

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2375 of 2011 & Cross.Obj.No.166 of 2011
and
MP.No.1 of 2011

The Divisional Manager,
United India Insurance Company Limited,
Ranipet. ... Appellant/3rd respondent

Versus

1.Settha Ammal
2.Mohan
3.Yogendiran .. Respondents 1 to 3/ Claimants
4.Sundar
5.Janakiraman ... Respondents 4&5/ Respondents

(Respondents 4&5 are set
exparte in lower Court)

CROSS OBJECTION NO.166 of 2011:

1.Seetha Ammal
2.Mohan
3.Yogendiran ...Cross Objectors/
respondents 1 to 3

Versus

1.The Divisional Manager,
United India Insurance Co.Ltd.,
Ranipet.
2.Sundar
3.Janakirman ...Respondents2&3/
Respondents 4&5
(set exparte before the Tribunal)

Common Prayer: Civil Miscellaneous Appeal and Cross
Objection have been filed under section 173 of Motor
Vehicle Act, 1988 against the Judgment and Decree dated
26.03.2010 made in M.C.O.P.No.75 of 2002 on the file of the
Motor Accident Claims Tribunal (Subordinate Judge) at
Vellore.

CMA.No.2375 of 2011:

For Appellant : Mr.D.Bhaskaran
For R1 to R3 : Mr.C.Prabakaran
For R4&R5 : Exparte

Cross Obj.No.166 of 2011:

For Cross Objector : Mr.C.Prabakaran
For Respondents : Mr.D.Bhaskaran (for R1)
: Exparte (for R2&R3)

JUDGMENT

This Civil Miscellaneous Appeal and the Cross objection have been filed against the Order and Decree dated 26.03.2010 made in M.C.O.P.No.75 of 2002 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Vellore.

2.The appellant/Insurance company is the third respondent and the respondents 1 to 3 are the claimants in the claim petition before the Tribunal. The claim petition in M.C.O.P.No.75 of 2002 was filed seeking a sum of Rs.5,00,000/- for the death of one Rajendran.

3.For the sake of convenience, the parties are referred to as per their litigative status in the claim petition.

4.According to the claimants, the deceased Rajendran was the husband of the first claimant and father of the claimants 2 and 3. It is represented by the claimants that the deceased was working as a cashier in a wine shop, earning a sum of Rs.4,000/- per month. On 09.03.2001, at about 10.00 pm, after completing his work in the wine shop at Tiruvalam, the deceased was travelling in a lorry bearing regn.No.TNV-3267 to return to his home at Kugainallur. While crossing the Poorna Vidhyalaya School, suddenly the lorry capsized, as a result the deceased, Rajendran, sustained multiple grievous fractures and injuries all over the body. Immediately, he was admitted to the Government Hospital, Vellore where from he was shifted to CMC Hospital, Vellore, where he declared as dead. A case was registered in Crime No.47 of 2001 under section 279, 338 and 304(A) of IPC, against the fifth respondent/driver of the lorry, who was set exparte before the Tribunal. Hence, the claimants filed the above said claim petition before the Tribunal.

5.Before the Tribunal, on behalf of the deceased, his wife/ the first claimant was examined as PW.1 and one Dr.C.Levingston examined as PW.2. There were eight

documents marked as Ex's.P1 to P8 . On the respondents side, one Sivakumar, Assistant Administrative Officer of the insurance company was examined as RW.1 and three documents were marked as Ex's.R1 to R3.

6.The insurance company has filed a counter affidavit alleging that the deceased traveling in the lorry as a passenger, when the fact remains that the vehicle involved in the accident is a goods vehicle, in which, the claimant ought not to have traveled as a passenger. The deceased was travelling in the lorry after paying fare to the driver, in which case there is a violation of the policy condition. Therefore, the Insurance company denied their liability to pay compensation. It is also contended that after one month from the date of accident, the deceased died and therefore, the injuries sustained in the accident has no nexus to his death. Therefore, the insurance company prayed for dismissal of the claim petition.

