IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.294 and 341 of 2017
and Cross Objection No.55 of 2018
and C.M.P.Nos.14484, 2412, 2143 of 2017 & 19094 of 2018

The Manager,
ICICI Lombard Motor Insurance Co. Ltd.,
No.84, Arihant Plaza
1st floor, Park Town,
Chennai 600 003. ..Appellant in both the appeals /II Respondent

.Vs.

1.Devarajan ..1st Respondent/Claimant

2.A.Rajamani ..2nd Respondent in C.M.A.No.294/2017 /1st Respondent

1.N.Jayamani ..R1 and R2 in CMA.341/17/Claimant
2.K.Nagappan
3.A.Rajamani ..3rd Respondent in C.M.A.No.341/2017 /II Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.07.2013, made in M.C.O.P.Nos.649 & 83 of 2010, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

For Appellant : Ms.R.Sree Vidhya (in both C.M.As.)

(In C.M.A.No.294/2017)

For R1 : Mr.G.Karthikeyan

For R2 : Mr.R.Vignesh Kumar for M/s.P.L.Narayanan

(In C.M.A.No.341/2017)

For RR1 & 2 : Mr.K.R.Ponnusamy for M/s.Anand and Suryas

For R3 : Mr.R.Vignesh Kumar
for M/s.P.L.Narayanan

Cross Objection No.55 of 2018

1.N.Jayamani
2.K.Nagappan ..Petitioners/1st & 2nd Respondent /Cross objectors

Vs.

1. A.Rajamani ..1st Respondent/ 3rd Respondent

2. The Manager,
ICICI Lombard Motor Insurance Co. Ltd.,
No.84, Arihant Plaza
1st floor, Park Town,
Chennai 600 003. ..2nd Respondent/Appellant

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the Decree and Judgment dated 23.07.2013, made in M.C.O.P.No.83 of 2010, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

For Cross Objectors : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For R1 : Mr.R.Vignesh Kumar
for M/s.P.L.Narayanan

For R2 : Ms.R.Sree Vidhya

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

C.M.A.Nos.294 and 341 of 2017 have been filed by the appellant-Insurance Company, challenging the award dated 23.07.2013 made in M.C.O.P.Nos.649 & 83 of 2010, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

Cross Objection No.55 of 2018 has been filed by the claimants seeking enhancement of the compensation granted by the award dated 23.07.2013 made in M.C.O.P.No.83 of 2010, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

2.Both the appeals and Cross Objection arise out of the same accident and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their respective ranks in the claim petitions.

4.The Insurance Company is 2nd respondent in M.C.O.P.Nos.649 & 83 of 2010, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur. The claimant in M.C.O.P.No.649 of 2010 [C.M.A.No.294 of 2017] filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2009. The claimants in M.C.O.P.No.83 of 2010 [C.M.A.No.341 of 2017] filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the death of one N.Devan who died in the accident that took place on 30.01.2009.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tipper lorry belonging to the 1st respondent and directed the 2nd respondent to pay a sum of Rs.1,64,660/- and Rs.6,90,000/- respectively as compensation to the claimant/claimants in both the appeals.

6.Against the said award of the Tribunal, the 2nd respondent-Insurance Company has filed C.M.A.Nos.294 and 341 of 2017, questioning the liability as well as the quantum of compensation. The claimants in M.C.O.P.No.83 of 2010 have filed Cross Objection No.55 of 2018 in C.M.A.No.341 of 2017 for enhancement of compensation.

7.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in fastening liability on the 2nd respondent when the offending vehicle is not insured with the 2nd respondent at the time of accident. The 2nd respondent has produced and marked Ex.R1, the Insurance Policy as mentioned by the claimants in column no.16 of compensation which relates to some other vehicle bearing number TN-21-Z-4136 and the Tribunal ought to have exonerated the 2nd respondent-Insurance Company. In view of Ex.R1, the Tribunal ought to have held that Ex.P9 in M.C.O.P.No.649 of 2010 and Ex.P10 in M.C.O.P.No.83 of 2010 are fabricated and the said policy was not issued by the 2nd respondent. In view of Ex.R1, liability could not be fastened on the 2nd respondent-Insurance Company. The Tribunal erred in observing that the 2nd respondent did not deny that the offending vehicle was not insured with the 2nd respondent. There is no legal or factual necessity for the 2nd respondent to deny the factum of insurance in-toto and could explain the position only with reference to Insurance Policy number. The liability can be fastened on the second respondent only on the basis of definite Insurance Policy and not on vague notions as had been done by the Tribunal. The 2nd respondent issued notice to the 1st respondent to appear before the

Tribunal, the 1st respondent did not appear and prayed for setting aside the award of the Tribunal in both M.C.O.P.Nos.649 and 83 of 2010.

