IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2019
PRONOUNCED ON : 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1189 of 2012
and
M.P.No.1 of 2012

Branch Manager,
United India Insurance Company Limited,
K.P.S.Motors Building,
36, Katpadi Road, Gandhi Nagar,
Vellore - 6. ... Appellant/2nd Respondent

.. Vs ..

1.Kalaivani
2.A.S.Anandhan
3.Vijayalakshmi ... Respondents/petitioners

4.Sivanandhan
5.G.Selvam ... R4 & R5/R1 & R3

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the award and decree dated 23.06.2010 made in M.C.O.P.No.427 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, (FTC), Dharmapuri.

For Appellant : Mr.S.Arunkumar
For R1 to R3 : Mr.R.Selvakumar
For R4 and R5 : No appearance

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JUDGMENT

The United India Insurance Company Limited is the appellant herein and challenging the award passed in M.C.O.P.No.427 of 2008, dated 23.06.2010, on the file of the learned Motor Accidents Claims Tribunal, Additional District Court, (FTC), Dharmapuri, the Insurance Company has come up with the present appeal.

2.The brief facts of the averments made in the claim petition are as follows:-

On 22.03.2007 at about 10.30 a.m., when Sarath Babu (deceased) was supervising the road contract work at Onnalvadi to Thorapalli road in Hosur Taluk, by standing on the left side mud portion of the road, a Tractor bearing Registration No.TN-29-Y-4925 with the attached tanker/trailer bearing Registration No.TN-22-AB-1847 driven by its driver in a rash and negligent manner, dashed against the said deceased Sarath Babu and the Tractor Trailer fell down on the deceased. As a result of the accident, the deceased sustained grievous injuries on his chest and he died on the spot. Therefore, the claimants 1 and 2, who are the parents of the deceased Sarath Babu and the third claimant, who is the sister of the deceased being the legal heirs of the deceased, have filed the claim petition in the above said MCOP, claiming a sum of Rs.36,23,000/- as compensation, which was restricted to Rs.10,00,000/-.

3. The appellant-Insurance Company filed a counter statement and stating that the deceased, without giving any signal turned the road and immediately the driver of the Tractor applied sudden break. Due to the impact, the vehicle capsized on the deceased. The accident occurred only due to the negligence act of the deceased. The said Tractor bearing Registration No.TN-29-Y-4925 was not insured with the second respondent and that the first respondent is the owner of the Tractor bearing Registration No. TN-23-J-9362 only and the said Trailer bearing Registration No. TN-23-AB-1847 has to be sued only to the Tractor bearing Registration No.TN-23-J-9362 but the Trailer was used by another Tractor bearing Registration No.TN-29-Y-4925 which is purely against the policy's condition.

4. On the claimants side, one Mr.A.S.Anandan, the father of the deceased was examined as PW1, one Mr.Rajesh, who is the witness to the occurrence, was examined as PW2 and the documents have been marked as Exs.P1 to P7. On the side of the respondents, one Mr.Kuppusami was examined as RW1 and documents Exs.R1 and R2 were marked.

5. On consideration of both oral and documentary evidence adduced before the Tribunal, the Tribunal held that due to the rash and negligent driving of the driver of the Tractor, the accident had occurred and the Insurance Company is liable to pay as long as the policy of Insurance is valid, on the date of the accident and accordingly awarded the compensation of Rs.3,77,000/- and directed that the respondents are jointly and severally liable to pay the said compensation to the claimants.

6. Challenging the said award of compensation, the Insurance Company has preferred this appeal, alleging that the Tractor was fitted with a tanker and that the Tractor alone was insured that the appellant/Insurance Company while the tanker

was not insured and hence, there being a violation of Policy condition by the owner of the Tractor, therefore, the Insurance Company cannot be mulcted with the liability and further stated that they have filed an application under Section 170 of the Motor Vehicles Act, 1988, and the same was allowed and the quantum of compensation is also exorbitant.

7. The learned counsel for the respondents 1 to 3/claimants would submit that the specific evidence of the PW2/occurrence witnesses is that while the deceased was working as a Supervisor in road laying and after completion of laying of the road, the tractor fitted with the tanker with water for spraying on the newly laid road and which was driven by its driver in a rash and negligent manner and thereby, the tractor lost its balance and capsized on the deceased Sarath Babu.

