

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1907 of 2013 and M.P.No.1 of 2013
and
Cros.Obj.No.31 of 2020

C.M.A.No.1907 of 2013

United India Insurance Co. Ltd.,
70, NSC Bose Road,
III Floor, Sowcarpet,
Chennai-600 003.

... Appellant/2nd Respondent/
R1 in Cross Objection

vs.

1. Munusamy
2. Minor R.Ramana
3. Minor T.Prajun
- Minors rep. By their grandfather and
Natural guardian Munusamy
4. C.Loganayagi

... Respondents/Petitioners/
1st Respondent/Cross Objectors
Second Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2012 made in M.C.O.P.No.4200 of 2010, on the file of the Motor Accidents Claims Tribunal, (XVIII Additional District and Sessions Judge) at Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.Varadhakamaraj- R1 to R3
R4 - No appearance

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Cros.Obj.No.31 of 2020

1. Munusamy
2. Minor R.Ramana
3. Minor T.Prajun
Minors rep. By their grandfather and
Natural guardian Munusamy

...Cross Appellants

vs

United India Insurance Co. Ltd.,
70, NSC Bose Road,
III Floor, Sowcarpet,
Chennai-600 003.

2.C.Loganayagi ...Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the judgment and decree dated 29.10.2012 made in M.C.O.P.No.4200 of 2010, on the file of the Motor Accidents Claims Tribunal, (XVIII Additional District and Sessions Judge) at Chennai.

For Cross Objectors : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar - R1

COMMON JUDGMENT

[This Appeal has been taken up for hearing through Video conferencing]

Civil Miscellaneous Appeal No.1907 of 2013 has been filed by the Insurance Company and Cross Objection No.31 of 2020 has been filed by the claimants. The Appellant as well as the cross objectors have challenged the award dated 29.10.2012 passed by the Motor Accidents Claims Tribunal, (XVIII Additional District and Sessions Judge), Chennai, in MACTOP.No.4200 of 2010. The insurance company has challenged the quantum of compensation assessed by the Tribunal and the claimants have sought for enhancement.

Brief facts leading to the filing of Civil Miscellaneous Appeal and the Cross Objection.

2. A person by name Thiruvenkadam, died on 24.10.2010, as a result of an accident caused by the lorry bearing Registration No.TSE 9977, owned by one Loganayagi, who is the fourth respondent in CMA.No.1907 of 2013 and second respondent in Cross Objection No.31 of 2020 and the said vehicle is insured with the Appellant- insurance company.

3. The accident happened when Thiruvenkadam was standing at Solaiamman Koil Street, in front of door No.91 B, Kodungaiyur, Chennai, at that time, a lorry bearing Registration No.TSE 9977 was suddenly taken reverse in a rash and negligent manner at high speed and hit the deceased Thiruvenkadam. As a result of the impact, he was thrown out and the lorry ran over the deceased and on the way to the hospital, he died.

4. The claimants are the dependents of the deceased and they are his father and sons. They have preferred a claim before the Motor Accidents Claims Tribunal against the owner of the lorry as well as the insurer of the lorry viz., Appellant/Insurance Company, seeking a compensation Rs.10,00,000/- for the death of Thiruvenkatam as a result of the accident.

5. The Motor Accident Claims Tribunal by its award dated 29.10.2012 passed in M.C.O.P.No.4200 of 2010, directed the Appellant/Insurance Company to pay the claimants a sum of Rs.9,92,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization. Out of the said compensation amount, the Tribunal determined the compensation payable to the first claimant at Rs.2,92,000/- and to the second and third claimants at Rs.3,50,000/- each and the amounts (share of the minors) were directed to be deposited in any one of the Nationalised Banks till they attain majority.

6. The break-up details of the award passed by the Tribunal in favour of the claimants are as follows:

Sl.No.	Heads	Amount passed by the Tribunal (Rs.)
1	Loss of income	8,64,000/-
2	Loss of Future prospects	1,00,000/-
3	Funeral Expenses	5,000/-
4	Loss of love and affection	20,000/-
5	Transportation	3,000/-
	Total	9,92,000/-

7. Aggrieved by the award dated 29.10.2012, passed in M.C.O.P.No.4200 of 2010, this appeal (CMA. No.1907 of 2013) has been filed by the Insurance Company. Cross Objection No.31 of 2020 has also been filed by the claimants seeking enhancement of compensation under the impugned award dated 29.10.2012 in M.C.O.P.No.4200 of 2010. Since both the matters arise out of the same accident, this Court is disposing of the same by a common judgment.

8. Heard Mr.S.Arunkumar, learned counsel for the Appellant/Insurance Company and Mr.K.Varadha Kamaraj, learned counsel for the Claimants 1 to 3 in C.M.A.No.1907 of 2013 as well as in Cros.Obj.No.31 of 2020.
Discussion:

9. The Appellant Insurance Company has filed the appeal on the ground that the quantum of compensation awarded by the Tribunal is excessive. According to them, the Tribunal has assessed the notional monthly income of the deceased at Rs.6,000/- which is excessive and it ought not to have awarded the loss of future prospects to the claimants. It is also their contention that the Tribunal has erroneously applied '18' years multiplier to calculate the loss of income.