7.The Tribunal considering the endorsement made in the insurance policy, Ex.R1 viz., IMT No.13, which concluded that four persons can travel along with Driver in the vehicle, for which premium has also been paid. The Tribunal, further held that the death of the deceased is a sequel to the injuries sustained in the accident. Therefore, the Tribunal awarded a sum of Rs.2,75,000/- as compensation and directed the respondents in the claim petition to pay it jointly and severally to the claimants. Aggrieved over the same, the insurance company has preferred this appeal.

8.The learned counsel appearing for the respondents/Cross Objectors in CMA No.166 of 2011 submitted that the medical expenses were incurred by the claimants, which is evident under Ex.P7/medical bills, while the deceased took treatment in CMC Hospital, Vellore and Government Pent land Hospital, Vellore, however, the same was not awarded by the Tribunal in the claim petition.

9.Heard both sides. As far as liability of the insurance company is concerned, it is seen that the policy condition envisages a person, other than the driver to travel in the vehicle and the insurance coverage for such person was in force at the time of accident. The Tribunal also on consideration of Ex.R1, insurance policy and the endorsement made thereon, held that the liability of the insurance company cannot be exempted. In such view of the matter, this Court is not inclined to interfere with the well considered and well merited award passed by the Tribunal.

10. Taking note of the fact that Ex.P1/First Information Report and Ex.P5/Charge sheet, the Tribunal has rightly come to the conclusion that the accident had taken place due to rash and negligent manner of driving of the first respondent/driver of the lorry. PW.2/Doctor, in his deposition has categorically stated that the deceased sustained spinal cord injury, due to which, he took treatment at Government Pent land Hospital, Vellore and thereafter, he took further treatment at CMC, Hospital, Vellore for the injuries caused in the said accident. After going through Ex.P8/Discharge summary issued by the Doctor/PW.2, the Tribunal opined that the death of the deceased is due to the injuries sustained in the said accident even though the deceased died one month after the accident. Therefore, this Court finds that based upon Ex.P2/copy of Accident Register, Ex.P4 & P8/Discharge summaries and the nature of injuries sustained by the deceased in the spinal cord and the deposition of PW.2/Doctor, the Tribunal is right in holding that the death of the deceased is a sequel to the injuries sustained in the accident.

11. It is not in dispute that the deceased had taken treatment from the date of injuries for one month prior to his death. In this context, the claimants have incurred medical expenses, which are also clear from Ex.P7/Medical bills. While so, there is no reason to deny the claimants the medical expenses incurred by them however, the Tribunal without assigning any reason, failed to award the medical expenses incurred under Ex.P7. Hence, this Court award the sum of Rs.1,85,210/- as against the award, awarded by the Tribunal. The other amount awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses appears to be fair and reasonable and they do not require any interference by this Court. Accordingly, the award passed by the Tribunal as modified and enhanced as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.2,20,000/-	Rs.2,20,000/-
Loss of consortium	Rs.25,000/-	Rs.25,000/-
Love and affection	Rs.25,000/-	Rs.25,000/-
Funeral expenses	Rs.5,000/-	Rs.5,000/-
Medical expenses	-	Rs.1,85,210/-
Total	Rs.2,75,000/-	Rs.4,60,210/-

(*) "12. In the result,

[i] the Civil Miscellaneous Appeal is dismissed. The Cross Objection filed by the claimants is partly allowed. [ii] The award of the Tribunal is enhanced to Rs.4,60,210/- from Rs.2,75,000/-.

[iii] The appellant/Insurance Company is directed to deposit the enhanced compensation amount of Rs.4,60,210/- with interest at 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of the judgment.

[iv] On such deposit being made, the claimants are entitled to withdraw their enhanced share amount, by moving appropriate application before the Tribunal.

[v] The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

[vi] No costs.

[vii] Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

(*) Deleted and Substituted the order as per the order of this Hon'ble Court dated 28/02/2020

//True Copy//

Sub Assistant Registrar

klt
To

**To be substituted for the order
already Despatched on 18/11/2019**

- 1.The Motor Accident Claims Tribunal
(Subordinate Judge) Vellore.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to Mr.D.Bhaskaran , Advocate SR.No. 19137
+lcc to Mr.C.Prabakaran , Advocate SR.No. 18061

CMA.No.2375 of 2011
and Cross Obj.No.166 of 2011

A.SK(30/09/2019)
AKM/20.03.2020/5P-5C /