IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3094 of 2011
and
Cross Objection No.37 of 2012
and M.P.Nos.1 of 2011 & 1 of 2012

(Through Video Conferencing)

The Oriental Insurance Co.Ltd.,
Divisional Office No.1, No.4,
Head Quarters Road,
Coimbatore. ... Appellant in C.M.A.No.3094/2011 & 1st respondent in Cros.Obj.No.37/2012

Vs.

1.B.L.Raman
2.D.Deguramma ... 1st and 2nd respondents in C.M.A.No.3094/2011 and Cross objectors in Cros.Obj.No.37/2012

3.M.Jeyaseelan
4.A.Raju
5.M.Vinu
6.The New India Assurance Co.Ltd.,
435, DB Road, R.S.Puram,
Coimbatore.

7.V.Ramkumar ... 3rd to 7th respondents in C.M.A.No.3094/2011 and 2nd to 6th respondents in Cros.Obj.No.37/2012

Prayer in C.M.A.No.3094 of 2011:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.39 of 2009 on the file of the Motor Accidents Claims Tribunal (District Judge) at Udhagamandalam dated 04.02.2011.

Prayer in Cros. Obj. No.37 of 2012:- This Cross Objection filed under Order 41 Rule 22 of C.P.C., against the Judgment and Decree dated 04.02.2011 and made in M.A.C.T.O.P.No.39 of 2009, on the file of the Motor Accidents Claims Tribunal cum District Judge at Udhagamandalam.

For Appellant in C.M.A.No.3094/2011
& R1 in Cros.Obj.No.37/2012 : Mr.M.Krishnamoorthy

For R1 and R2 in C.M.A.No.3094/2011
& Cross Objectors in
Cros.Obj.No.37/2012 : Mr.M.Sankaravadivel for
Mr.B.Soundarapandian

For R6 in C.M.A.No.3094/2011
& R5 in Cros.Obj.No.37/2012 : Mr.K.Vinod for
Mr.Elveer Ravindran

For R5 and R7 in C.M.A.No.3094/2011
& R4 and R6 in Cros.Obj.No.37/2012 : No appearance
R3 and R4 in C.M.A.No.3094/2011
& R2 and R3 in Cros.Obj.No.37/2012: Exparte

COMMON JUDGMENT

The Insurance Company is the appellant and is aggrieved by the impugned Judgment and Decree dated 04.02.2011, passed by the District Judge and Motor Accident Claims Tribunal of Nilgiris at Udhagamandalam in M.C.O.P.No.39 of 2009.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.16,00,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the 1st and 2nd respondents/claimants who are the cross objectors in this appeal. The Tribunal has fixed the liability equally on all the respondents, i.e. appellant and the 3rd to 7th respondents.

3. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the appellant Insurance Company. Similarly, the claimants, who are the 1st and 2nd respondents in this appeal, filed this Cross Objection for enhancement of compensation.

4. Since there is connected Cross Objection filed by the 1st and 2nd respondents/claimants, the parties are referred in this Judgment as they were arrayed in the Civil Miscellaneous Appeal filed by appellant the insurance Company.

5. The 1st and 2nd respondents are the parents of the deceased R.Vivekanandha, who died tragically in a motor accident that took place on 28.04.2008 at 11.50 p.m in front of Town Hall, Ukkadam Outpost Police Station on B.B.Street Juction. The deceased was travelling as a pillion rider in a Motor cycle bearing registration No. TN-38-X-1500 which was driven by his friend, when a tipper lorry bearing registration No.TN-37-AW-7067 insured with the appellant, driven by the 3rd respondent herein, hit the said motor cycle. The deceased suffered grievous injuries and died on the spot.

6. Since the deceased was travelling as a pillion in the insured vehicle which was driven rashly and negligently and considering the fact that the accident vehicle insured with the 6th respondent was also driven in a rash and negligent manner, the Tribunal has fixed the 50% of the liability and compensation thereon to be paid by the appellant Insurance Company and another 50% by the 6th respondent Insurance Company.

