BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.366 of 2017
and
C.M.P(MD)No.4006 of 2017
and
Cross Obj(md)No.20 of 2018

C.M.A(MD)No.366 of 2017

The Divisional Manager,
The Oriental Insurance Company Ltd.,
Sekar Chambers,
No.732, P.K.S.A.Arumugam Road,
Sivakasi. ... Appellant/Respondent No.2

Vs.

1.Mrs.Venkateswari
2.Mr.Janakaraj
3.Vasanthakumar ...Respondents/Petitioners

4.S.Mahendran ..4th Respondent/Respondent No.1
(4th Respondent given up)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.110 of 2012, dated 26.06.2015 passed by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Sivakasi.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R3 : Mr.K.K.Ramakrishnan

Cros Obj (MD)No.20 of 2018

1.Mrs.Venkateswari
2.Mr.Janakaraj
3.Vasanthakumar ... Cross Objectors/
1 to 3 Respondents/Petitioners

Vs

1.The Divisional Manager,
The Oriental Insurance Company Ltd.,
Sekar Chambers,
No.732, P.K.S.A.Arumugam Road,
Sivakasi. ..1st Respondent/Appellant/
2nd Respondent

2.S.Mahendran
(2nd respondent given up) ...2nd respondent/4th respondent/ 1st respondent

PRAYER: Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code, against the award passed in M.C.O.P.No.110 of 2012, dated 26.06.2015 by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Sivakasi.

For Cross objectors : Mr.K.K.Ramakrishnan
For R1 : Mr.C.Jawahar Ravindran

* * * * *

COMMON JUDGMENT

The appeal and the cross objection arise out of common award passed by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Sivakasi, in M.C.O.P.No.110 of 2012, dated 26.06.2015.

2.The appellant Insurance Company in C.M.A(MD)No.366 of 2017 is the second respondent in the claim petition. The claimants filed Cross-Objection(MD) No.20 of 2018 for enhancement of compensation. In view of the above facts, the appeal as well as the cross-objection are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The second respondent Insurance Company filed an appeal challenging the quantum of compensation granted to the claimants. The claimants filed the cross-objection for enhancement of compensation.

5.According to the claimants, one Seenivasan, son of the claimants 1 & 2 and brother of the third claimant, aged 23 years died in the accident that occurred on 12.05.2012. The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.12,60,000/- for loss of income. The Tribunal awarded a sum of Rs.3,00,000/- towards pain and suffering, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards Transportation and Rs.50,000/- towards loss of estate.

6.The learned counsel appearing for the second respondent Insurance Company contended that the deceased was a Student. The Tribunal erred in fixing the notional income of the deceased at Rs.12,000/- per month. The Tribunal ought to have taken the age of the parents of the deceased for applying the multiplier, instead of fixing the age of the deceased.

7.Per contra, the learned counsel appearing for the claimants contended that the deceased was a MBA Student and his batchmates are decently employed and are earning more than

Rs.30,000/- per month. The Tribunal failed to give future prospects. The dependants of the deceased are three persons. The Tribunal ought to have deducted 1/4th from the total income of the deceased and prayed for enhancement of compensation.

8.I have heard the learned counsel appearing on either side and perused the materials available on record.

9.The deceased was a MBA Student studying in Kaleeswari College, Sivakasi at the time of accident. The Vice Principal of the said College was examined as P.W.3 and he deposed that the deceased was a bright and brilliant student and he was good in sports. He further deposed that if he is alive, he would have got appointment in Campus Interview and his batchmates are employed on monthly salary of Rs.30,000/-. There is no resason to disbelieve the evidence of Vice Principal of the College. In such circumstances, the notional income of the deceased fixed by the Tribunal as Rs.12,000/- is reasonable. The deceased was 19 years at the time of accident and the claimants are entitled to have 40% enhancement towards future prospects. The contention of the learned counsel appearing for the second respondent Insurance Company that the Tribunal ought to have taken the age of the parents for applying the multiplier method to arrive at loss of income, is without merits. As per the Judgment of the Hon'ble Apex Court reported in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi],*** the age of the deceased has to be taken for applying the multiplier.

10.The deceased was a bachelor at the time of accident. The Tribunal had deducted 50% from the income calculated for loss of income. The contention of the learned counsel for the claimants that the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased as there are three dependants on the deceased, is contrary to the judgment of the Hon'ble Apex Court reported in **2009(2)TN MAC 1 (SC)** ***Sarla Verma v. Delhi Transport Corporation.*** The Hon'ble Apex Court held that in case, the deceased is a bachelor, 50% has to be deducted from the salary and in exceptional case, 1/3rd may be deducted. The present case is not an exceptional case.

11.For the above reasons, the loss of income of the deceased is calculated as follows:-

The notional income of the deceased is Rs.12,000/- and adding 40% towards future prospects the amount comes to Rs.16,800/- (12,000 + 40%) and after deducting 50% towards his personal expenses the amount comes to Rs.8,400/- (16,800 - 50%). The loss of income of the deceased would be Rs.18,14,400/- (8,400 x 12 x 18).

12.The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of estate and the same are excessive. Therefore, the said amounts are reduced to Rs.15,000/-

towards loss of estate and Rs.15,000/- towards funeral expenses. In all other aspects, the award of the Tribunal is confirmed.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	12,96,000	18,14,400	enhanced
2.	For loss of love and affection	3,00,000	3,00,000	confirmed
3.	For Transportation	10,000	10,000	confirmed
4.	For Funeral expenses	25,000	15,000	reduced
5.	For loss of estate	50,000	15,000	reduced
	Total	Rs.16,81,000	Rs.21,54,400	By enhancing a sum of Rs.4,73,400/-

14. In the result,

(i) Both the appeal and the Cross-objection are partly allowed by enhancing the loss of income and reducing the amount awarded by the Tribunal under other heads as stated above.

(ii) The appellant/first respondent Insurance Company is directed to deposit the award amount along with 7.5% interest and costs to the credit of M.C.O.P.No.110 of 2012, on the file of the Motor Accident Claims Tribunal-cum-Subordinate Judge, Sivakasi, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iii) The respondents/claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit being made, the first claimant is entitled to a sum of Rs.11,31,000/- (Rupees Eleven Lakhs Thirty One Thousand Only), the second claimant is entitled to a sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only) and the third claimant is entitled to a sum of Rs.2,73,400/- (Rupees Two Lakhs Seventy Three Thousand and Four Hundred only) with interest by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Sub Judge, Motor Accident Claims Tribunal,
Sivakasi.

COPY TO
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.K.K.RAMAKRISHNAN, Advocate Sr. No.88292
+1CC TO MR.C.JAWAHAR RAVINDRAN, Advocate Sr. No. 88547

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TR (12.03.2019) 5P 6C