10. The cross objection has been filed by the claimants seeking enhancement of compensation on the ground that the notional monthly income of the deceased fixed by the Tribunal at Rs.6,000/- is too low. According to them, the deceased was earning a daily income of Rs.500/- as an Auto driver and therefore, the notional monthly income assessed by the Tribunal is incorrect.

11. This Court has perused and examined the impugned award as well as the materials available on record before the Tribunal.

12. Before the Tribunal, the claimants have filed nine documents which were marked as Exs.P1 to P9 and three witnesses were examined on their side viz., P.W.1 - the father of the deceased, P.W.2 and P.W.3 are the eyewitnesses to the accident. On the side of the appellant/insurance company, neither any document was filed nor any witness examined before the Tribunal.

13. Before the Tribunal, in their claim petition, the respondents/claimants have pleaded that the deceased was earning a daily income of Rs.500/- as an Auto driver. The Driving license of the deceased has been marked as Ex.P8. The necessary endorsement to drive an Auto rickshaw is also found in Ex.P8- the driving license. The claimants have established before the

Tribunal that the deceased was an Auto rickshaw driver at the time of the accident. The accident had happened on 24.10.2010. The Tribunal has assessed the notional monthly income of the deceased at Rs.6,000/- and has awarded Rs.1,00,000/- towards loss of future prospects to the deceased.

14. It is settled law that as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680 that the claimants are entitled for loss of future prospects at 40% when they have established before the Tribunal that the deceased was gainfully employed. Therefore, this Court is of the view that the Tribunal ought to have granted 40% towards loss of future prospects to the claimants, when the claimants have established before the Tribunal that the deceased was an Auto driver as seen from his driving license, which was marked as Ex.P8. Accordingly, this Court grants 40% as loss of future prospects to the claimants.

15. The age of the deceased was 29 years at the time of the accident, which was also proved by the claimants through the driving license/Ex.P8. However, as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), the correct multiplier to be applied for a person whose age is 29 years is '17' multiplier. But, the Tribunal has erroneously applied '18' multiplier. Accordingly, it is modified to '17' multiplier by this Court. The Tribunal has rightly deducted 1/3rd amount towards personal expenses of the deceased. Therefore, the said finding is not altered by this Court. However, it is the contention of the claimants before the Tribunal that as seen from the deposition of PW1-the father of the deceased that the wife of the deceased is not a dependent of the deceased, since she has already married to another person, without taking care of her two children, who are the respondents/claimants 2 and 3 in this appeal. The Tribunal has rightly believed the testimony of PW1, since the father of the deceased has deposed that the wife of the deceased left the family seven years prior to the date of the accident. This Court does not find any infirmity in the said findings. However, it is made clear that in case the wife of the deceased makes a claim from and out of the compensation awarded by this Court, the same will have to be necessarily indemnified by the claimants and not the appellant/Insurance Company.

16. Further, the Tribunal has awarded a compensation only Rs.5,000/- towards funeral expenses and has not awarded any compensation towards loss of estate, which the claimants are

legally entitled to as per the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. Accordingly, this Court enhances the compensation towards transportation and funeral expenses from Rs.8000/- (Rs.5000 + Rs.3000) to a consolidated sum of Rs.15,000/-. The Tribunal has awarded only a sum of Rs.20,000/- towards loss of love and affection, which is not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in Pranay Sethi case referred to supra and accordingly, this Court awards Rs.40,000/- towards loss of love and affection as per the said judgment.

Conclusion:

17. For the foregoing reasons, the impugned award of the Tribunal is modified and the compensation is enhanced from Rs.9,92,000/- to Rs.12,12,400/-/- as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of income	8,64,000/-	11,42,400/- [Rs.6,000+40%X12X17-1/3]
Loss of Future prospects	1,00,000/-	-----
Loss of love and affection	20,000/-	40,000/-
Transportation	3,000/-	15,000/-
Funeral Expenses	5,000/-	
Loss of Estate	-----	15,000/-
Total	9,92,000/-	12,12,400/-

Conclusion:

18. In the result, the Civil Miscellaneous Appeal filed by the Appellant/Insurance company is dismissed and the Cross Objection filed by the claimants is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed (Since there is a delay of 2017 days in filing the cross objection, the claimants are entitled for interest only from the date of filing of the cross objection).

- The Appellant-Insurance Company is directed to deposit the entire award amount of Rs.12,12,400/- [Rupees Twelve lakhs twelve thousand four hundred only] as per the order of this

Court before the Tribunal along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.4200 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment.

- On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount to the claimants/Appellants as per the ratio of apportionment made by the Tribunal through RTGS within a period of four weeks thereafter.
- Since the second and third respondents in CMA. No.1907 of 2013 are minors, their respective shares of award amount shall be deposited in any one of the Nationalised Banks, till they attain majority. The first respondent, who is the grandfather of the minors/second and third respondents is permitted to withdraw the interest accrued once in six months. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal,
(XVIII Additional District and Sessions Judge) at Chennai.
- 2.The Section Officer,
VR Section, Madras High Court.

C.M.A.No.1907 of 2013
and

M.P.No.1 of 2013

and

Cros.Obj.No.31 of 2020

vsnII(co)
aa03/12/2020