

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 21.03.2019]

[PRONOUNCED ON : 20.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.633 of 2012

and

Cros. Obj.No.46 of 2016

& M.P.No.1/2012 & CMP No.3649/2016

The Oriental Insurance Co. Ltd.,
4/12, Naveen Complex, Hebbal Main Road,
Metagalli, Mysore - 16. .. Appellant/2nd Respondent in CMA
(in CMA 633/12)
.. 1st Respondent (in Cros.Obj)

.. Vs ..

1. Manimekalai

2. Minor Roja

3. Minor Prithi

[Minors rep. by their mother & next friend Manimekalai]
..Respondents 1 to 3/Petitioners/
Cross. Objection

4. M/s.OMKAR Transport Corporation,
Rep. by Gopala Reddy,
Managing Partner,
No.2, Rajeswari Weigh Bridge Compound,
Bommanaholli, Bangalore.

[4th respondent remained ex-parte
and notice dispensed with for him]

... Respondent 4/1st Respondent/
2nd Respondent in Cros Objection

Cross. Obj.No.46 of 2016:

1. Manimekalai

2. Minor Roja

3. Minor Prithi

[Minors rep. by their mother & next
friend Manimekalai]

... Cross Objectors

.. Vs ..

1. The Oriental Insurance Co. Ltd.,
4/12, Naveen Complex, Hebbal Main Road,
Metagalli, Mysore - 16.

2. M/s.OMKAR Transport Corporation,
Rep. by Gopala Reddy,
Managing Partner,
No.2, Rajeswari Weigh Bridge Compound,
Bommanaholli, Bangalore.

... Respondents

[2nd respondent remained ex-parte
before the Tribunal and hence, notice
dispensed with in this Cross Appeal]

Prayer in C.M.A.No.633 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988
against the judgment and decree dated 08.06.2011 passed by the
learned Principal District Judge, Motor Accidents Claims
Tribunal at Namakkal, in M.C.O.P.No.985 of 2006.

Prayer in Cross.Objection No.46 of 2016: Cross Objection filed
under Order 41, Rule 22 of C.P.C. praying to enhance the award
passed in the judgment and decree in M.C.O.P.No.985 of 2006,
dated 08.06.2011 on the file of the MACT/Principal District
Judge at Namakkal by allowing the cross objection.

For Appellant in C.MA.No.633/2012
& 1st Respondent in
Cross. Obj. No.46/2016 : Mr.M.Krishnamoorthy

For RR-1 to 3 in C.M.A.No.633/2012
& Appellants in
Cross. Obj. No.46/2016 : Mr.C.Thangaraju

R-4 in C.M.A.No.633/2012
& R-2 in Cross. Obj. No.46/2016 : Ex-parte

COMMON JUDGMENT

C.M.A.No.633 of 2012 has been preferred by the Insurance
Company against the judgment and decree dated 08.06.2011
passed by the learned Principal District Judge, Motor
Accidents Claims Tribunal at Namakkal, in M.C.O.P.No.985 of
2006, on the point of quantum. On the other hand, the
claimants have preferred the Cross Objection No.46 of 2016
seeking enhancement of compensation awarded by the Tribunal.

2. Since both the civil miscellaneous appeal and the cross-objection arise out of the same accident and as against the same award passed by the Tribunal, both are taken up together and disposed of by way of this common judgment.

3. The factum of the accident, manner of the accident and rash and negligence on the part of the driver of the offending vehicle are not in dispute and hence, the finding in this regard is hereby confirmed.

4. The claimants have preferred the claim petition in M.C.O.P.No.985 of 2006 before the Tribunal alleging that on 16.06.2005 at about 6.00 hours at NH 4 main road, K.R.Halli Gate, near Ramasamy land, Hiriyur Taluk, Chitradurga District, Karnataka, the deceased namely, Raman was walking on the extreme left side of the road and at that time, a Lorry bearing Registration No.KA-01-AA-2268, owned by the first respondent [before the Tribunal] and driven by its driver, in a rash and negligent manner hit the deceased and caused accident. As a result of which, the deceased sustained severe multiple injuries to all over his body and head injury and also died on the spot. It is stated that the deceased namely, Raman was aged about 38 years and was owner cum driver and was earning more than Rs.10,000/- p.m. For the death of the said Raman, the claimants 1 to 4, who are the wife, two minor daughters and one minor son have preferred the above claim petition claiming a sum of Rs.10,00,000/- as compensation. During the pendency of the claim petition, the fourth claimant namely, minor Akilesh died.

5. Before the Tribunal, on the side of the claimant, the first claimant/wife of the deceased examined herself as P.W.1 and one Mr.M.Kaliannan, who is the occurrence witness, was examined as P.W.2 and documents Exs.P.1 to P.9 were marked. On behalf of the respondents before the Tribunal, no witness was examined and no document was marked.

6. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimants, has awarded a sum of Rs.8,20,000/- with interest at 7.5% per annum from the date of the claim petition till the date of realisation and costs as compensation and directed the respondents 1 and 2 [before the Tribunal] to pay the compensation to the claimants jointly and severally.

7. Though a point was raised by the learned counsel appearing for the insurance company that there is no valid insurance coverage, in view of the fact that Ex.P.9-policy copy was marked, the Tribunal has rightly held that both respondents 1 and 2 before the Tribunal viz., owner of the offending Lorry and insurer of the offending Lorry are jointly and severally liable to pay the compensation to the claimants.

8. On the point of quantum, P.W.1, the widow of the deceased had deposed that at the time of the accident, her husband/the deceased was aged about 38 years; he was owning a driving license and he was the owner-cum-driver of the national permit lorry and in support of the same, documents Exs.P.6 and P.7 were marked. Ex.P.6 is the Xerox copy of R.C. Book of the Lorry bearing Registration No.KA-01-AA-2268, in the name of the deceased Raman and Ex.P.7 is the Driving License of the deceased. Hence, the Tribunal has rightly concluded that the deceased Raman was the owner-cum-driver of the Lorry and as per the document Ex.P.7-Driving License, the date of birth of the deceased was 15.06.1966 and on the date of the accident i.e., on 16.06.2005, the deceased was aged 39 years and accordingly, adopted multiplier of 16. However, as per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], multiplier of 15 has to be applied.

9. The Tribunal has fixed the income of the deceased as Rs.6,000/- per month and the same cannot be termed as meager as projected by the cross objectors/claimants. Taking note of the fact that at the time of the accident, the deceased was aged 39 years, following the judgment of the Hon'ble Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% of income has to be added towards future prospects. Accordingly, monthly of the deceased is re-assessed as Rs.6,000/- + Rs.2,400/- [40% of Rs.6,000/-]. Further, the Tribunal has deducted 1/3 towards personal expenses of the deceased. This Court is of the considered view that in view of the fact that the number of the dependents being four in numbers, 1/4th amount has to be deducted and hence, pecuniary loss sustained by the family members of the deceased is reassessed as follows:-

Rs.6,000/- + Rs.2,400/- x 1/4 x 12 x 15 =
Rs.11,34,000/-.

10. The Tribunal has awarded a sum of Rs.10,000/- to the first claimant/widow of the deceased towards loss of consortium and the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount under the head of loss of estate and this Court is of the view that it is just and proper to award a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-. The Tribunal has awarded a total sum of Rs.40,000/- [each Rs.10,000] towards loss of love and affection to the claimants 1 to 4. This Court is of the view that the claimants 2 to 4, who are the two minor daughters and one son respectively, are entitled to a sum of Rs.75,000/- each [Totally Rs.2,25,000/-] towards loss of love and affection and the award amount of Rs.10,000/- granted by the Tribunal to the first claimant/wife under the said head is deleted. In all, claimants 1 to 3

[while the petition is pending, the fourth claimant is reported as dead] are entitled to a sum of Rs.14,29,000/- as total compensation.

11. Accordingly, the award of the Tribunal stands modified as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 7,68,000/-	Rs.11,34,000/-
2.	Loss of consortium to the first claimant/wife	Rs. 10,000/-	Rs. 40,000/-
3.	Loss of estate	- Nil -	Rs. 15,000/-
4.	Funeral Expenses	Rs. 2,000/-	Rs. 15,000/-
5.	Loss of love and affection to claimants 1 to 4 [each Rs.10,000/-]	Rs. 40,000/-	--
6.	Loss of love and affection to claimants 2 to 4 [each Rs.75,000/-]		Rs. 2,25,000/-
	Total	Rs. 8,20,000/-	Rs.14,29,000/-

12. In the result:

I. C.M.A.No.633 of 2012 preferred by the Insurance Company is dismissed and Cross.Obj.No.46 of 2016 preferred by the claimants is partly allowed and the award amount passed by the Tribunal is enhanced to Rs.14,29,000/- from Rs.8,20,000/-.

II.The interest granted by the Tribunal at 7.5% stands confirmed.

III.The appellant in C.M.A.No.633 of 2012/Insurance Company is directed to deposit their share of the enhanced award amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV.On such deposit being made, respondents 1 to 3 in C.M.A.No.633 of 2012/cross objectors are

permitted to withdraw their respective share amount with proportionate interest, in the same apportionment as apportioned by the Tribunal, less the amount already withdrawn, if any, after following due process of law.

V. The respondents 1 to 3 in C.M.A.No.633 of 2012/cross objectors shall pay necessary Court fee, if any, on the enhanced compensation amount.

VI.No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Jrl

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.71598

+1cc to Mr.C.Thangaraju, Advocate SR.No.70800

+2cc to Mr.C.Thangaraju, Advocate SR.No.70800(24/01/2020)

C.M.A.No.633 of 2012
and
Cros. Obj.No.46 of 2016

BS (CO)
GMY (23/01/2020)

