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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1680 of 2018 & C.M.P.No.13171 of 2018
and Cross Objection No.13 of 2019

C.M.A.No.1680 of 2018:

The Divisional Manager,
The United India Insurance Company Limited,
Vellore. .. Appellant/2nd Respondent

Vs.

1.Geetha
2.K.Nithiya ..1 & 2 Respondent/Claimants
3.Raji @ Raju ..3rd Respondents/1st Respondent

(R3 remained exparte before Tribunal
and notice dispensed with for him)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2011 made in M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore.

For Appellant : Mr.M.Krishnamoorthy
For RR1 & 2 : Mr.Pa.Sudesh Kumar

Cross Objection No.13 of 2019:

1.Geetha
2.Nithiya .. Cross objectors/Claimants

Vs.

1.The Divisional Manager,
The United India Insurance Company Limited,
Vellore.



2.Raji @ Raju

.. Respondents/Respondents

(R2 remained exparte before Tribunal.

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 24.01.2011 made in M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore.

For Cross Objectors : Mr.Pa.Sudesh Kumar

For R1 : Mr.M.Krishnamoorthy

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

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 24.01.2011 made in M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore.

2.The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 24.01.2011 made in M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore.

3.Both the appeal and cross-objection are arising out of the same accident and same award and hence, they are disposed of by this common judgment.

4.The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

5.The appellant-Insurance Company is second respondent in M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore. The claimants/cross objectors filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Manjunathan, who died in the accident that took place on 26.02.2007.

6.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tata sumo belonging to the first respondent and directed the second respondent-Insurance Company being the insurer of the vehicle to pay a sum of Rs.12,78,000/- as compensation to the claimants.



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7. Against the said award dated 24.01.2011 made in M.C.O.P.No.9 of 2010, the second respondent/Insurance Company has come out with the present appeal. Not being satisfied with the award amount granted by the Tribunal, the claimants have come out with the Cross-Appeal seeking enhancement of compensation awarded by the Tribunal.

8. The learned counsel appearing for the second respondent-Insurance Company contended that the claimants have not filed any authenticated document to prove the avocation and income of the deceased. The Tribunal ought to have rejected Ex.P7, alleged salary certificate, which was not proved by the claimants by examining the author of the said document. The claimants have not produced any bank statement, salary certificate and Income Tax returns to prove the income of the deceased. The deceased was a bachelor and the Tribunal ought to have deducted 50% towards personal expenses and erroneously deducted 1/3rd. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the claimants/cross objectors contended that the claimants have filed Ex.P7/salary certificate and Ex.P8/Identity Card to prove that deceased was working as Senior Executive in HDFC Bank and was earning a sum of Rs.13,000/- per month. The Tribunal erroneously fixed meagre sum of Rs.10,500/- as monthly income of the deceased. The deceased was aged 24 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal erroneously applied multiplier '15' instead of '18'. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

10. I have heard the learned counsel appearing for the second respondent-Insurance Company as well as the learned counsel appearing for the claimants-cross objectors and perused the entire materials on record.

11. From the materials available on record, it is seen that the claimants have contended that the deceased was working as Senior Executive in HDFC Bank and was earning a sum of Rs.13,000/- per month. They have produced Ex.P8/Identity Card to prove that the deceased was working in HDFC Bank. They have also produced Ex.P7/salary certificate of the deceased to prove that the deceased was earning a sum of Rs.13,000/- per month at the time of accident. From the award of the Tribunal it is seen that as per Ex.P7/salary certificate, the basic salary of the deceased was Rs.5,000/- and he was granted a sum of Rs.3,500/- as allowances and a sum of Rs.4,500/- as incentive. The Tribunal has held that incentive will depend upon the work done by the deceased and it will vary from month to month. Considering these



materials, the Tribunal fixed monthly income of the deceased at Rs.10,500/-. The learned counsel appearing for the second respondent-Insurance Company contended that Ex.P7/salary certificate was issued by one Green City and not by HDFC Bank. The claimants have not proved Ex.P7/salary certificate by examining the author of the said letter or an official from the Bank. The claimants have also not produced any salary slip or Bank statement to show the monthly income of the deceased. In view of the same, considering the date of accident and age of the deceased, the monthly income of the deceased is fixed at Rs.9,000/- per month. The deceased was aged 24 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal instead of deducting 50% towards personal expenses, erroneously deducted 1/3rd towards personal expenses. As per the judgment of the Hon'ble Apex Court reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC) [National Ins. Co. v. Pranay Sethi], the age of the deceased must be the basis for applying multiplier method. For the age of the deceased, the correct multiplier applicable is '18'. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- [Rs.9,000/- + 40% of Rs.9,000/- X 12 X 18 X 1/2]. The Tribunal has granted a sum of Rs.10,000/- towards loss of love and affection to the claimants, which is meagre and the same is hereby enhanced to Rs.40,000/-. A meagre sum of Rs.5,000/- granted by the Tribunal towards funeral expenses is hereby enhanced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal towards transportation is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	12,60,000/-	13,60,800/-	Enhanced
2.	Loss of love and affection	10,000/-	40,000/-	Enhanced
3.	Funeral expenses	5,000/-	15,000/-	Enhanced
4.	Transportation	3,000/-	3,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.12,78,000/-	Rs.14,33,800/-	enhanced by Rs.1,55,800/-



12.The compensation awarded by the Tribunal at Rs.12,78,000/- is hereby enhanced to Rs.14,33,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.9 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Tirupattur, Vellore. On such deposit, the claimants are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. No costs.

13.In the result, both the Civil Miscellaneous Appeal as well as the Cross Objection are allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Tirupattur,
Vellore.

copy to
The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.M.Krishnamoorthy Advocate sr32573

+1 cc to Mr.P.A.Sudesh kumar Advocate sr32562

C.M.A.No.1680 of 2018 & C.M.P.No.13171 of 2018
and Cross Objection No.13 of 2019

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aa21/10/2019