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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2019

Pronounced on : 11.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2414 of 2011 & Cross.Obj.No.67 of 2012
and
MP.No.1 of 2011

United India Insurance Co., Ltd.,
rep.by its Manager Branch Office,
180, A.Attur Main Road,
Rasipuram Post & Taluk,
Namakkal District.

... Appellant in CMA /
1st Respondent in Cross Obj.,

Vs.

1.Saraswathi
2.Minor K.Saravanan
3.Minor K.Prakasam
4.Muthayee
5.Periya Gounder
6.N.Suganya

[R6 set exparte in the Lower Court] ... Respondents in CMA
/ 1 to 5 are Cross
Objectors and R6 is the R2
in Cross Objection.

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 28.10.2010 made in
M.C.O.P.No.674 of 2004 on the file of the Motor Accident Claims
Tribunal (Principal District Judge) at Namakkal.

For Appellant in CMA
& R1 in Cross Obj. : Mr.T.Ravichandran

For R1 to R5 in CMA &
Cross Objectors in Cross Obj. : Mr.Ma.P.Thangavel

For R6 in CMA
& R2 in Cross Obj. : Exparte



JUDGMENT

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The Insurance company has preferred this appeal as well as the claimants have preferred the Cross objection as against the award dated 28.10.2010 made in M.C.O.P.No.674 of 2004 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Namakkal, challenging the quantum of compensation.

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

3.The claimants are wife and children of the deceased. The first respondent is the owner of the offending vehicle, which was insured with the second respondent/Insurance company. The first claimant is the wife of the deceased and the claimants 2 & 3 are the sons of the deceased and the claimants 4 & 5 are the parents of the deceased. Hence, his legal heirs/claimants have filed the claim petition in M.C.O.P.No.674 of 2004, seeking a sum of Rs.12,00,000/- as compensation for the death of one P.Krishnamoorthy.

4.It is represented by the claimants that the deceased was working as an Agriculturist as well as Tractor Tractor owner, Operator and Tapioca business broker at Ayil and earning a sum of Rs.25,000/- per month. On 23.08.2001, at about 7.30 pm, the deceased Krishnamoorthy drove his TVS 50 bearing Reg.No.TAM 1471 from Pillainanllur to his residence Ponkurichi i.e., Rasipuram to Tiruchengode main road the deceased drove this TVS 50 very slowly at the extreme left side of the road, when he came near Kallanguthu, at that time from the opposite direction one Matador bearing Reg.No.TN-27-C-6746, which was driven by its driver in a rash and negligent manner and hit against the TVS 50 bearing Reg.No.TAM - 1471 as a result of, the deceased skull was fractured and sustained grievous injuries and fractures on hip bone, hand region and internal organs, he sustained fatal injuries and died on the same day. A case was registered by the Inspector of Police, Puduchatram against the driver of the Metador bearing Reg.No.TN-27-C-6746 in Crime No.258 of 2001 under Sections 279 and 304(A) of IPC.

5.The first respondent remained as ex-parte before the Tribunal.

6.The Insurance Company filed a counter statement and contested the contentions made in the claim petition with regard to the manner of accident, the age, income and avocation of the deceased. It is the stand of the Insurance company that they are



not liable to pay compensation to the claimants and prayed dismissal of the claim petition.

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7. Before the Tribunal, in order to sustain the claim, on the side of the claimants, the first respondent herein was examined as PW.1, one Mani, eye witness was examined as PW.2 and twenty one documents were marked as Exs.P1 to P21. On the side of the respondents, no oral or documentary evidence was adduced.

8. Based upon the witness of PW.2 coupled with the Ex.P1-P6, the Tribunal has held that Ex.P1/FIR and Ex.P5/Charge sheet filed against the driver of the first respondent's offending vehicle and he was convicted and sentenced in C.C.No.179 of 2001 and the copy of the Judgment was also marked as Ex.P6. Accordingly, the Tribunal held that the accident has taken place due to rash and negligent driving of the driver of the first respondent as on the date of the accident, the policy was in force and accordingly held that both the first respondent and the Insurance company are jointly and severally liable to pay the compensation to the victims. On appreciation of the evidence and the absence of any contra evidence the said finding of the Tribunal is hereby confirmed.

9. The learned counsel appearing for the Insurance company would contend that on the point of quantum, the compensation awarded by the Tribunal is on the higher side at the relevant point of time.

10. Per contra, the learned counsel for the respondents and the petitioner in Cross objection has stated that on the date of the accident, the deceased was aged 44 years and future income was not granted by the Tribunal and other heads are, also are not in terms of the sound legal principles.

11. I have heard both counsel for the respective parties and perused the materials available on record.

12. After perusing the records adduced before the Tribunal, it has come to the conclusion that as per the driving license/Ex.P10 and Ex.P11/School certificate, the age of the deceased was fixed at 45 years on the date of the accident and the same is hereby confirmed. Considering the deceased avocation mentioned in the claim petition, the Tribunal has notionally fixed his monthly income at Rs.6,000/- and adopted multiplier '15' for proper compensation. On perusing Ex.P17 to P21, the deceased was cultivating the lands and vacant sites, however, taking into consideration of that source of income is still available. So, the loss is only with regard to the loss of



service and the same is enhanced by this Court under structural formula. The amount of Rs.6000/- per month comes to Rs.7,20,000/- towards loss of income was fixed by the Tribunal is hereby increased to Rs.7,000/- per month along with 40% future prospects to be included and 1/3 deduction has to be made for his personal expenses, which is arrived to be at Rs.2800 (Rs.7000 x 40%)=Rs.9,800/- out of that amount, a sum of Rs.11,75,940/- (Rs.9800 x 1/3= 3267) (Rs.9800 - 3267 = 6533) x 12 x 15). Further, considering the first respondent/Cross objector being widow, she is entitled to get the award amount under the head of loss of consortium a sum of Rs.40,000/- is awarded instead of Rs.20,000/-. This Court is of the opinion that a sum of Rs.2,000/- towards funeral expenses is paltry sum, and the same is hereby enhanced to Rs.15,000/-. 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.15,000/-each except the first claimant. 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.7,20,000/-	Rs.11,75,940/-
Love and affection	Rs.50,000/-	Rs.60,000/-
Loss of consortium	Rs.20,000/-	Rs.40,000/-
Funeral expenses	Rs.2,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.7,92,000/-	Rs.13,05,940/-

13.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed and the Cross objection filed by the claimants is allowed and the compensation amount of Rs.7,92,000/- awarded by the Tribunal is hereby enhanced to Rs.13,05,940/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) The appellant/Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iii) On such deposit being made, the first claimant/wife is entitled to Rs.6,05,940/- and the second and third claimants are



entitled to Rs.2,50,000/- each. Since the second and third claimants have attained majority pending the appeal, they are also entitled to withdraw their respective share.

(iv) The fourth claimant being the mother of the deceased is entitled to Rs.1,00,000/- and the fifth claimant is entitled to Rs.1,00,000/- in as much as, he passed away pending the appeal, hence, the share shall be distributed equally among the all other four legal heirs/claimants at the rate of Rs.25,000/- each and the claimants are also entitled to withdraw the same with the accrued proportionate interest.

(v) 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

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Principal District Judge) at Namakkal.

Copy to : The Section Officer,
V.R.Section, High Court, Madras - 104.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 35830

AKM/29.11.19/5P- 4C /

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