IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2019
PRONOUNCED ON : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1391 of 2016 and
Cross Obj.No.24 of 2017 and
C.M.P.Nos.10594, 19400 of 2016,
5975, 5976 of 2017

M/s.ICICI Lombard General
Insurance Company Limited,
No.140, Nungambakkam High Road,
Chennai 600 034. .. Appellant/2nd Respondent

vs.

1. V.Thillai

2. V.Petchiammal (Minor)
   Rep.by her mother and next friend
   V.Thillai
3. V.Kasimani Nadar
4. Bhadrakali .. Respondents 1 to 4 / Petitiners

5. M/s.Rattan Road Carrier
   Shop No.14, Shiv Ashram Complex,
   Opposite to Pripalam,
   Gurgaon Road, Gurgaon

(5th Respondent was set exparte before the Tribunal) .. Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 04.02.2016 made in M.C.O.P.No.1425 of 2012 on the file of the Accident Claims Tribunal (II Judge) Small Causes Court, Chennai.

For Appellant	:	Mr.J.Michael Visuvasam
For R1, R2 and R4	:	Mr.K.Suryanarayanan
For R3	:	No Appearance

Cross Objection No.24 of 2017

1. V.Thillai
2. V.Petchiammal (Minor)
   Rep.by her mother and next friend
   V.Thillai
3. V.Kasimani Nadar
4. Bhadrakali .. Cross Objectors/Respondents 1 to 4 in CMA

vs.

1. M/s.ICICI Lombard General
   Insurance Company Limited,
   No.140, Nungambakkam High Road,
   Chennai 600 034. .. Respondent/Appellant in CMA

2. M/s.Rattan Road Carrier
   Shop No.14, Shiv Ashram Complex,
   Opposite to Pripalam,
   Gurgaon Road, Gurgaon ..Respondent/5th Respondent in CMA

(2nd Respondent was set exparte before the Tribunal)

Prayer : Cross-Objection filed under Order XXXXI, Rule 22 of the C.P.C., praying for enhancement of further compensation of Rs.90,00,000/-.

For Cross Objectors 1, 2, and 4 : Mr.K.Suryanarayanan
For Cross Objector No.3 : No Appearance
For 1st Respondent : Mr.J.Michael Visuvasam

C O M M O N J U D G M E N T

C.SARAVANAN,J.

Both the appeal and cross objection are confined to the quantum of the compensation awarded by the Tribunal.

2. The appellant-Insurance company is aggrieved by the fair and decretal order dated 04.02.2016 passed by the Motor Accident Claims Tribunal, (II Court of Small Causes) Chennai in M.C.O.P.No.1425 of 2012. (For brevity hereinafter referred to as the Tribunal and the impugned order respectively).

3. By the impugned fair and decretal order, the Tribunal has awarded a sum of Rs.2,92,15,300/- together with interest from the date of claim petition till the date of realisation to the claimants.

4. Not being satisfied with the above compensation, the claimants have filed Cross-Objection under Order XXXXI Rule 22 of C.P.C and have prayed for further enhancement of compensation of another sum of Rs.90,00,000/-.

5. The claimants are the respondents 1 to 4 i.e. wife, a minor daughter and parents of the deceased K.Vanniaraj. The deceased K.Vanniaraj was aged about 47 years at the time of the fatal accident. On the fateful night, the deceased riding a Honda Activa, a gearless scooter on the highway and was fatally knocked down by a lorry belonging to the 5th respondent and died.

6. Under these circumstances, a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 r/w relevant rules.

7. The deceased was said to be the proprietor of a manufacturing unit under the name and style of Chairmmam Plastics. The unit was registered not only with a Commercial Tax Department for payment of VAT and CST but also with the Central Excise Department for payment of Central Excise duty. The deceased was an income tax assessee.

8. The deceased however has neither paid income tax nor any of the indirect taxes although the bank statement filed subsequently before the Tribunal shows huge inflow of cash.

9. The claim was originally restricted for a sum of Rs.1,00,00,000/-in the claim statement by declaring a monthly income of Rs.50,000/- of the deceased. However, no income tax return was filed by the claimants to substantiate the aforesaid income.

10. During the course of hearing, the claim was enhanced to Rs.5,00,00,000/-by the claimants before the Tribunal by declaring a monthly income of Rs.5,00,000/-. In support of the same, the claimants filed copies of the personal account of deceased Vanniaraj with ICICI Bank, Anna Nagar, Chennai and the current account statement of the proprietary concern Chairmmam Plastics.

11. The Tribunal considered the evidence of the first respondent viz., wife of the deceased and based on the aforesaid document, namely the bank statement, allowed amendment to the claim for enhanced compensation of Rs.5,00,00,000/-.

