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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.66 of 2008
and
Cross Objection No.47 of 2016

The New India Assurance Co. Ltd.,
No.46, Moore Street, 'Regina Mansion',
Chennai - 600 001. ... Appellant in CMA.No.66 of 2008/
Respondent No.1 in Cross Objection
No.47 of 2016 (2nd Respondent)

..Vs..

1.Jennifer Juli Mary
2.Minor. Vanitha
3.Vanathammal
4.Vanathiyan

(Minor represented by her mother
and next friend the 1st petitioner)

.. Respondents in CMA.No.66 of 2008/
Cross Objectors in Cross Objection
No.47 of 2016 (Petitioners)

5.V. Mathialagan .. Respondent No.5 in CMA.No.66 of 2008/
Respondent No.2 in Cross Objection
No.47 of 2016 (1st Respondent)

Prayer in C.M.A.No.66 of 2008: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.3166 of 2005 dated 08.08.2007 on the file of the Learned Motor Accident Claims Tribunal, Small Causes Court-II of Chennai District.

Prayer in Cross Objection No.47 of 2016: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 8th day of August 2007 passed in MACTOP.No.3166 of 2005 on the file of the Motor Accident Claims Tribunal, (II Court of Small Causes), Chennai.



For Appellant in CMA No.66 of 2008
and Respondent 1 in Cr.Obj.47 of 2016 : Mr. J.Chandran

For Respondents 1 to 4 in CMA.No.66
of 2008 and Cross Objectors in
Cr.Obj.47 of 2018 : Mr.K.Ayyadurai
for M/s. N.M.Muthurajan

For Respondent 5 in CMA.No.66 of 2008
and Respondent 2 in Cr.Obj.47 of 2016 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 08.08.2007 passed in M.C.O.P No.3166 of 2005 by the Motor Accident Claims Tribunal, Small Causes Court-II, Chennai. The Respondents 1-4 in the instant appeal have also filed cross objection namely Cross Obj.No.47 of 2016 seeking to enhance the compensation by a further sum of Rs.5,00,000/- under the impugned award dated 08.08.2007.

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

2. One Kristhu Raja died on 25.06.2005 as a result of an accident caused by a Van bearing registration No.TSG-3951 owned by the fifth respondent and insured with the Appellant in CMA.No.66 of 2008. The dependents of the deceased Kristhu Raja who are the respondents 1 to 4 in the instant Appeal preferred a compensation claim before the Motor Accident Claims Tribunal, Small Causes Court-II, Chennai in M.C.O.P No.3166 of 2005 seeking a compensation of Rs.12,00,000/- from the Appellant in CMA. No.66 of 2008. The Tribunal by its award dated 08.08.2007 in MCOP No.3166 of 2005, directed the Appellant to pay the respondent Nos. 1 to 4, a sum of Rs.6,04,068/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 08.08.2007 passed by the Motor Accident Claims Tribunal in MCOP.No.3166 of 2005, the instant appeal has been filed by the Appellant Insurance Company. On receipt of notice in the instant appeal, the respondents 1 to 4 have filed a cross objection namely Cros.Obj.No.47 of 2016 seeking enhancement of compensation by another sum of Rs.5,00,000/-. Even though the said cross objection was filed in the year 2008, it was numbered only in the year 2016.



5. The learned counsel for the appellant submits that the tribunal ought to have dismissed the claim for non-joinder of the owner and the insurer of the vehicle bearing registration No.TN-01-D-9613 which formed part of cause of action, since the accident occurred due to head on collusion of the motor cycle by the deceased Krithu Raja.

7. Per contra, the learned counsel for the respondents 1-4/ Cross Objectors would submit that the quantum of compensation awarded by the Tribunal under the impugned award is an inadequate compensation, considering the fact that the deceased was aged 34 years and was an Auto Driver holding a valid driving license and a badge. The deceased left behind his wife, minor child and both his parents, at the time of his death.

