IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1019 of 2015 & M.P.No.1 of 2015
and Cross Objection No.2 of 2020

C.M.A.No.1019 of 2015
New India Assurance Co. Ltd.
Having its office at
No.251, Thiruvotriyur high road
Chennai-600 019. .. Appellant/2nd Respondent

Vs.

1.P.Kavitha

2.Minor.P.Rudhvic Sai
(Rep. by his natural guardian
1st respondent mother)

3.P.Laila ..Respondents 1 to 3/Claimants

4.S.Srinivasan ..4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.09.2014 made in M.C.O.P.No.728 of 2010 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri.

For Appellant : Mr.J.Chandran
For R1 to R2 : Mr.K.V.Muthu Visakan

Cross Objection No.2 of 2020

1.P.Kavitha

2.Minor.P.Rudhvic Sai
(Rep. by his natural guardian
1st respondent mother)

3.P.Laila (died) .. Cross objectors/Claimants

Vs.

1.New India Assurance Co. Ltd.
Having its office at
No.251, Thiruvotriyur high road
Chennai-600 019.

2.S.Srinivasan .. Respondents/Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 25.09.2014 made in M.C.O.P.No.728 of 2010 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tiruvallur at Ponneri.

For Cross Appellants: Mr.K.V.Muthu Visakan
For R1 : Mr.J.Chandran

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 25.09.2014 made in M.C.O.P.No.728 of 2010 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tiruvallur at Ponneri.

The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 25.09.2014 made in M.C.O.P.No.728 of 2010 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tiruvallur at Ponneri.

2.Both the appeal and cross-objection arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the claim petition in M.C.O.P.No.728 of 2010 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tiruvallur at Ponneri, claiming a sum of Rs.44,37,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 26.05.2007. Pending Civil Miscellaneous Appeal, the 3rd claimant P.Laila died and death memo was filed.

4.According to the claimants, on the date of accident i.e., on 26.05.2007 at 18.15 hours, while the deceased Ramesh was driving a Tata sumo car from Mampattu to Meenambakkam Airport in Chennai, the lorry, which came in the same direction, driven by its driver was suddenly stopped without any indication. Not anticipating the sudden stoppage of the lorry, the deceased, who could not stop the car suddenly, collided with the said lorry from behind and thus the accident has occurred. The deceased Ramesh and three others, who travelled in the said car died instantaneously and therefore, the claimants filed the above claim petition claiming compensation against the respondents.

5.The 1st respondent, owner of the lorry, remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the lorry was stopped by the Commercial Tax Officer at the check post and the Tata sumo car which followed the lorry, dashed on the back side of the lorry. The deceased, who drove the car, alone was responsible for the accident. Two vehicles are involved in the accident. The claim petition is bad for non-joinder of owner and insurer of the Tata sumo car. They have also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants is excessive.

7.Before the Tribunal, the 1st claimant, wife of the deceased, examined herself as P.W.1, one Kanchana alias Thavitti Beri Ammulu, eye-witness, was examined as P.W.2 and one Prasad & Rameshkumar, who are employers of the deceased, were examined as P.W.3 & P.W.4 and marked thirteen documents as Exs.P1 to P13. The respondents did not let in any oral and documentary evidence.

8.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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.16,06,808/- as compensation to the claimants.

9.Against the said award dated 25.09.2014 made in M.C.O.P.No.728 of 2010, the 2nd respondent/Insurance Company has come out with C.M.A.No.1019 of 2015 challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with Cros.Obj.No.2 of 2020 seeking enhancement of compensation awarded by the Tribunal.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident has occurred solely due to the negligence on the part of the deceased. The claimants admitted that while the deceased was driving the car slowly and cautiously, the driver of the lorry going in front of the car driven by the deceased, suddenly stopped the lorry without any indication and the deceased could not avoid the accident. The fact that the deceased dashed on the back side of the lorry and four persons died in the accident would show that the deceased has not driven the car slowly and cautiously. The Tribunal ought to have seen that the deceased would have avoided the accident if he maintained the statutory distance between two vehicles. Therefore, the Tribunal ought to have fixed entire negligence on the part of the deceased. In any event, the monthly income fixed by the Tribunal is excessive. The amounts awarded by the Tribunal under different heads are excessive. The claimants are not entitled for any enhancement of compensation and prayed for setting aside the award of the Tribunal and dismissal of the Cross-objection filed by the claimants.

