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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
CMA.No.3229 of 2011 & Cross.Obj.No.39 of 2013
and
MP.No.1 of 2011

The New India Assurance Company Limited,
No.12, New Hospital Road,
Gobichettipalayam - 638 452.

... Appellant/3rd Respondent

Versus

1.K.Subbulakshmi
2. K.Krishnapriya
3. K.Senthilkumar
4.Karuppayee Ammal

: Respondents 1 to 4/Petitioners

5. P. Sakthivel
6. G.K.Nataraja
(Respondents 5&6 are set
exparte before the Tribunal)

: Respondents 5&6/ Respondents 1&2

CROSS OBJECTION NO.39 of 2013:

1.K.Subbulakshmi
2.K.Krishnapriya
3. K.Senthilkumar
4. Karuppayee Ammal

...Cross Objectors/
respondents 1 to 4 in CMA.No.3229/11/
Petitioners in MCOP

Versus

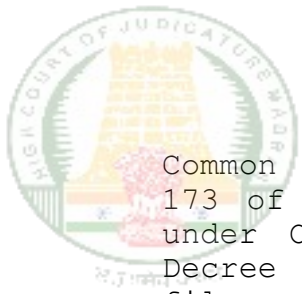
1.M/s. New India Assurance Company Ltd.,
No.12, New Hospital Road,
Gobichettipalayam - 638 452.

: 1st Respondent/Appellant in
CMA.3229/11/3rd Respondent in MCOP

2. P.Sakthivel
3.G.K.Natarajan

: Respondents 2&3 / Respondents 5&6
respondents in CMA No.3229/11/respondents 1&2
in MCOP

(Respondents 2&3 are set
exparte before the Tribunal)



Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection filed under Order 41 Rule 22 of C.P.C, against the Judgment and Decree dated 21.12.2010 made in M.C.O.P.No.284 of 2009 on the file of the Motor Accident Claims Tribunal and Additional District Judge (Fast Track Court No.4) Bhavani, Erode District.

For Appellant : Mr.Eleera Ravindran (R1 in Cross)

For R1 to R4 : Mr.Ma.P.Thangavel (Cross objectors)

COMMON JUDGMENT

This Civil Miscellaneous Appeal and the Cross objection have been filed against the Judgment and Decree dated 21.12.2010 made in M.C.O.P.No.284 of 2009 on the file of the Motor Accident Claims Tribunal and Additional District Judge (Fast Track Court No.4) Bhavani, Erode District.

2.The Appellant/Insurance Company has preferred the appeal and the claimants/Cross Objectors have preferred the Cross Objection for enhancement of Award passed by the Tribunal in M.C.O.P. No.284 of 2002.

3.The claimants/Cross Objectors are the legal representatives of the deceased Kuppuswamy, who allegedly carrying on Agricultural and Milk dairy Farm and also a member in Hatson Agro Milk Dairy Farm and he is also a graduate, earned a sum of Rs.10,000/- per month. As per the claim petition, on 20.06.2009 at about 08.15 A.M. when the deceased was riding his TVS XL Super bearing Registration No.TN-36-D-9651 from Ammapettai to Anthiyur Main Road, while nearing Bannari Amman Weigh Bridge, in order to go to Bhoodapadi for purchase of agricultural articles from East to West side, the first respondent (before the Tribunal) drove the TATA 407 Tempo bearing Reg.No.TN.36-J-3679 in a rash, negligent and careless manner from West to East direction and hit against the deceased G.Kuppusamy. Due to sudden hit, the deceased was thrown away and he sustained multiple grievous injuries all over his body. The first respondent was solely responsible for the said miserable accident.

4.The Insurance Company filed a counter statement denied the manner of the accident and also denied the age, avocation and income of the deceased.



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5. During the Trial, the widow of the deceased, examined herself as P.W.1 and also examined the eye-witness Shanmugam/P.W.2 and marked Exs.P1 to P24. On behalf of the Insurance Company, no oral evidence and no documentary evidence were marked.

6. The Tribunal, based upon the oral and documentary evidence of P.W.2, coupled with Exs.P1, P5, P6 and P7 came to the conclusion that the accident has taken place due to the rash and negligent driving by the first respondent (before the Tribunal) of the vehicle, owned by the second respondent before the Tribunal. Which was insured with the third respondent (before the Tribunal) and held that both owner and the insurance company are jointly and severally liable to pay the compensation.