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9. Further, the learned counsel for the respondents 1-4/ Cross Objectors would contend that even though under the cross objection they have sought for enhancement of only Rs.5,00,000/-, they are entitled for a much more higher sum, in view of the law laid down by the recent decisions of the Hon'ble Apex Court. The learned counsel for the respondents 1 to 4 further contended that the Tribunal has not granted any amount towards loss of future prospects under the impugned award which the respondents 1-4/ Cross Objectors are legally entitled to.

10. This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The respondents 1-4/ Cross Objectors have filed a valid driving license as well as the badge endorsement which was marked as Ex.P6 to establish that the deceased was an auto driver, at the time of the accident.

b) In the claim petition filed before the Tribunal, the respondents 1-4/ Cross Objectors have disclosed that the deceased was earning daily between Rs.250/- and Rs.300/- whereas the Tribunal has assessed the monthly income of the deceased at Rs.4,000/-. No contra evidence has been produced by the appellant to disprove the claim of the respondents 1-4/Cross Objectors.

c) The Appellant has not disputed the age of the deceased as 34 at the time of his death, as a result of the accident. Respondents 1-4 have also filed the legal heirship certificate before the Tribunal which was marked as Ex.P1 to prove that the respondents 1-4/ Cross Objectors are the legal representatives of the deceased. The deceased has left behind his wife, his minor daughter and both his parents as his legal heirs.

d) Having established before the Tribunal that the deceased was 34 years at the time of the accident and that he was an auto driver, the Tribunal ought to have awarded loss of future prospects. Under the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects.

e) Under the impugned award, the compensation awarded under the heads funeral expenses and loss of consortium to the first respondent is also low and in the considered view of this Court, it has to be enhanced.

f) The Tribunal has erroneously applied the 17 multiplier by following the second schedule of the Motor Vehicles Act instead of applying the 16 multiplier as laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC)



11. In the light of the above observations, this Court is of the considered view that the award passed by the Tribunal in favour of the respondents 1 to 4 has to be enhanced in the following manner:

Head	Amount Awarded by the Tribunal	Modified Amount
Funeral Expenses	Rs.5,000/-	Rs.15,000/-
Loss of Consortium to the first respondent	Rs.30,000/-	Rs.40,000/-
Loss of Companionship	Rs.25,000/-	Nil
Loss of Pecuniary benefits and loss of estate of the deceased	Rs.5,44,068/-	Rs.10,78,000/-
Transport Charges	Nil	Rs.15,000/-
Total	Rs.6,04,068/-	Rs.11,48,000/-

12. In the result, there is no merit in the instant appeal and CMA.No.66 of 2008 is dismissed and Cros.Obj.No.47 of 2016 is partly allowed by enhancing the award amount from Rs.6,04,068/- to Rs.11,48,000/- and the Appellant in CMA.No.66 of 2008 is directed to deposit the modified Award amount together with interest at the rate of 7.5% per annum from the date of filing of the instant appeal till the date of deposit, after the deducting the amount that has already been deposited, to the credit of MCOP. No. 3166 of 2005 on the file of the Motor Vehicles Accident Claims Tribunal, Small Causes Court-II of Chennai within a period of eight weeks from the date of receipt of a copy of this Order. On such deposit being made, the respondents 1 to 4 are permitted to withdraw the amount lying to the credit of MCOP. No.3166 of 2005 on the file of the Motor Vehicles Accident Claims Tribunal Small Causes Court-II of Chennai with accrued interest by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



gsi/nl

To

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- 1.The Motor Accident Claims Tribunal
Small Causes Court - II, Chennai
- 2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.N.M.Muthurajan, Advocate Sr.61626
+1cc to Mr.J.Chandran, Advocate Sr.61680

C.M.A.No.66 of 2008
and
Cros.Obj.No.47 of 2016

nm[co]
srg 9/10/2018