IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 115 of 2016
and Cross Objection No.56 of 2016

C.M.A. No. 115 of 2016

National Insurance Company Limited,
Pudukottai,
No.52, Oppanakara Street,
Coimbatore 641 001. ..Appellant /3rd Respondent

Vs.

1.N.Murugesan
2.N.Saraswathi
3.R.Govindaraj
4.Susairaj
(Respondents 3 & 4 herein were set
exparte by the Court below and hence
notice against them in the above appeal
may be dispensed with) ...Respondents/4th Respondent

Cross Objection No.56 of 2016

1.N.Murugesan
2.N.Saraswathi ... Cross Objector/Appellant

Vs

1.National Insurance Company Limited,
Pudukottai,
No.52, Oppanakara Street,
Coimbatore 641 001.

2.R.Govindaraj
3.Susairaj
(Respondents 2 & 3 herein were set
exparte by the Court below and hence
notice against them in the above appeal
may be dispensed with) ... Respondents / Respondents

PRAYER in CMA. No. 115 of 2016: Civil Miscellaneous Appeal filed under Section 173 of MV Act against the Judgment and decree dated 19.07.2013 passed in MCOP. No. 855 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Coimbatore.

PRAYER in Cross. Obj. No. 56 of 2016: Cross Objection is filed to allow this cross objection and to dismiss the CMA. No. 115 of 2016 as devoid of merits.

For Appellant in CMA and for Respondents in Cross.Objection. : Mr. S.Manohar for Mr.K.Padmanabhan

For Respondents in CMA and for Petitioners in Cross.Objection.: Mr.C.Veeraraghavan for R1 & R2
R3 & R4 - Exparte

COMMON JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree dated 19.07.2013 passed in MCOP. No. 855 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Coimbatore.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed Cross Objection No. 56 of 2016 for enhancement of the compensation amount.

3. Brief facts leading to the claim application are as follows;

On 12.04.2012 at 11.30 a.m., when the deceased Guru Vignesh was proceeding in the Avinashi road from west to east direction near Arulmigu Thandumariamman temple, in the motorcycle bearing Registration No. TN 37 BJ 7576 as pillion rider and at that time the first respondent came behind them by riding the mini lorry bearing Registration No. TN 55 C 9860 in a very high speed in negligent manner and dashed against the said motorcycle, as a result, the deceased and rider of the motorcycle fallen down and the mini lorry ran over the deceased and the mini lorry went further towards 10 to 15 feet and then stopped, thereby the accident occurred. The said accident had occurred only due to the rash and negligent driving of the 1st respondent/driver of the mini lorry. A Criminal Case was also registered against the 1st respondent/driver in FIR No. 104/2012 under Sections 279 and 304(A) IPC. Due to the said accident, the deceased had sustained grievous head injuries and died on the spot. The legal heirs of the deceased Guru Vignesh have claimed compensation for Rs.5,00,000/-.

4. The Insurance Company in the counter statement had denied the mode of the accident by stating that the accident took place only due to the carelessness and negligence on the part of the rider of the motor cycle, he drove the motor cycle without following the traffic rules and regulations and suddenly applied break, due to which the accident was occurred. Further, it is stating that the driver of said vehicle was not having any valid driving license at the time of the accident. There is no negligence on the part of the driver of the mini lorry. Hence, the Insurance Company denied the liability as well as the sum claimed by the claimants as compensation on various head also stated as excessive and exorbitant one, without any valid proof or documents.

5. The Tribunal, after analysing evidence and documents placed before the same, has fixed the negligence aspect on the part of the driver of the mini lorry. While determining the sum claimed by the claimants, the Tribunal has discussed that the deceased was a minor child, studied in 6^{th} standard at time of the accident and aged about 12 years and the Tribunal has observed that there is no possibility to award any amount under the head 'loss of income'. The Tribunal has awarded a total compensation of Rs.3,00,000/- without any breakup details.

6. Regarding the liability the Tribunal has also given a finding that the driver of the said vehicle did not possess any valid driving license at the time of the accident, but ultimately fastened the liability on the driver and owner of the mini lorry and exonerated the Insurance Company. However, the Tribunal has directed the Insurance Company/ Appellant to pay the compensation at first instance and directed to recover it from the owner of the mini lorry/ fourth respondent later.