7. Aggrieved against the said order and decreetal order made in M.C.O.P.No.284 of 2009, the insurance company has preferred this appeal.

8. Heard both sides.

9. After hearing the submissions of both the parties, it is seen that taking into consideration of the version of PW2-Shanmugam, the occurrence witness coupled with the documentary evidence of Ex.P1-FIR and Ex.P2 -Rough sketch and also Ex.P4-Motor vehicle inspector's inspection report along with Ex.P7-charge sheet, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the 407 Tempo, T.N.36 J 6973 which was owned by the second respondent before the Tribunal. The said finding does not suffer from any illegality or irregularity and accordingly, in the absence of any contra evidence, the same is hereby confirmed and as the vehicle was insured with the appellant /insurance company and the respondents before the Tribunal are jointly and severally liable to pay the compensation.

10. Learned counsel for the appellant insurance company would submit that the quantum is exorbitant. I have heard, learned counsel for the respondent in the CMA who is the cross objector, regarding enhancement of compensation. As per the claim petitioner, the deceased was doing agricultural, Milk Dairy farm and also a registered member of Milk dairy farm. As per Ex.P22 and Ex.24, the Tribunal has arrived the income at Rs.9000/-and taking into consideration the number of dependents, 1/4th amount has been deducted towards personal expenses of the deceased.



11. As per the Post Mortem certificate, the deceased was aged about 51 years. Hence, as per the Constitution Bench judgment of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the age of the parents should not be the criteria and it is only the age of the victim that has to be taken as per the decision of the Hon'ble Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], for the purpose of future prospects, 10% has to be granted. The monthly income along with future prospects comes to Rs.9,900/- (Rs.9,000/- + 10% of Rs.9,000/-). Taking into consideration the age of the deceased, 11 multiplier is adopted. Therefore, the loss of income is arrived at Rs.13,06,800/- (Rs.9,900/- x 12 x 11). After deducting 1/4th towards personal expenses, the loss income would be at Rs.9,80,100/- [Rs.13,06,800/- (-) 1/4 of Rs.13,06,800/-].

12. The first claimant being the widow of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The claimants 2 & 3 are entitled to a sum of Rs.50,000/- each towards loss of love and affection, while the 4th claimant is entitled to a sum of Rs.30,000/- towards loss of love and affection. Towards funeral expenses and Loss of estate a sum of Rs.15,000/- each is granted and as per Ex.P9 to Ex.P21 a sum of Rs.4,84,290/- was granted towards medical expenses.

13. Thus, 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.7,92,000/-	Rs.9,80,100/-
Loss of consortium to the wife for the 1st claimant	Rs.10,000/-	Rs.40,000/-
Loss of Love and affection to the claimants 2 & 3 (each Rs.50,000/-)	Rs.10,000/-	Rs.1,00,000/-
Loss of Love and affection to the 4th claimant	---	Rs.30,000/-
Funeral expenses	Rs.5,000/-	Rs.15,000/-
Medical expenses	Rs.4,84,290/-	Rs.4,84,290/-
Loss of Estate	---	Rs.15,000/-
Total	Rs.13,01,290/-	Rs.16,64,390/-



14. In the result, CMA.No.3229 of 2011 preferred by the insurance company is dismissed and the Cross objection No.39 of 2013 preferred by the claimants is partly allowed to the extent indicated above. Therefore, the appellant/Insurance company is directed to deposit the enhanced amount along with interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the respondents 1 to 4 /Claimants are entitled to withdraw their enhanced share amount, by moving appropriate applications before the Tribunal. 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

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To

- 1.The Motor Accident Claims Tribunal
The Learned Additional District Judge,
Fast Track Court No.4, Bhavani, Erode District.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to Mrs.Elveera Ravindrnr, Advocate, SR.No.20874.
+lcc to Mr.P.Thangavel, Advocate, SR.No.21606.

CMA.No.3229 of 2011 &
Cross.Obj.No.39 of 2013
and
MP.No.1 of 2011

SPD (CO)
CSR(16/12/2019)