12. Based on these documents and deposition of the 1st respondent-wife, the Tribunal has concluded that the gross income/receipt of Chairmmam Plastics is to Rs.10,40,926/- p.m. After deducting 80% of the gross receipt towards revenue

expenditure such as, rent, salary, maintenance, electricity charges and other expenses of the proprietary concern, the Tribunal arrived at the monthly income of the deceased as Rs.2,09,586/- and added 30% towards future prospects, after applying multiplier of 13 as per the decision of the Hon'ble Supreme Court reported in Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (5) LW 561, and 2009 (2) TNMAC 1 (SC) and deducting amounts towards income tax at 10% i.e. Rs.2,45,216/- and 1/4th towards the personal expenses of the deceased, the Tribunal arrived at the pecuniary loss of the claimants at Rs.1,83,912/-p.m, and awarded a sum of Rs.2,86,90,272/- (Rs.1,83,912/- X 12 X 13) as compensation.

13. The break up of the amount awarded by the Tribunal are summarised below:-

Loss of Pecuniary Benefits	Rs.2,86,90,272/-
Loss of Consortium	Rs. 1,00,000/-
Loss of love and affection	Rs. 3,00,000/-
Loss of Estate	Rs. 1,00,000
Funeral expenses	Rs. 25,000/-
Total	Rs. 2,92,15,272/-

14. We have heard the learned counsel for the appellant and the learned counsel for the respondents-claimants. We have gone through the records and the impugned order of the Tribunal awarding the above compensation and claim for enhanced compensation.

15. This is a classic case where social welfare legislation intended to benefit the dependent of the deceased has been abused to the hilt. Strange method has been adopted by the Tribunal to arrive at a monthly income of the deceased at Rs.2,09,586/-.

16. Even though the deceased was registered with the Income Tax Department and was a holder of Income Tax PAN Card and had registered his proprietary concern with the Commercial Tax Department and the Central Excise Department, he had neither paid any income tax nor the indirect taxes and yet the Tribunal increased the income of the deceased based on cash transactions reflected in the Bank Statement.

17. The net income of the deceased arrived at Rs.2,09,586/- p.m by the Tribunal to award the above compensation of Rs.2,92,15,272/- to the claimants is more than 400% of the income originally declared in the claim statement. Even income

of Rs.50,000/- p.m. declared appears to be exaggerated considering the fact that neither the deceased nor the claimants appear to possess any materials to establish the income except the inference from the Bank Statement, which was strangely marked through the first claimant herself though she did not know much about the business of the deceased.

18. The fact that the deceased died in a road accident riding scooter on a highway late in the night makes us believe that the deceased was not a man of means and appears to have lent his name somebody else to do business in his name. It appears that the deceased was a mere employee and it doubtful whether he would have earned even Rs.50,000/- p.m as was declared in the claim statement.

19. In fact, on an earlier occasion i.e. on 28.04.2017, after admitting the appeal and while passing interim order, this Court had called State Government Pleader to assist in arriving taxable turnover of the said proprietary concern. It is turned out that the deceased had not paid commercial tax since the inception in 2007.

20. The fact that the deceased died riding a two wheeler viz., Honda Activa scooter on a highways raises a serious doubt as to whether the proprietary concern would have earned an average gross income of Rs.10,40,926/-p.m for the Tribunal to arrive at the net income of Rs.2,09,586/- p.m of the deceased. Further, if the deceased was having substantial income, he could not have evaded huge tax liability based on the transactions reflected in the bank accounts and transactions would have attracted TDS.

21. Therefore, we are unable to accept the views of the Tribunal to enhance the gross income to Rs.10,40,920/-p.m. and thereafter to arrive at the net income of the deceased as Rs.2,09,586/- p.m.

22. The fact that in the original claim, the income was declared as Rs.50,000/- per month and was allowed to be enhanced to Rs.5,00,000/- p.m., the amended claim appears to be highly irregular.

23. The income of Rs.2,09,586/- p.m. adopted to award a compensation of Rs.2,92,05,300/- to the claimants is uncalled for in the absence of any material evidence in the form of income tax returns of the deceased.

24. In fact, this is a fit case which ought to be referred to the Income Tax Department to probe further. Perhaps, the name of the deceased was used to do business from behind as the

deceased appears to have no means and led a modest life and died riding a ordinary two wheeler on a highway. It is quite uncharacteristic for a person having high income to ride a two wheeler in the night on a highway to be fatally knock down.

25. To us, it appears that the deceased was a mere employee whose name was used by somebody else. A probe by cyber cell tracking the flow of money from the accounts would reveal whether the deceased was doing the business himself or was a mere name lender. However, we are not expanding the scope of enquiry in this case.

