable Apex Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), and hence the same is enhanced to Rs.40,000/-

10.Loss of Estate:

The Tribunal has awarded a sum of Rs.15,000/- towards loss of estate and the same is confirmed.

11.Funeral Expenses:

The Tribunal has awarded a sum of Rs.5,800/- towards funeral expenses and the same is enhanced to Rs.15,000/-.

12.Loss of love and affection:

The Tribunal has awarded a sum of Rs.32,000/- towards loss of love and affection and the same is confirmed, since it is akin to loss of consortium.

13.Hence, the total compensation awarded in this case is Rs.30,94,044/- rounded off to Rs.31,00,000/-.

Head	Amount (Rs.)
Total loss of income	2992044
Loss of consortium	40000
Loss of estate	15000
Funeral expenses	15000
Loss of love and affection	32000
	3094044

14.The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

15.Out of the award amount, respondents 1 to 3 are permitted to withdraw their respective shares, as per the apportionment of the Tribunal. It is represented that the 4th respondent, Mrs. Rajambal, who is the mother of the deceased, died on 06.12.2010 and the same is proved by the death certificate produced before this Court dated 17.02.2011, issued by the Deputy Tahsildar of Jayankodam. As the 4th respondent died, the share of the 4th respondent has to be adjusted among the grand children. Hence, the amount payable to the 4th respondent/Rajambal is directed to be shared equally by respondents 2 and 3.

16.Since the appellant and the 6th respondent are liable to pay the compensation equally, they are directed to deposit their respective shares of the award amount, as per the modified award passed by this Court, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order.

17.On such deposit being made, the Tribunal is directed to transfer the award amount to the bank accounts of the respective claimants, through RTGS, within a period of two weeks thereon.

18.With the above directions, this Appeal is dismissed. The Cross objection filed by claimants is partly allowed on the above terms. Consequently connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
The Principal District Judge,
Motor Accident Claims Tribunal,
Ariyalur District.

Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.T. Chandran, Advocate sr 25540.
+1 CC to Mr.A.A. Venkatesan, Advocate sr 25026.

C.M.A.No.3154 of 2013
and
Cros. Obj. 81 of 2017

KS(CO)
SP(28/06/2018)