IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1109 of 2007 and Cross.Obj.No.74 of 2006
and
MP.No.1 of 2007

Divisional Manager,
United India Insurance Company Ltd,
Divisional Officer, No.2, Dr.Sankaran Road,
Namakkal Town,
Namakkal Taluk and District. ... Appellant /R2 & first Respondent in Cross Obj.

Versus

1.Angamuthu
2.Rajamma
3.Sumathi
4.Revathi ... RR1 to R4/ Petitioner/ Cross Objectors

5.Pe.Pe.Feeds,
BSN Complex, first Floor, ..R5/R1/R2 in Cross Objection
25, Mohanur Road,
Namakkal Taluk and District.

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 20.11.2006 passed in M.C.O.P.No.121 of 2003, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellant in CMA & 1st Respondent in Cross Objection	: Mr.K.Suryanarayanan
For R1 to R4 in CMA & Cross Objectors	: Mr.Ma.P.Thangavel
For R5 in CMA & 2nd Respondent in Cross Objection	: Not ready in notice

J U D G M E N T

The Insurance Company is the appellant herein. The present appeal is filed challenging the liability fixed on them by the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in and by the award dated 20.11.2006 passed in M.C.O.P.No.121 of 2003. Cross objection No.74 of 2006 is filed by the claimants/ Respondents 1 to 4, seeking enhancement of compensation

2.The brief facts of the case of the claimants is that on 24.10.2002 at about 4.00 am while the deceased was carrying out his avocation as Sales Manager near the Dindugal By-pass road at Kottapatti near Joseph Motor Workshop, the Van bearing Regn.No.TN-39-0399 was driven in a rash and negligent manner by its driver and dashed against the lorry, due to which, the deceased Muruganatham sustained grievous injuries. The deceased was taken to Government Hospital, Dindigual, where he was declared brought dead. The claimants are the legal heirs of the deceased and they filed the claim petition in M.C.O.P.No.121 of 2003, claiming a sum of Rs.12,13,000/- as compensation, which was restricted to Rs.10,00,000/-.

3.The Insurance Company resisted the claim petition by way of filing counter affidavit, contending that the driver of the Eicher Van bearing Regn.No.TN-28-E-0769 belonging to the first respondent in the claim petition, had driven the vehicle in a rash and negligent manner, which resulted in the death of the deceased (Muruganantham) and they also contended that he is solely responsible for the cause of the accident and therefore it is the owner of the offending vehicle who is liable to pay the compensation amount and the insurance company cannot be mulcted with any liability to pay compensation. The Insurance Company also denied the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

4.In order to substantiate the claim, before the Tribunal, on the side of the claimants, the father of the deceased was examined as PW.1, one Saravanakumar, co-worker, who worked along with the deceased, was examined as PW.2, one Murugasen, driver of the offending vehicle was examined as PW.3 and eight documents were marked as Exs.P1 to P8. On behalf of the respondents, one S.Rajarathinam, officer of the Insurance company was examined as RW.1 and Ex.R1/copy of Insurance company policy of the offending vehicle was marked.

5.Based upon the oral and documentary evidence adduced before the Tribunal, it rendered a finding that both the owner of the vehicle as well as the Insurance Company are jointly and severally liable to pay the compensation at Rs.2,38,900/- to the claimants.

6.Challenging the liability imposed on them, the appellant/Insurance company filed the present appeal and the Cross Objection is filed by the claimants seeking enhancement and the both are taken up for disposal by this common Judgment.

7.The learned counsel appearing for the Insurance Company would contend that the vehicle involved in this case is an

Echier Van, which was classified as a goods vehicle and deceased was said to have traveled in it as a gratuitous passenger. As such, he is an unauthorized/gratuitous passenger and hence, the claimants are not entitled to claim compensation for the death of Muruganantham from the Insurance company. Further he contended that the Insurance company cannot be fastened with the liability and seeks exoneration from the liability.

8.Heard the learned counsel appearing for the respective parties and perused the materials available on record.

