IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2360 of 2009 and
M.P.No.1 of 2009 and
Cros.Obj.No.3 of 2019

C.M.A.No.2360 of 2009

M/s. Royal Sundaram Alliance Insurance Co. Limited,
Sundaram Towers,
Nos. 45 and 46, Whites Road,
Chennai- 600 014. ..Appellant in CMA No.2360/09/
1st Respondent in Cros.Obj.No.3/19
(3rd Respondent)

..Vs..

1. Subramanian (died) ..1st Respondent in CMA No.2360/09
(1st Claimant)

2. Rajeswari @ Eswari ..2nd Respondent in CMA 2360/09/
Cross Objection in Cross Obj No.3/19
(2nd Claimant)

3. B. Raju

4. S.K. Eswaran ..Respondents 3 & 4 in CMA 2360/09 and
Respondents 2 & 3 in Cross Obj 3/19
(Respondents 1 & 2)

5. Vijayalakshmi

6. Saraswathi .. Respondents 5 & 6 in CMA 2360/2009/
Cross Objection in Cross Objection in
Cross Obj.3/2019 (LR's of the deceased
1st Claimant)

(Respondents 5 and 6 are brought on record as legal heirs of deceased first respondent in view of the order of the Court made in CMP.Nos. 6824 to 6826 of 2018 in C.M.A. No. 2360 of 2009 dated 29.01.2019)

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.04.2009 in M.C.O.P. No. 133 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast Track Court, No. 4, Bhavani, Erode District.

For Appellant in CMA 2360/09 and R1 in Cross Obj 3/19 : Mr.N.Vijayaraghavan

For Respondents in CMA 2360/09 and Cross Objection in Cross Obj.3/19 : Mr.Ma.Pa.Thangavelu for R2, R5 and R6
R1 - died
No appearance for R3 and R4 (Exparte)

JUDGMENT

The Royal Sundaram Alliance Insurance Company Limited, the third respondent in MCOP.No.133 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, No. 4, Bhavani, Erode District has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The claimants in the said MCOP filed the Cross Objection. No.3 of 2019 seeking for enhancement of compensation awarded by the Tribunal for the death of one Gopalakrishnan @ Kannan in a road accident that took place on 17.01.2007.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimants is that on 17.01.2007, at about 00.30 hours, the deceased was travelling as a pillion rider in a Bajaj Pulsar motorcycle bearing Registration No. TN 37 AB 2518 on Ooty - Kovai main road. When the motorcycle was nearing Narasimmanayakkanpalayam, a speeding lorry bearing Registration No. TN 43 B 2442 belonging to one S.K. Eswaran (second respondent in MCOP.No.133 of 2007) hit the motorcycle, as a result of which, the deceased was thrown out from the motorcycle and sustained injuries all over his body. He was immediately admitted in CMC Hospital at Coimbatore. However, he succumbed to injuries on the same date. The claimants who are the parents of the deceased had contended that their son was aged 28 years on the date of the accident and was a vegetable vendor by profession, earning a sum of Rs.6,000/- per month. Their further contention is that the rash and negligent driving

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of the driver of the lorry belonging to S.K.Eswaran (second respondent in MCOP.No.133 of 2007) was the cause of the accident and that since the said lorry was insured with the Royal Sundaram Alliance Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. The respondents 3 and 4 remained absent before the Tribunal and therefore, they were set ex-parte. The Royal Sundaram Alliance Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Judge, Fast Track Court, No. 4 / Motor Accidents Claims Tribunal, Bhavani, Erode District after analysing the evidence on record, awarded a compensation of Rs.4,42,000/- together with interest at the rate of 7.5% per annum to the claimants.

5. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant / Royal Sundaram Alliance Insurance Company Limited contended that the Tribunal had awarded an exorbitant amount of Rs.4,42,000/- to the claimants, even though, the claimants had not adduced any documentary evidence to show that their son was actually earning a sum of Rs.4,500/- per month on the date of the accident.

6. Mr.Ma.Pa.Thangavelu, learned counsel appearing for the claimants / cross objectors contended that though the deceased was a vegetable vendor, the Tribunal has fixed the monthly income of the deceased only as Rs.4,500/-. He would further contend that the claimants had lost their only son in the accident and they have not been adequately compensated by the Tribunal. He also relied on the decision in Santosh Devi & Others vs. Mahaveer Singh & Others reported in CDJ 2018 SC 818 and contended that the Honourable Supreme Court of India had fixed the monthly income of the deceased as Rs.2,500/- for the accident that took place in the year 1999 for a person who was selling desi ghee and namkin bhujia and in the instance case since the deceased was a vegetable vendor, his income should be fixed at Rs.7,500/- per month.

7. A perusal of the records shows that in the claim petition, the deceased has mentioned his income as Rs.6,000/- per month. Considering the year of the accident, the notional income of the deceased is fixed at Rs.5,000/- per month. Since the deceased was a bachelor on the date of the accident, 50% of his income is deducted towards his personal expenses which would come to Rs.2,500/-. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards future prospects of the deceased and thus a sum of Rs.3,500/- is taken up for calculating loss of dependency. Since the age of the deceased was 28 years on the date of the accident, the proper multiplier

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to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.
Loss of dependency
= Rs.3,500/- x 12 x 17
= Rs.7,14,000/-

8. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.7,14,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,84,000/-

Thus the quantum of compensation awarded by the Tribunal is enhanced from Rs.4,42,000/- to Rs.7,84,000/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. The Cross Objection is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,42,000/- to Rs.7,84,000/-.

(iii) The respondents 1 and 2 / claimants are directed to pay the Court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.

(iv) The appellant, Royal Sundaram Alliance Insurance Company Limited is directed to deposit the entire compensation awarded by this court i.e., Rs.7,84,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.133 of 2007 on the file of the Motor Accidents Claims Tribunal / Fast Track Court, No. 4, Bhavani, Erode District within a period of four weeks from the date of receipt of a copy of this order.

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(v) On such deposit being made, the respondents 2, 5 and 6 herein are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
The Fast Track Court No. 4,
Bhavani,Erode District.

Copy To
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.Ma.Pa.Thangavelu, Advocate SR.No.79049

+1cc to Mr.M.B.Gopalan, Advocate SR.No.78604

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M.P.No.1 of 2009 and
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V(CO)
GMY(23/10/2019)

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