IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.691 OF 2015
AND M.P.NO.1 OF 2015
AND
CROS.OBJ.NO.47 OF 2018

The Regional Manager,
United India Insurance Co., Ltd.,
Divisional Office,
TKM Complex, Katpadi Road,
Vellore. ....Appellant in CMA/
1st respondent in Cros.Obj.

Vs

1. Sakunthala
2. R.Bhoopalan
3. Minor Prabakaran,
Rep.by Mother and Natural Guardian
Sakunthala ...Respondents 1 to 3 in CMA/
Cross Objectors

4. T.Venkatesan
(4th respondent ex-parte before
... 4th respondent in the Lower Court)
the CMA and 2nd respondent in Cross.Obj.

Prayer:-

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.06.2012 made in MACTOP No.29 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Vaniyambadi.

Cross Objection under Order 41 Rule 22 of the Code of Civil Procedure, against the judgment and decree dated 05.06.2012 made in MCOP No.29 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant in CMA/
1st respondent in Cross Obj. : Mr.R.Rathna Thara

For respondents 1 to 3 in CMA/: Mr.PA.Sudesh Kumar
Cross Objectors for M/s.Sun Associates

JUDGMENT

Both the appeal and the cross objection arise out of the same award passed by the Tribunal in MCOP.No.29/2011, the same are being decided by this judgment. Branding the compensation awarded by the Tribunal as excessive and exorbitant, the insurance company has filed this appeal. Whereas the claimants have preferred the cross objection seeking enhancement of the compensation awarded by the Tribunal.

2.The case in brief, is as follows:

On the fateful day, ie., on 02.11.2005, at about 10.30 a.m, one V.Rajamani and his son were standing on the extreme left side mud portion of Tirupattur - Vaniyambadi main road. At that time, a TVS victor Motorcycle bearing Registration No.TN 23 K 4567 belonging to the fourth respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and hit the said Rajamani. Due to the said impact, he fell down and sustained grievous injuries and he succumbed to the same in the hospital. Stating that the accident had occurred only due to the carelessness and negligence on the part of the rider of the motorcycle, the wife and sons of the deceased filed a claim petition seeking compensation of Rs.9,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,28,705/- with interest at the rate of 7% per annum from the date of petition. Challenging the same, the appellant insurance company and the claimants/cross objectors have filed the appeal and Cross Objection respectively.

3.The learned counsel for the appellant Insurance Company has submitted that the rider of the two wheeler did not possess a valid driving licence at the time of the accident and hence, the appellant is not liable to pay any compensation. He further submitted that the compensation awarded by the Tribunal under various heads are excessive and exorbitant.

4.The learned counsel for the respondents 1 to 3 in the CMA /Cross Objectors, has submitted that though the deceased was earning Rs.15,000/- per month, the Tribunal has taken a lesser sum of Rs.3,000/- per month, while awarding the compensation under the head “loss of income”; the amounts awarded towards other heads are also very meagre; and hence, the same has to be enhanced substantially.

5.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the respondents 1 to 3/ claimants/Cross Objectors and perused the materials available on record carefully and meticulously.

6.The learned counsel for the appellant Insurance Company has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent riding of the rider of the two wheeler and hence the said finding of the Tribunal, need not be interfered with by this Court.

7.With regard to liability, the contention of the learned counsel for the appellant Insurance Company is that the rider of the vehicle did not possess the valid driving licence and was not having badge at the time of the accident and hence, the appellant Insurance Company cannot be fastened with the liability to pay compensation to the respondents 1 to 3/Cross Objectors. However, no concrete evidence was adduced to substantiate their contention. Ex.P5 : Ex.R4 is the driving licence of the rider of the two wheeler and Ex.P4 : Ex.R2 is the copy of the insurance policy relating to the offending two wheeler. Considering those materials and evidence adduced by the parties, the Tribunal has rightly fastened the liability on the appellant insurance company, which finding this Court is not inclined to interfere.

8.With regard to the quantum of compensation is concerned, the son of the deceased was examined as P.W.1, who deposed in his evidence that the deceased was aged about 54 years and was earning Rs.15,000/- per month by doing coconut and milk business. But the Tribunal has taken the monthly income of the deceased only at Rs.3,000/-, which appears to be very meager and the same is hereby, enhanced to Rs.4,500/-. After deducting 1/3rd towards his personal expenses and adopting the multiplier of 11, the compensation towards loss of income works out to Rs.3,96,000/- [3000x 12 x 11]. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs.3,96,000/- under this head. However, there is no modification with regard to the award of Rs.10,000/- towards loss of consortium to the first respondent, Rs.10,000/- each towards loss of love and affection to the respondents 1 to 3, Rs.5,000/- towards funeral expenses, Rs.5,000/- towards transport charges, as per Ex.P7 car rental receipt, and Rs.14,705/- towards medical expenses as per Ex.P8. Thus, the award of the Tribunal is enhanced from Rs.3,28,705/- to Rs.4,60,705/- the break-up details of which, read as follows:-

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of Income	2,64,000/-	3,96,000 /-
Loss of Consortium to the first respondent	10,000/-	10,000/-
Loss of love and affection to the respondents 1 to 3 Rs.10,000/- each	30,000/-	30,000/-
Funeral Expenses	5,000/-	5,000/-
Transport charges	5,000/-	5,000/-
Medical expenses	14,705/-	14,705/-
Total	3,28,705/-	4,60,705/-

However, it is made clear that the enhanced sum of Rs.1,32,000/- (Rs.4,60,705/- (-) Rs.3,28,705/-) shall carry interest at 7% per annum only from the date of filing of the cross objection.

9.In such view of the matter, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the entire compensation amount, as enhanced by this Court, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. It is submitted by the learned counsel for the respondents/claimants/cross objectors that the minor claimant has attained majority as of now. On such deposit being made, all the respondents/claimants/cross objectors are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Subordinate Judge, Vaniyambadi.

Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.PA.Sudesh Kumar, Advocate, S.R.No.91008
+1cc to Mr.R.Rathna Thara, Advocate, S.R.No.91000

C.M.A.No.691 of 2015
and M.P.No.1 of 2015
and
Cros.Obj.No.47 of 2018

GMR(CO)
CS/27/07/2020