9.After perusing Ex.R1/policy copy of the Insurance Company in respect of the offending vehicle bearing Regn.No.TN-28-E-0769, it is seen that the vehicle was insured under B category comprehensive policy and the coverage is extended to the driver, cleaner and conductor, hence, taking note of the fact that the employees and one non-fare Paying Passenger is eligible to travel in the above said vehicle as per the terms and conditions of the policy, the Tribunal rendered a finding that the van being the offending vehicle and the deceased was working in the poultry farm as Sales Manager and he carried the eggs from place to place to sell the eggs in the above said vehicle, he travelled in the vehicle as representative of owner of the goods and coupled with the terms and conditions of the policy, his legal heirs are entitled to claim compensation on his death.

10.This Court is of the considered view that the deceased comes within the Insurance coverage as per Ex.R1/copy of policy and therefore, contention raised by the learned counsel for the appellant/ Insurance company in that regard stands negatived. Since the deceased falls under coverage of policy, the Insurance Company is liable to pay compensation to the claimants/victims.

11.After hearing both sides, on the point of, quantum of compensation, it is seen from the records Ex.P7/ Salary certificate of the deceased coupled with the version of Co-employee and, as per the decision rendered in the case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, wherein, it held that 50% has to be awarded for future prospects and as per the terms and conditions of the salary certificate and EPF paid by the deceased were proved by EPF account number TN/35376/15 of M/s. Pe.Pe Feeds and thus, he was working as an employee, for which the PF contribution was also made by the employer and accordingly, by fixing 50% of future prospects to the deceased, the sum of Rs.3,800/- was taken as monthly income of the deceased, which can be fixed at Rs.5,700/=(Rs.3,800 + 50%). Out of this sum, after deduction of 1/2 for his personal expenses, his contribution to the family is fixed at

Rs.2,850/-(Rs.5,700/- x 1/2). By applying multiplier '18' as has been held by the Honourable Supreme Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, the compensation is arrived at a sum of Rs.6,15,600/- (Rs.2,850/- x 12 x 18) as loss of income of the deceased.

12.Taking into account the young age of the deceased, who was 24 years, at which age the deceased died leaving behind the claimants, the Tribunal has awarded a paltry compensation, which is not just and fair. Hence, this Court feels that the amount awarded by the Tribunal is inadequate and thus, it should be enhanced to some extent under the various heads.

13.Considering the age of the deceased, the amount towards love and affection is fixed at Rs.30,000/- each to the claimants 1 & 2 (parents of the deceased) and a sum of Rs.20,000/- is awarded under the same head to each of the claimants 3 & 4 (unmarried sisters of the deceased) and under the other conventional heads namely, Funeral expenses and Loss of estate, a sum of Rs.15,000/- each are hereby granted. A sum of Rs.5,000/- is granted towards transportation charges. Consequently, the total compensation amount of Rs.2,38,900/- awarded by the Tribunal is hereby modified and enhanced to Rs.7,50,600/-, and the break up details of the enhanced/modified compensation amounts are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.2,38,900/-	Rs.6,15,600/-
Love and Affection Claimants 1 & 2	-	Rs.60,000/-
Love and Affection Claimants 3 & 4	-	Rs.40,000/-
Funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Transportation charges	-	Rs.5,000/-
Total	Rs.2,38,900/-	Rs.7,50,600/-

14.It is represented by the learned counsel for the appellant /Insurance company that the claim petition was filed with a delay of 2358 days. Hence, the claimants are not entitled to get interest during the period of delay of filing petition as per the order of this Court dated 07.11.2016 made in MP.No.1 of 2014 in CMA.SR97595 & 97596 of 2013.

15.In the result, the appeal filed by the Insurance company is dismissed and the Cross Objection filed by the claimants is partly allowed.

(ii) The appellant/Insurance company is directed to pay the compensation amount Rs.7,50,600/- with interest at 7.5% per annum from the date of claim petition, till the date of payment, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iii) On such deposit being made, the respondents/Claimants are entitled to withdraw the compensation amount, by moving appropriate application before the Tribunal.

(iv) The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,Motor Accidents Claims Tribunal, Namakkal.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.K.Suryanarayanan , Advocate SR.No. 29045
+1cc to Mr.Ma.P.Thangavel , Advocate SR.No. 29954

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A.SK(21/10/2019)