

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

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

CMA.No.3118 of 2017
and
Cross.Obj.No.26 of 2018

CMA.No.3118 of 2017
M/s. Royal Sundaram Alliance Insurance Company Ltd.,
No.186/5, 3rd Floor, Royal Towers,
New Bus Stand Road,
Meyyanur, Salem - 636 004. ... Appellant/2nd Respondent

-vs-

1. Elizabeth
2. Megavarshana (Minor)
(2nd respondent Minor Rept. By
Mother and NF 1st respondent)
3. Ponnuthayee
4. Kannan
5. Valli
6. Gunavathy
7. P. Raghunathan ... Respondents/Petitioners 1 to 6 &
7th Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.110 of 2015, dated 08.03.2017, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem.

For Appellant : Mr.R.Mohan Babu
for M/s.M.B.Gopalan Associates

For Respondent : Mr.D.Shivakumaran for R1 to R6
R7 - Dispense with

Cross.Obj.No.26 of 2018

1. Elizabeth
2. Megavarshana

(Minor) rep the mother & Guardian
Mrs.Elizabeth 1st Petitioner)
3. Ponnuthayee
4. Kannan
5. Valli
6. Gunavathy

... Cross Objections/Respondents 1 to 6 in CMA

-vs-

1. M/s.Royal Sundaram Alliance
Insurance Company Limited
No.186/5, 3rd Floor, Royal Towers
New Bus Stand
Meyyanur, Salem- 636 004.

2. P.Raghunathan ... Respondents/Appellant and 7th Respondent
(R2 reminded exparte before the tribunal)

Memorandum of Cross Objections filed under Order 41 Rule 22 of CPC, the cross objectors/respondents 1 to 6 in C.M.A.No.3118 of 2017 on the file of this court pleased to set aside the award and decree dated 08.03.2017 in MCOP No.110 of 2015 on the file of the Motor Accidents Claims Tribunal (III Additional District Court) Salem, and enhance the same

For Appellant : Mr.D.Shivakumaran

For Respondents : Mr.R.Mohan Babu for R1

J U D G M E N T

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

The challenge in the appeal by the Insurance company is to the award of the Motor Accident Claims Tribunal, (III Additional District Judge), Salem made in M.C.O.P.No.110 of 2015. Awarding a sum of Rs.1,13,03,500/- as compensation for the death of one Dr.Mariappan in a motor accident that occurred on 20.12.2014. The claimants who are the wife, parents and sisters of the deceased Dr.Mariappan have filed Cross Objections No. 26 of 2018 seeking enhancement of the compensation.

2. The case of the claimants before the Tribunal is that the deceased was riding a motor cycle bearing registration No.TN-30-R-1632 from Cinnappampatty to Konganapuram following all traffic rules and regulations in a careful manner. At about 07:30 hrs, when the deceased was proceeding near Pannankadu Annanmar Sengal Sulai on Cinnappampatty to Konganapuram Road,

the TATA ACE goods vehicle bearing registration No.TN-36-AX-8601 belonging to the 7th respondent in the appeal insured with the appellant Insurance company driven by its driver in a rash and negligent manner in the opposite direction came on the wrong side of the road and dashed against the motor cycle bearing registration No.TN-30-R-1632 . As a result of the accident, the deceased Dr.Mariappan sustained grievous injuries in his head and died on the spot. Terming the rash and negligent driving on the part of the driver of the goods vehicle as the cause for the accident, the claimants sought for a compensation of Rs.2,00,00,000/-. The owner of the goods vehicle who was arrayed at the 1st respondent had remained ex-parte.

3. The Insurance company resisted the claim contending that the accident occurred due to the rash and negligent driving of the deceased. The age, income and the qualifications of the deceased were denied by the Insurance company. The Tribunal which heard the original petition concluded that the accident occurred due to the rash and negligent driving of the goods vehicle owned by the 7th respondent and insured with the appellant Insurance company. In coming to the said conclusion, the Tribunal relied upon the First Information Report filed as Ex.P1, and rough sketch filed as Ex.P4 and the evidence of PW2 who was an eye-witness to the accident. The Tribunal also drew the adverse inference against the Insurance company for its failure to examine the driver of the goods vehicle or its owner.