8.The learned counsel appearing for the claimant/claimants in both the appeals contended that the policy marked as Ex.P9 in M.C.O.P.No.649 of 2010 and Ex.P10 in M.C.O.P.No.83 of 2010 was furnished to them by the police. R.W.1 in his cross examination has admitted that the Investigating Officer appointed by them enquired the 1st respondent, verified the documents and gave the report that the offending vehicle belonging to the first respondent was insured with the 2nd respondent-Insurance Company and recommended payment of compensation. The first respondent owned number of vehicle and all the vehicles were insured only with the second respondent. In the Motor Vehicle Inspector's Report marked as Ex.P2 in M.C.O.P.No.83 of 2010, the Motor Vehicle Inspector has recorded the insurance policy of the offending vehicle. The 2nd respondent has not taken any criminal action against the 1st respondent for the alleged fabrication by the 1st respondent in respect of the insurance policy relating to the offending vehicle. The Tribunal considering all the above materials, held that offending vehicle was insured at the time of accident with the 2nd respondent. The reasons given by the Tribunal are valid. The learned counsel appearing for the claimants in C.M.A.No.341 of 2017 [M.C.O.P.No.83 of 2010] contended that the claimants have filed Cross Objection No.55 of 2018 claiming enhancement of compensation and contended that the deceased was working as a Collection Executive in M/s.Deccan Credit Services and was earning a sum of Rs.10,000/- per month. The Tribunal has erroneously fixed a meagre sum of Rs.4,500/- per month as the notional income of the deceased. The deceased was aged 26 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amount granted by the Tribunal for loss of love and affection is meagre. The Tribunal failed to grant any amount for loss of estate and prayed for dismissal of the appeal in C.M.A.No.341 of 2017 and allowing Cross Objection by enhancing the compensation.

9.The learned counsel appearing for the 1st respondent contended that the 1st respondent is owning number of vehicles and all the vehicles were insured with the 2nd respondent only. The 1st respondent produced RC book and original policy to the Regional Transport Office. The Motor Vehicle Inspector after verifying the policy produced by the 1st respondent, recorded the policy number and has given a report that the offending vehicle was insured with the 2nd respondent at the time of accident. The 2nd respondent has not verified the policies issued by them to all the vehicle belonging to the 1st respondent. The policy produced by them and marked as Ex.R1 relates to another vehicle belonging to the 1st respondent. The 1st respondent has filed

C.M.P.No.19094 of 2018 for admitting the policy bearing No.3003/A/55275722/00/000 of the subject vehicle bearing No.TN-01-D-0947 issued by the 2nd respondent as the additional document in C.M.A.No.341 of 2017. The 1st respondent has produced original policy to the investigator appointed by the 2nd respondent and after verification of the original policy, the investigator has given a report that the offending vehicle was insured with the 2nd respondent and recommended payment of claim made by the claimants. The 2nd respondent instead of accepting the report of their own investigator, for the reasons best known to them has come out with the case that the 1st respondent fabricated the policy to avoid payment of compensation to the victim and to avoid their statutory liability. In view of the attitude of the 2nd respondent-Insurance Company, the 1st respondent has now insured all his vehicles with another Insurance Company and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the 1st respondent, 2nd respondent-Insurance Company as well as the claimant/claimants and perused the materials available on record.

11.The only contention of the learned counsel appearing for the 2nd respondent-Insurance Company is that the offending vehicle was not insured with them at the time of accident. The policy number mentioned by the claimants does not relate to the offending vehicle, but relates to a different vehicle and prayed for dismissal of the claim petitions against the Insurance Company as there was no insurance coverage at the time of accident. From the award of the Tribunal, it is seen that the contention of the 1st respondent/owner of the vehicle is that he is the owner of number of vehicles and all the vehicles were insured with the 2nd respondent. The claimants produced a policy for the offending vehicle bearing Registration No.TN-01-D-0947 and marked the same as Ex.P9 in M.C.O.P.No.649 of 2010 and Ex.P10 in M.C.O.P.No.83 of 2010. The 2nd respondent-Insurance Company produced and marked Ex.R1 with the same policy number which relates to the other vehicle bearing number TN-21-Z-4136. According to the learned counsel appearing for the claimant/claimants, the copies of the policies produced and marked by them were furnished to them by the police. The investigator of the 2nd respondent after enquiry has submitted a report stating that the offending vehicle was insured with the 2nd respondent and recommended payment of compensation. The learned counsel appearing for the claimants produced evidence of R.W.1 and referred to the portion of the cross examination wherein R.W.1 has admitted that the investigator appointed by the 2nd respondent-Insurance Company after investigation filed a report stating that the offending vehicle was insured with the 2nd respondent. R.W.1-Manager of the 2nd respondent admitted that the report was in his file, but he has not produced the same. The Tribunal taking note of the fact that the 2nd respondent has not taken any criminal action against the 1st respondent for the alleged forgery by the 1st respondent, rejected the contention of the 2nd respondent that the vehicle was not insured with them. Further, the Tribunal has considered Ex.P2, Motor Vehicle Inspector's report marked in M.C.O.P.No.83 of 2010, wherein the correct policy number was mentioned. The policy number mentioned in Ex.P2 corroborates the contention of the 1st respondent that he has produced RC book and original insurance policy before the Regional Transport Officer. The 1st respondent also filed C.M.P.No.19094 of 2018 to admit the policy bearing No.3003/A/55275722/00/000 relating to the offending vehicle bearing Registration No.TN-01-D-0947 as the additional document in C.M.A.No.341 of 2017. The 1st respondent has produced the original policy. The policy number tallies with the finding of the Tribunal with regard to the insurance policy as mentioned in Ex.P2-Motor Vehicle Inspector's report. The 1st respondent has given valid reasons for admitting the said policy in the appeal. In view of the same, C.M.P.No.19094 of 2018 is allowed and the insurance policy is marked as Ex.R3 in M.C.O.P.No.83 of 2010.