7. Heard both sides and perused the documents available on record.

8. The learned counsel for the Insurance Company at the outset submitted that the Tribunal failed to appreciate the evidence of RW.1 and failed to appreciate the documents produced on the side of the Insurance Company. He further submitted that the Tribunal erred in observing that the appellant shall pay the amount of compensation on behalf of the respondents 3 & 4 and later recover from them. He further submitted that the quantum arrived at by the Tribunal was on the higher side.

9. Per contra, the learned counsel for the claimants/ cross objectors submitted that the Tribunal erred in awarding the total compensation at Rs.3,00,000/- in lumpsum and ought to have awarded Rs.5,00,000/- as claimed by the claimants. He further

submitted that the Tribunal failed to appreciate the documents produced by the claimants and ought to have awarded compensation under the heads loss of income, funeral expenses and loss of love and affection. In support of the said contention the learned counsel relied upon the decisions reported in 2013 (2) TNMAC 358 (SC) (Kishan Gopal and another Vs Lala and others), Civil Appeal No.5123 of 2019 dated 01.07.2019 (Parminder Singh Vs. New India Assurance Company Limited), 2017 (2) TNMAC 702 (J.Kanagaraj and another Vs. Metropolitan Transport Corporation Limited) and 2018 (2) TNMAC 238 (G.Sumathy and another Vs. K.Anbazhagan and others).

10. In view of the observation made in the said judgments and considered the evidence and documents, this Court of the opinion that the Tribunal has failed to consider with regard to the actual amount of compensation claimed by the claimants while fixing the quantum of compensation. It has failed to appreciate the evidence of PW.1, who is the star witness in the proceedings and exhibits produced by the claimants, in proper perspective. Further, the decisions relied upon by the learned counsel for the claimants squarely applicable to the facts of the case on hand.

11. Added to the above, the Tribunal has not awarded the compensation item wise but has awarded the lumpsum compensation which in the opinion of this Court is incorrect. It is not in dispute that there was an accident and the child aged 12 died in the accident. The parents are the claimants.

12. It is seen that there is no evidence about the academic record of the child. The death of the child had occurred on 12.04.2012. Further, as the age of the child was 12 years at the time of the accident and the calculation has to be made on the multiplier of 15. In the case of Chetan Malhotra Vs. Lala Ram delivered on 13.05.2016, the Delhi High Court among other things and after referring to various judgments of the Hon'ble Supreme Court, has ultimately taken the income of the deceased at Rs.15,000/-. Further, in the cases of R.K.Malik & Anr Vs Kiran Pal and others delivered on 15.05.2009 and National Insurance Company Limited Vs. D.Balu delivered on 07.01.2010, after referring to various decisions on the point of annual income, the Courts have taken the annual/ notional income of the deceased minor child at Rs.15,000/-. The said decisions squarely apply to the facts of the present case.

13. If the said decisions are applied in letter and spirit to the facts of this case, the loss of estate would be Rs.2,25,000/- (Rs.15,000/- x 15) and the same is awarded accordingly. Under conventional heads Rs.15,000/- is awarded

towards Funeral expenses and Rs.30,000/- each to the first and second claimants towards loss of love and affection, totalling to Rs.60,000/- is awarded towards loss of love and affection. This Court is of the opinion that awarding a sum of Rs.3,00,000/- as total compensation in total would meet the ends of justice. Though the Tribunal has also awarded the said sum as total compensation it has awarded the same without any breakup details.

14. In the result, the findings rendered by the Tribunal on negligence and quantum are confirmed, though for different reasonings. The Civil Miscellaneous appeal is partly allowed and the Cross objection filed by the respondents/ claimants is dismissed. No costs.

15. The Insurance Company is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

16. On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The first claimant/father of the deceased child is entitled to a sum of Rs.1,50,000/- and the second claimant/ mother of the deceased child is entitled to a sum of Rs.1,50,000/- together with accrued interests and costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
IV Additional District Judge,
Coimbatore.

Copy to

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

+1cc to Mr.K.Padmanabhan, Advocate Sr.60129
+1cc to Mr.C.Veeraraghavan, Advocate Sr.60201

C.M.A.No. 115 of 2016
and Cross Objection No.56 of 2016

vg II[co]
srg 08/06/2020