26. Considering over all circumstances, we are quite convinced that the deceased did not have sufficient income to justify the compensation awarded by the Tribunal.

27. We are therefore of the view that the amount of compensation awarded by the Tribunal at Rs.2,92,15,300/- deserves to be reduced substantially and cross objection dismissed.

28. At the time of passing the interim order in CMP.No.19400 of 2016 in CMA.No.1391 of 2016 dated 28.04.2017, this Court had arrived at monthly income of the deceased as Rs.12,000/- as per the decision of the Division Bench of this Court in C.M.A.No.3273 of 2014 dated 13.10.2015 (Royal Sundaram Alliance Insurance Co., Ltd., v. Tmt.Vennila) and arrived at loss of contribution at Rs.21,60,000/- as the claimants were unable to give any assistance. Further, this Court has awarded amounts under various heads, which are as follows :

1.	Loss of contribution (Rs.6,000 x 12x15x2/3)	Rs. 21,60,000/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of Love and affection	Rs. 2,00,000/-
4.	Funeral Expenses	Rs. 25,000/-
5.	Extra Nourishment	Rs. 10,000/-
6.	Transportation	Rs. 10,000/-
7.	Conventional damages	Rs. 2,000/-
8.	Total	Rs. 24,97,000/-

29. By the said order dated 28.04.2017 claimants were allowed to withdraw the total compensation of Rs.25,00,000/ together with interest accrued thereon till then. The minor's share was also directed to be deposited in a nationalised bank till she attains the age of majority. It was further mentioned that at the time of admission, the appellant Insurance Company had already deposited a sum of Rs.1,86,52,282/-.

30. As we are required to award just compensation, we are inclined to restrict the income of the deceased to Rs.50,000/-pm as was claimed in the absence of any other evidence considering the over all facts and circumstances of the case, though the appellant insurance company would pray for further reduction. We are therefore inclined to award compensation by accepting the gross income of the deceased as Rs.50,000/- which appears to be reasonable.

31. Under these circumstances, compensation is worked out as follows:-

S.No.	Heads of compensation and calculation thereof		Just Compensation
1	i) Income per month	Rs. 50,000/-	
	ii) Addition to loss of income for determination of future prospects (25% of 50,000)	Rs. 12,500/- ---------------	
	Total	Rs. 62,500/-	
	Less Income tax at 15%	Rs. 9,375/- ---------------	
	Total	Rs. 53,125/-	
	iii) after deducting ¼ personal expenses (Rs.53,125x1/4)	Rs. 39,844/-	
	iv) Net income per annum (Rs.39,844 x 12)	Rs.4,78,128/-	
	v) Total loss of income applying multiplier of 13 (Rs.4,78,128 x 13)	Rs.62,15,664/-	Rs.62,15,664/-

S.No.	Heads of compensation and calculation thereof		Just Compensation
2	Loss of consortium to 1st claimant		Rs. 40,000
3	Loss of love and affection to claimants 2 to 4		Rs. 1,20,000
4	Funeral expenses		Rs. 15,000
5	Loss of estate		Rs. 30,000
	Total		Rs.64,20,664

32. In view of the order already passed on 28.04.2017, we direct the Tribunal to order payment out to the claimants for the balance amount of Rs.39,20,664/-(Rs.64,20,664 - Rs.25,00,000) being the balance amount together. Claimants shall also be entitled to receive the interest accrued thereon at 7.5% and proportionate costs.

33. Since the 3rd respondent has passed away during the pendency of the present appeal, proportionate share shall be divided equally between the 2nd and the 4th respondent. The first claimant/wife and mother/fourth respondent herein are permitted to withdraw their respective shares with accrued interest as per apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn.

34. Since the 2ndrespondent is still a minor, the amount shall be invested in a fixed deposit of a nationalised bank for the benefit of the said minor, who shall be entitled to withdraw the same on attaining the age of majority. The first claimant shall be entitled to withdraw the interest for the benefit of the second respondent minor.

35. Accordingly, C.M.A.No.1391 of 2017 is hereby partly allowed and Cross Objection No.24 of 2017 for enhancement of compensation is dismissed. Consequently, connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

kkd

To

1) The Motor Accident Claims Tribunal
II Court of Small Causes, Chennai.

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

+1 cc to Mr.K.Suryanarayanan, Advocate, S.R.No.21738

+1 cc to Mr.Michael Visuvasam, Advocate, S.R.No.21824

C.M.A.No.1391 of 2016 and
Cross Obj.No.24 of 2017 and
C.M.P.Nos.10594, 19400 of 2016,
5975, 5976 of 2017

NMI(CO)
SSM(31/05/2019)