4. On the quantum, the Tribunal found that the deceased Dr.Mariappan was employed as an Assistant Surgeon at the Government Primary Health Centre in Nainampatti at the time of the accident. From Ex.P5, the salary certificate, the Tribunal concluded that the deceased Dr.Mariappan was drawing a salary of Rs.58,013/- on the date of the accident. The Tribunal added 50% towards future prospects and after deducting 1/3rd towards his personal expenses, the Tribunal arrived at the annual loss of dependency at Rs.6,96,156/-. Applying a multiplier of 16, as the deceased was aged about 35 years, the Tribunal worked out the total loss of dependency at Rs.1,11,38,500/-. The Tribunal awarded a sum of Rs.50,000/- towards loss of consortium to the 1st claimant, Rs.50,000/- towards loss of love and affection to the minor child and Rs.30,000/- towards loss of love and affection to the parents at Rs.15,000/- each, Rs.20,000/- towards loss of love and affection to the sisters at Rs.10,000/- each, Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transport charges. In all, the Tribunal awarded a sum of Rs.1,13,03,500/- with 7% interest. The Tribunal also found that since the original petition was dismissed or default on 19.07.2016 and restored on 15.09.2016 directed abatement of interest for the said period. Contending that the award is on the higher side. The Insurance company had come forward in the above appeal and the claimants had filed the

cross objection seeking enhancement.

5. We have heard Mr.R.Mohan Babu for M/s.M.B.Gopalan and Associates for the appellant Insurance company and Mr.D.Sivakumaran for respondents 1 to 6. Notice to the 7th respondent is dispensed with since he remained ex-parte before the Tribunal.

6. Mr.Mohan Babu learned counsel for the appellant Insurance company would submit that the Tribunal erred in not making any deduction towards income tax. He would also fault the award of the Tribunal for granting a sum of Rs.20,000/- towards loss of love and affection to the sisters of the deceased, as they were married sisters and cannot be termed as dependents.

7. Per contra, Mr.D.Sivakumaran learned counsel for the claimants would contend that the Tribunal ought not to have deducted 1/3rd of the amount towards personal expenses, considering the fact that the deceased had left behind a widow, a minor child and the parents. Mr.D.Sivakumaran would contend that the Tribunal should have deducted only 1/4rd of the income towards personal expenses.

8. We considered the rival submissions. We find that the contention of the learned counsel for the appellant Insurance company, as to the deduction of the income tax has to be accepted. Once the annual income exceeds the taxable limits, the Tribunal must deduct the percentage of income towards income tax. We also find that the award of the Tribunal towards loss of consortium at Rs.50,000/- needs modification, in view of the Judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Compay Vs. Pranay Sethi reported in 2018 (1) LW 331. We also find that the award of Rs.20,000/- towards loss of love and affection to the sisters cannot be justified. At the same time, we also see some justification in the contention of the learned counsel for the claimants that the Tribunal was not right in deducting 1/3rd of the income towards personal expenses. In the light of the above, the award of the Tribunal requires modification and the same is modified as follows:

Award towards	Amount
Income Fixed	Rs.58,013/- P.M.
Add: Future Prospects (50%)	Rs.87,019/-
Less: Income Tax at 20%	87019 - 17403 = 69,615/-
Annual Dependency	Rs.69,615 x 3/4 x 12 = Rs.6,26,535/-
Multiplier (37 years)	16

Award towards	Amount
Pecuniary Loss	Rs.6,26,535 x 16 = Rs.1,00,24,560/-
Loss of Consortium	Rs.40,000/-
Loss of Love and Affection	Rs.80,000/- (40,000 x 2)
Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Transport	Rs.5,000/-
Total	Rs.1,01,79,560/-

The same is rounded off to Rs.1,01,80,000/-.

The award will carry interest at 7.5% from the date of petition till date of payment. The direction of the Tribunal for abatement of interest for the period between 19.07.2016 to 15.09.2016 is upheld.

