



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2019

PRONOUNCED ON : 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.52 OF 2012

AND

CROSS.OBJ.NO.14 OF 2019

C.M.A.No.52 of 2012:

The Branch Manager,
United India Insurance Co.Ltd.,
P.B.No.34, C.G. Complex,
139, Kumaran Road,
Tiruppur.

... Appellant/2nd Respondent

Versus

1.Sarasu Lakshmi

2.Balasubramaniam

3.Geethambari

4.Subbathal (died)

.. Respondents/Petitioner

[R1 to R3 are recorded as LR's of the
deceased R4 viz., Subbathal vide Court
order dt.15.03.2019 in CMP.No.23481 of 2018 in
Cros.Obj.SR129962 of 2018, as per memo dated
10.12.2018]

5.Balamani

... V Respondent/I Petitioner

[set ex-parte before the Tribunal]

Cross.Obj.No.14 of 2019:

1.Sarasu Lakshmi

2.Balasubramaniam



3.Geethambari

Subbathal (died)

[R1 to R3 are impleaded as LR's of the deceased R4 viz., Subbathal vide Court order dt.15.03.2019 in CMP.No.23481 of 2018 in Cros.Obj.SR129962 of 2018, as per memo dated 10.12.2018]

... Cross
Appellants

Versus

1. The Branch Manager,
United India Insurance Co.Ltd.,
P.B.No.34, C.G. Complex,
139, Kumaran Road,
Tiruppur.

2. Balamani
[set ex-parte before the Tribunal]

... Respondents

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 CPC, against the award and decree dated 30.09.2010 made in M.C.O.P.No.132 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District-cum-Sessions Court, Fast Tract Court - V, Tiruppur.

M/s.I.Malar :For Appellant in CMA.52 of 2012 &
for Mr.T.Ravichandran: first Respondent in
Cross.Obj.14/2019

Mr.Ma.P.Thangavel : For R1 to R3 in CMA.52 of 2012 &
for Appellants in Cross.Obj.No.14/2019

: Ex-parte
(for R5 in CMA & R2 in Cross.Obj)

COMMON JUDGMENT

The Insurance company has filed the appeal, challenging the award and decree dated 30.09.2010 made in M.C.O.P.No.132 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District-cum-Sessions Court, Fast Tract Court - V, Tiruppur. As against the very same judgment, seeking enhancement of the compensation awarded by the Tribunal, the claimants have



filed the Cross Objection.

2.The brief facts of the case are as follows:-

On 20.12.2006 at about 9.00 am., when one Natarajan (the deceased), was riding a two wheeler bearing Registration No.TN-37-M-9645, on the left extreme side of the road, a car bearing Registration No.TN-38-M-0660 came in the same direction, in a rash and negligent manner and dashed the vehicle of the deceased and as result, the deceased was thrown away and he sustained grievous injuries and died on the spot. At the time of the accident, the deceased was aged 62 years and earning a sum of Rs.20,000/- per month.

2.1. The first claimant/first respondent in the appeal is the wife of the deceased, the second and third claimants/second & third respondents are son and daughter of the deceased respectively and the fourth claimant/fourth respondent in the appeal is the mother of the deceased.

2.2. At the time of accident, the above said car was owned by the first respondent in the claim petition/fifth respondent in the appeal and insured with the appellant/Insurance company. Hence, the legal heirs of the deceased have filed the claim petition before the Tribunal claiming a sum of Rs.36,80,000/- as compensation for the death of Natarajan. However, the claim was restricted to Rs.15 lakh.

3.The Insurance Company resisted the claim petition by filing a counter statement and stating that at the time of accident, the driver of the car did not possess valid licence and the owner of the above said vehicle did not have valid insurance policy. They also denied all the details furnished by the claimants in the claim petition. Hence, the Insurance Company prayed to dismiss the claim petition and to exonerate them from the liability to pay compensation to the claimants.

4.Before the Tribunal, in order to substantiate the claim, the wife of the deceased/ Sarasu Lakshmi was examined as PW.1 and one occurrence witness was examined as PW.2/Balamurugan, who reiterated the manner of accident. Eight documents have been marked as Exs.P1 to P8. On the side of the respondents, neither any witness was examined nor any document was adduced.

5.PW.1/wife of the deceased had deposed that her husband, after his retirement was re-employed as Principal in Sri Mahalakshmi Teacher Training Institute and was earning a sum of Rs.20,000/- per month, apart from the monthly pension. But, during the cross-examination, she deposed that her husband was receiving a sum of Rs.9,000/- per month as Pension and after his demise, she is getting a sum of Rs.3,500/- per month under



family pension scheme.

6.The Tribunal, taking note of the facts of the case, has held that the monthly income deceased would be at Rs.21,000/- per month, at the time of accident and as per Ex.P4/Postmortem certificate, the age of the deceased would be 62 years. The Tribunal deducted 1/3rd towards his personal expenses and took the monthly income at Rs.14,000/- and adopted the multiplier '5' and, accordingly, fixed at Rs.8,40,000/- (Rs.1,400 x 12 x5) towards loss of income. Though there were discrepancies in the oral evidence of PW.2, the Tribunal rightly arrived the loss of income of the deceased and the same appears to be just and reasonable, hence, it does not require any interference.

7.Apart from the above amount, the Tribunal granted a sum of Rs.10,000/- each towards loss of love and affection for the four dependencies. This Court feels that the first Cross objector, being the widow is entitled to sum of Rs.40,000/- towards loss of consortium; a sum of Rs.15,000/- towards funeral expenses; a sum of Rs.15,000/- towards loss of amenities. That apart, a sum of Rs.50,000/- is awarded towards loss of love and affection to the mother of the deceased and a sum of Rs.50,000/- towards love and affection to the son and daughter of the deceased, in which, they are entitled to Rs.25,000/- each.

8.Consequently, the total compensation amount of Rs.8,83,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.10,10,000/-. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.8,40,000/-	Rs. 8,40,000/-
Love and Affection	Rs. 40,000/-	-
Funeral	Rs. 3,000/-	Rs. 15,000/-
Loss of consortium	-	Rs. 40,000/-
Loss of amenities	-	Rs. 15,000/-
Love and Affection for mother	-	Rs. 50,000/-
Love and Affection for children	-	Rs. 50,000/-
Total	Rs.8,83,000/-	Rs.10,10,000/-

9.In the result,

(i) the appeal filed by the Insurance company is dismissed and the Cross objection filed by the claimants are allowed to



the extent indicated above.

(ii) The Insurance company is directed to deposit the award amount as determined by this Court along with interest at 7.5% p.a., and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the first claimant is entitled to Rs.5,50,000/-; the second & third claimants are entitled to Rs.2,00,000/-each. In as much as the fourth claimant has passed away, her share shall be equally distributed to second and third claimants at Rs.50,000/- each as no other legal heirs of the fourth claimant have been impleaded in this appeal. Therefore, the claimants 1 to 3 are entitled to withdraw their respective share of the award amount as determined by this Court, along with interest and costs, less the amount if any, already, withdrawn by moving necessary application.

(iv) The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

(v) There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims Tribunal,
Additional District-cum-Sessions Court,
Fast Tract Court - V, Tiruppur.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.59120
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.59894

C.M.A.No.52 of 2012
and

Cross.Obj.No.14 of 2019

PP(CO)
CS/17/09/2019