11.Per contra, the learned counsel appearing for the claimants contended that the claimants have proved that the accident has occurred due to sudden stopping of the lorry by its driver without giving any signal, by examining P.W.2/eye-witness and marking Ex.P1/F.I.R. The 2nd respondent/Insurance Company has not let in any evidence to disprove the evidence of P.W.2. The claimants have examined P.W.3 and P.W.4 to prove the avocation and income of the deceased. The Tribunal accepted the evidence of P.W.3 & P.W.4 and Exs.P10 to P13/documents relating to the income of the deceased, fixed monthly income of the deceased at Rs.9,186/-. The deceased was aged 35 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the appeal filed by the 2nd respondent/Insurance Company.

12.Heard the learned counsel appearing for the claimants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.From the materials available on record, it is seen that the accident has occurred, when the car driven by the deceased dashed on the back side of the lorry. According to the claimants, the driver of the lorry suddenly stopped the lorry without any indication and the deceased, who came behind the lorry could not avoid dashing against the lorry. To substantiate their contention, the claimants examined the eye-witness as P.W.2 and marked Ex.P1/F.I.R., which was registered against the driver of the lorry. The 2nd respondent/Insurance Company in the counter statement have stated that the Commercial Tax Officer stopped the lorry at check post and Tata sumo car, which was following the lorry, dashed on the back side of the lorry and thus the accident has occurred. The 2nd respondent/Insurance Company has not examined any witness to prove that the lorry was stopped by the Commercial Tax Officer at check post and has not examined anybody to disprove the evidence of P.W.1 & P.W.2 and the contents of F.I.R. The Tribunal considering the above evidence, concluded that the accident has occurred only due to sudden stopping of lorry without any indication by the driver of the lorry. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as cross-objection filed by the claimants is concerned, the claimants have proved the monthly income of the deceased by examining P.W.3 & P.W.4 and marking Exs.P10 to P13. The Tribunal considering the evidence of P.W.3 and P.W.4, rejected the contention of the 2nd respondent that Ex.P11/salary certificate was created for the purpose of this case and fixed the monthly income of the deceased at Rs.9,186/-. As per Ex.P9/School Transfer Certificate, the deceased was aged 35 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. By applying multiplier '16' and deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs. 16,46,080/- (Rs.9,186/- + 3674 [Rs.9,186/- X 40%] X 12 X 16 X 2/3). The sum of Rs.2,00,000/-, Rs.2,00,000/- and Rs.25,000/- awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are excessive and the same are hereby reduced to Rs.40,000/-, Rs.40,000/- and Rs.15,000/- respectively. A sum of Rs.6,000/- awarded by the Tribunal towards transportation is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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	11,75,808	16,46,080	Enhanced
2.	Transportation	6,000	10,000	Enhanced
3.	Loss of love & affection	2,00,000	40,000	Reduced
4.	Loss of consortium	2,00,000	40,000	Reduced

5.	Funeral expenses	25,000	15,000	Reduced
6.	Loss of estate	-	15,000	Granted
	Total	16,06,808	17,66,080	Enhanced Rs.1,59,272/-

15. In the result, both the Civil Miscellaneous Appeal and the Cross-Objection are partly allowed. The compensation awarded by the Tribunal at Rs.16,06,808/- is hereby enhanced to Rs.17,66,080/- 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 necessary Court fee if any, on the enhanced compensation. It is made clear that the claimants are not entitled for any interest for the delay period on the amount of Rs.1,59,272/- enhanced by this Court as per the order of this Court dated 13.12.2019 made in C.M.P.No.25354 of 2019 in Cross.Obj.SR.No.112823 of 2019. The 3rd claimant died and therefore, the claimants 1 & 2 are permitted to withdraw the share of the 3rd claimant i.e., Rs.2,00,000/- equally among themselves. Out of the enhanced award amount, the 1st claimant being wife of the deceased is entitled to a sum of Rs.7,86,444/- and the 2nd claimant being son of the deceased is entitled to a sum of Rs.9,79,636/- as compensation. The 2nd 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. On such deposit, the 1st claimant/P.Kavitha is permitted to withdraw her share of the enhanced award amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor, 2nd claimant/Rudhvic Sai, is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st claimant being mother of the minor/2nd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.Additional District Judge No.IV
Motor Accident Claims Tribunal,
Ponneri, Tiruvallur District.

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

+2 Ccs to Mr.K.V.Muthuvisakan, Advocate sr 9184 & 9299
+1 CC to Mr.J.Chandran, advocate sr 9137.

C.M.A.No.1019 of 2015 & M.P.No.1 of 2015
and Cross Objection No.2 of 2020

CP(CO)
SP(01/12/2020)