9. In fine, the appeal is partly allowed, the compensation awarded by the Tribunal is modified and reduced to Rs.1,01,80,000/- with interest at 7.5% per annum from the date of petition till date of payment. The claimants will not be entitled to interest for the period for 19.07.2016 to 15.09.2016. The award amount is apportioned as follows:

i) The claimants 5 and 6 namely, in the appeal are entitled to no share in the compensation since they are married sisters and not dependents.

ii) The 1st claimant/1st respondent wife will be entitled to a sum of Rs.40,00,000/- with proportionate interest and entire costs.

iii) The minor child, second claimant/second respondent would be entitled to a sum of Rs.45,00,000/- with proportionate interest.

iv) The mother, 3rd claimant/3rd respondent would be entitled to Rs.10,00,000/- with proportionate interest.

v) The father, 4th claimant/4th respondent would be entitled to Rs.6,80,000/-.

10. The Insurance company is directed to deposit the award amount as per the modified award less the amount if any already deposited within a period of 6 weeks from the date of receipt of the copy of the judgment. On such deposit, the major claimants, namely claimants 1,3, and 4 would be entitled to withdraw their share of the compensation. The Tribunal is directed to deposit the share of the minor along with accrued

interest in interest earning Cumulative Fixed Deposit in any one of the Nationalized banks till she attains majority. We are not permitting the mother/guardian of the minor child to withdraw interest from the fixed deposit since, she is getting a sum of Rs.40,00,000/- as compensation. In view of the above, cross objections will stand dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
III Additional District Court, Salem.

Copy To

The Section Officer, VR Section, High Court, Madras.

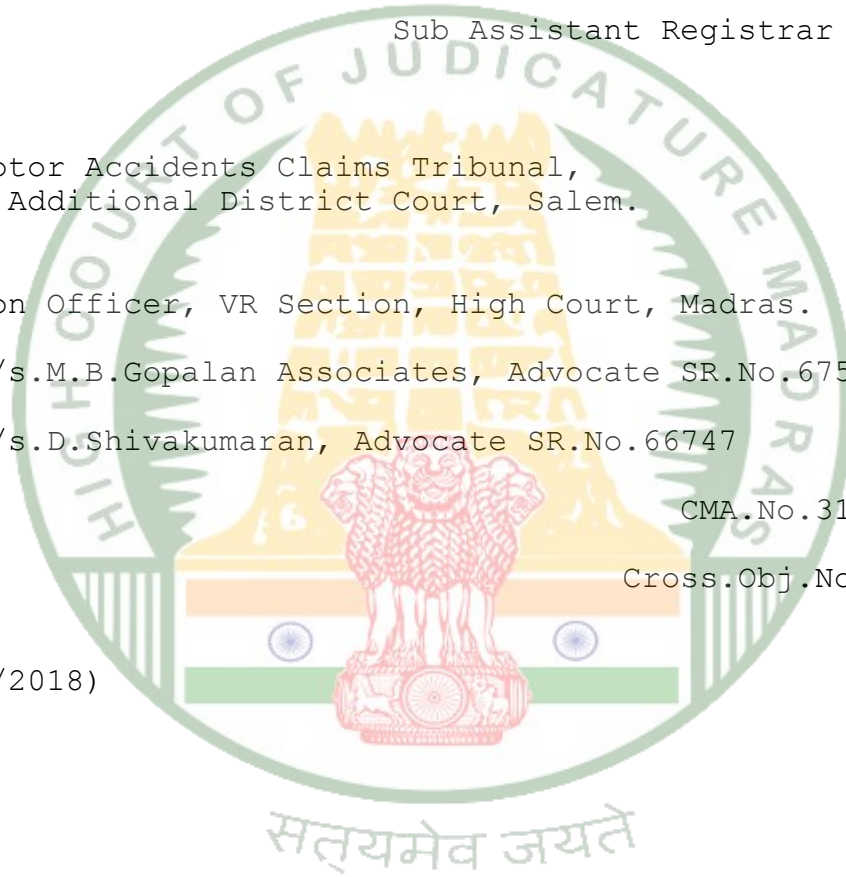
+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.67586

+1cc to M/s.D.Shivakumaran, Advocate SR.No.66747

CMA.No.3118 of 2017
and
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SAI (CO)

GMV (31/10/2018)



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