12.The Tribunal has verified that the signatures found in Exs.P9, P10 and R1 are similar. The copy of the said policy was produced before this Court and the learned counsel appearing for the 2nd respondent have verified and contended that the policy was not cancelled. Before this court, the learned counsel appearing for the 2nd respondent have not filed any material to prove that the said policy was cancelled by the 2nd respondent-Insurance Company. Considering the above materials in its entirety, I hold that the offending vehicle was insured with the 2nd respondent at the time of accident and the Tribunal considering all the materials on record in proper perspective, has held that the offending vehicle was insured with the 2nd respondent at the time of accident. There is no error warranting interference by this Court.

13.As far as the quantum of compensation in M.C.O.P.No.649 of 2010 [C.M.A.No.294 of 2017] is concerned, the claimant was aged 22 years and was working as a Collection Executive in M/s.Deccan Credic Service and was earning a sum of Rs.8,000/- per month. P.W.2-Doctor assessed that the claimant suffered 55% disability. The Tribunal reduced the same to 50% stating that the percentage of disability may vary by 5% from one Doctor to another and granted compensation towards disability at the rate of Rs.2,000/- per percentage for 50% disability. The same is not excessive. The Tribunal considering all the materials on record in proper perspective, granted compensation, which is not excessive and there is no error in the said award warranting interference by this Court.

14.As far as quantum of compensation in C.M.A.No.341 of 2017 and the the Cross Objection is concerned, the claimants contended that the deceased was aged 26 years at the time of accident and was working as a Collection Executive in M/s.Deccan Credit Services and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a sum of Rs.4,500/- per month as the notional income of the deceased. The accident is of the year 2009. The notional income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as the notional income of the deceased. 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. The Tribunal erroneously deducted 1/3rd instead of deducting 50% towards personal expenses of the deceased. Hence, applying the multiplier '17' and deducting 50% towards the personal expenses of the deceased, the amount granted by the Tribunal towards loss of income is modified to Rs.9,28,200/- {[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 17 x ½}. The Tribunal has granted meagre amount towards loss of love and affection. The claimants are entitled to Rs.40,000/- each towards loss of love and affection. The Tribunal has granted excessive amount towards funeral expenses. The same is reduced to Rs.15,000/-. The Tribunal failed to grant any amount towards loss of estate. The claimants are entitled to a sum of Rs.15,000/- towards the same. The amount granted by the Tribunal towards transportation is just and reasonable and the same 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 income	6,12,000/-	9,28,200/-	enhanced
2.	Funeral expenses	25,000/-	15,000/-	Reduced
3.	Transportation charges	3,000/-	3,000/-	confirmed
4.	Loss of love and affection	50,000/-	80,000/-	enhanced
5.	Loss of estate	-	15,000/-	granted
	Total	6,90,000/-	10,41,200/-	enhanced by Rs.3,51,200/-

15.In the result, both C.M.A.Nos.294 and 341 of 2017 are dismissed and the Cross Objection is partly allowed.

16. C.M.A.No.294 of 2017 - The amount granted by the Tribunal in M.C.O.P.No.649 of 2010 at Rs.1,64,660/- along with interest and costs is confirmed. The Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. Consequently, C.M.P.No.2143 of 2017 is closed.

17. C.M.A.No.341 of 2017 - The amount granted by the Tribunal in M.C.O.P.No.83 of 2010 at Rs.6,90,000/- is enhanced to Rs.10,41,200/- along with interest and costs. The 2nd respondent 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.83 of 2010. On such deposit, the claimants are permitted to withdraw the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. Consequently, C.M.P.Nos.2412 and 14484 of 2017 are closed. C.M.P.No.19094 of 2018 is allowed and the insurance policy is marked as Ex.R3 in M.C.O.P.No.83 of 2010.

gsa

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional District Judge,
(Motor Accident Claims Tribunal),
Tiruvallur.

Copy to:-
2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.G.Karthikeyan, Advocate, SR.No.34448
+1cc to M/s.R.Sreevidhya, Advocate, SR.No.34522
+1cc to M/s.Anand and Suryas,Advocate Sr.No. 33857(14/02/2019)

C.M.A.Nos.294 and 341 of 2017
and Cross Objection No.55 of 2018
and C.M.P.Nos.14484, 2412, 2143 of 2017
& 19094 of 2018

Kak(24/07/2019)