

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1607 of 2013

and

M.P.No.1 of 2013

United India Insurance Co.Ltd.,
448-A, Dr.Nanjappa Road,
Coimbatore-18.

.. Appellant/Second Respondent

Vs.

1.Nataraj
2.Mylathal
3.Parameswaran
4.Marappasami
5.Nagaraj
6.Tharmalingam
7.Marughathal
8.Dhanalakshmi
9.R.Thangavel

..RR1 to 8/Petitioners1 to 8
.. R9/first Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2008 made in M.C.O.P.No.933 of 2005 on the file of Motor Accident Claims Tribunal, Principal District Judge, Namakkal.

For Appellant : Mrs.I.Malar
For R2 to R8 : Mr.C.Thangaraja
For R9 : Ex-Parte
R1 : Served -NA

JUDGMENT

The United India Insurance Company Limited, the second respondent in MCOP.No.933 of 2005 on the file of the Motor Accidents Claims Tribunal/Principal District Court, Namakkal, has filed the present appeal questioning the liability and the quantum of compensation awarded by the Tribunal. The claimants filed the above said claim petition under Section 166 (A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Murugesan, son of first & second claimants and brother of the claimants 3 to 8 in a road accident that took place on 07.10.2004.

2. On 07.10.2004, at about 10.00 pm, when the deceased Murugesan was standing on the extreme left side of the road at Sankari to Salem Main road near Lorry Owner's association Petrol Bank, Sankari, a Maruthi Omni Van bearing Registration No.TN 21 B 8595, driven by its driver in a rash and negligent manner, dashed against the deceased. Due to the said accident, the deceased was thrown out and he sustained grievous multiple injuries all over his body including head injury and immediately after the accident, the deceased was admitted as inpatient at Government Hospital Sankari and then at Lotus Hospital, Erode and he died on 08.10.2004. According to the claimants, the rash and negligent driving of the driver of the Mauthi Omni Van was the cause of the accident and that since the said Maruthi Omni Van was insured with the present appellant, both the owner and the insurer of the van are jointly and severally liable to pay compensation to them.

3. The owner of the Maruthi Omni Van remained absent before the Tribunal and therefore, he was set ex-parte.

4. The present appellant / United India Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Principal District Court, Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.5,40,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the New India Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mrs.I.Malar, learned counsel appearing for the appellant contended that the Tribunal has fixed the responsibility on the owner of the Maruthi Omni Van bearing Registration No. TN.21 B 8595 and its insurer, the present appellant. She would further contend that the accident had taken place due to the rash and negligent driving by the driver of the Van and hence, the Insurance Company is not liable to pay compensation to the claimants.

6. Mr.C.Thangaraja, learned counsel appearing for the respondents 1 to 8/claimants contended that the award passed by the Tribunal cannot be said to be just in the light of the decision rendered in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601(SC). He also relied on the decision in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013 and contended that even though the claimants have not challenged the quantum of compensation awarded by the Tribunal

by way of filing an appeal or cross-objection, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded. His specific contention is that though in the claim petition it is stated that the deceased was earning a sum of Rs.4,000/- per month, the Tribunal has fixed the notional income of the deceased as Rs.4,000/- per month, which is very meager.

7. It is pertinent to point out that the claimants did not adduce any documentary evidence to show that the deceased was actually earning a sum of Rs.4,500/- per month as salary and Rs.50/- per day as batta as Cleaner. Hence, the Tribunal has fixed the monthly income of the deceased as Rs.4,000/- and awarded a total sum of Rs.4,80,000/- towards "Loss of Income". The accident took place on 07.10.2004 and since there is no material evidence to prove the income of the deceased, the monthly income fixed by the tribunal at Rs.4,500/- shall be reduced by 50% (Rs.2,250/-). The age of the deceased was 22 years at the time of the accident. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Hence, this Court is inclined to enhance the same to a sum of Rs.4,86,000/- (2,250 X 12 X 18).

8. Apart from the above said amount, this Court enhances the amount awarded towards "loss of Love and affection" to Rs.40,000/- and Rs.13,000/- towards "Medical expenses". Further, this Court is inclined to award a sum of Rs.2,000/- towards "personal belongings", which has not been awarded by the Tribunal. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	4,80,000/-	Rs.4,86,000/-	enhanced
2.	Loss of Love and affection	30,000/-	Rs.40,000/-	enhanced
3.	Medical expenses	10,000/-	Rs.13,000/-	enhanced
4.	Funeral expenses	10,000/-	Rs.10,000/-	confirmed
5.	Mental Agony	10,000/-	Rs.10,000/-	confirmed

6.	Personal belongings		Rs.2,000/-	granted
	Total	5,40,000/-	Rs.5,61,000/- -	enhanced by Rs.21,000/-

9. Thus, the quantum of compensation awarded by the Tribunal is enhanced from Rs.5,40,000/- to Rs.5,61,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) However, the quantum of compensation awarded by the Tribunal is enhanced from Rs.5,40,000/- to Rs.5,61,000/-.

(iii) The respondents 1 to 8 / claimants are directed to pay the court fee for the enhanced compensation amount, within a period of six weeks from today and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant /The New India Insurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.5,61,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.933 of 2005 on the file of the Motor Accidents Claims Tribunal / Principal District Court within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents 1 to 8 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

सत्यमेव जयते
-s/d-

Assistant Registrar (CSVI)

True Copy

Sub-Assistant Registrar

sbn
To

1.The Motor Accident Claims Tribunal,
Principal District Court,
Namakkal.

+1 cc to Mr.T.Ravichandran Advocate sr7290
+1 cc to Mr.C.Thangaraja Advocate sr7264

C.M.A.No.1607 of 2013
and
M.P.No.1 of 2013

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