8. In view of the specific evidence of the PW2 coupled with Ex.P1/FIR, the Tribunal has rightly come to the conclusion that the driver of the Tractor had caused the accident, which was insured with the United India Insurance Company Limited. Hence, the Insurance Company and the other two respondents are jointly and severally liable to pay the compensation to the claimants and the award of the Tribunal does not warrant any interference and pray for dismissal of the appeal.

9. On the point of quantum, I have heard both sides and perused the records.

10.The Tribunal taking into consideration, the avocation and income of the deceased as spoken by the co-employee, PW2/Rajesh, had fixed the notional income of the deceased at Rs.3,000/- per month and after deducting 1/3rd for his personal expenses, which was arrived at Rs.2,000/- per month and totally arrived his loss of annual income at Rs.24,000/- and by adopting multiplier '15' had arrived at the loss of income as Rs.3,60,000/- (Rs.2000 x 12 x 15).

11. Taking into consideration, the age of the deceased at the time of the accident was 22 years and in the above referred decision cited supra, the Hon'ble Supreme Court has held that for the matter of bachelor dying in the accident, age of the deceased alone shall be the criteria and not the age of the parents to be taken as the criteria for assessment of compensation and hence, as per the Ex.P2, the age of the deceased was fixed at 22 years and accordingly, in the light of the decision rendered before the Hon'ble Supreme Court of India, in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, the Tribunal should have adopted multiplier '18' instead of

multiplier '15' and however, taking into consideration that if he had been alive, the source of income is still available. But the Tribunal has calculated the loss is only with regard to the loss of service, hence, the same is enhanced by this Court under structural formula. The income of the deceased was taken as Rs.3000/- per month by adding 50% for future prospects, which is arrived at Rs.4,500/- income per month, out of the said amount the total annual income is arrived at Rs.54,000/- (Rs.4,500/- x 12). Since, the deceased is bachelor, 1/2 deduction has to be made for his personal expenses, which is arrived to be at Rs.27,000/-(Rs.54,000/- ÷ ½), in which by adding multiplier '18', the total loss of income of the deceased is arrived at Rs.4,86,000/- (Rs.27,000/- x 18).

12. By exercising the power under Article 227 by the Constitution of India, this Division Bench of this Court has held that in the case of Managing Director, State Express Transport Corporation Limited, Vs. Radha and others, reported in 2018 (1) TN MAC 592 (DB), in which, the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

> "9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

As per the said above decision, this Court enhanced the compensation as suo moto, without filing any appeal by the claimants.

13.The Tribunal awarded a sum of Rs.3,60,000/- towards loss of income, which is considered to be meagre. Hence, this Court feels to enhance the sum at Rs.4,86,000/-; a sum of Rs.5,000/- is awarded towards funeral expenses and a sum of Rs.2,000/- is awarded towards last rituals; a sum of Rs.10,000/- is awarded towards pain and sufferings. In toto, a compensation of Rs.3,77,000/- is awarded to the claimants. But, the Tribunal has also failed to award any amount under the head of loss of estate and the same is hereby awarded of Rs.15,000/-. Considering the age of the legal heirs of the deceased, this Court feels that due to loss of love and affection, a sum of Rs.10,000/- awarded by the Tribunal for all claimants is meager and the same has to be enhanced to Rs.50,000/-each. Thus, the break-up details of the modified and enhanced amounts are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.3,60,000/-	Rs.4,86,000/-
Funeral expenses	Rs.5,000/-	Rs.15,000/-
Last rituals	Rs.2000/-	-
Love and Affection	Rs.10,000/-	Rs.1,50,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.3,77,000/-	Rs.6,66,000/-

14. In the result,

I. This Civil Miscellaneous Appeal is partly ordered accordingly by enhancing the compensation from Rs.3,77,000/- to Rs.6,66,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The respondents before the Tribunal are directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the claimants are permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The claimants shall pay necessary Court fee, if any, on the enhanced compensation.

VI.No order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Additional District Court, (FTC),
Dharmapuri.

Copy to
The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to Mr.S.Arunkumar Advocate sr63068
+1 cc to Mr.R.Selvakumar Advocate sr62922

C.M.A.No. 1189 of 2012

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