7. The appellant Insurance Company has challenged the awarding of 50% of the compensation on the ground that the quantum of compensation awarded to the 1st and 2nd respondents/claimants was on the higher side. Particularly, it is submitted that the Tribunal erred in deducting only 1/3rd of the income of the deceased towards personal expenses though the deceased was a bachelor and therefore, the actual deduction should have been 50% of the income as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

8. It is further submitted that the Tribunal also ought to have deducted the income tax payable on the notional income based on Exhibits P10 and P11. In the Cross Objection, the parents (who are the 1st and 2nd respondents) of the deceased have asked for enhancement of compensation.

9. Heard the learned counsel for the appellant, 6th respondent and 1st and 2nd respondents/claimants who have filed the Cross Objection.

10. I have considered the arguments advanced by the learned counsel for the appellant, 1st and 2nd respondents and the 6th respondent. I have also perused the evidence on record, impugned Judgment and Decree and the decisions of the Hon'ble Supreme Court rendered in the context of fixing of the compensation under the provisions of the Motor Vehicles Act, 1988.

11. Though the appeal has been filed by the appellant Insurance Company, it is noticed that the Tribunal has committed

error in applying multiplier 13 instead of multiplier 18 based on the age of the deceased Vivekanandha as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

12. The Tribunal has also committed error in deducting only 1/3rd of the notional income towards the personal expenses of the deceased Vivekanandha when it indeed ought to have deducted 50% of the income as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

13. Similarly, the Tribunal has not awarded the compensation on the other conventional heads. The Tribunal has not considered the future prospects while calculating compensation. Therefore, the future prospects will also have to be added at 40% to the income of the deceased for the purpose of quantifying of the compensation as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

14. In overall facts and circumstances of the case, the compensation awarded by the Tribunal is therefore modified as follows:-

Heads and Calculation	Re-quantified amount by this Court

Loss of income : Rs.15,000/- per month 15,000 x 12 : Rs.1,80,000/- per annum Total income : 1,80,000 - Less: Income Tax 10% : 18,000 --------------- : 1,62,000 Less: Personal Expenses 50% *: 81,000 - --------------- : 81,000 Add: Future Prospects 40% ** (81,000x40%) : 32,400 + --------------- : 1,13,400 Add: Multiplier (18 x 1,13,400) :18 x --------------- : 20,41,200	Rs.20,41,200/-
Funeral Expenses & Transportation*	Rs. 30,000/-
Loss of Estate*	Rs. 30,000/-
Loss of Love and affection# (40,000 x 2 = 80,000)	Rs. 80,000/-
Counsel fee and Miscellaneous Expense	Rs. 15,000/-
Total	Rs.21,96,200/-

Note:- Rs.21,96,200/- is rounded off to Rs.22,00,000/-

* A as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt)'s Case (Supra).

**As per the decision of the Hon'ble Supreme Court in Pranay Sethi's Case (supra).

\# As per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanuram @

Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546.

15. Therefore, the compensation is thus increased to ***Rs.22,00,000/-** from Rs.16,00,000/-. Both the appellant and the 6th respondent are equally liable for the compensation.

16. The appellant and the 6th respondent are therefore directed to deposit the enhanced amount of compensation of ***Rs.6,00,000/- (*Rs.22,00,000** – Rs.16,00,000) equally together with interest at 7.5% from the date of claim petition till the date of such deposit, within a within a period of six weeks from the date of receipt of a copy of this Judgment.

17. If the amount of compensation awarded by the Tribunal has not been deposited, the appellant and the 6th respondent are also directed to deposit the same together with interest as per the ratio fixed by the Tribunal, less already deposited if any, within the aforesaid period.

18. On such deposit, the 1st and 2nd respondents/claimants are permitted to withdraw the amount of compensation together with interest, less amount already withdrawn if any, by filing suitable application before the Tribunal.

19. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed while partly allowing the Cross Objection filed by the claimants. No cost. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar
Dated:28/08/2020

*Corrected as per the order
of this Court dated 11.02.2021
Sd/-
Assistant Registrar (CS-V)
Dated:16/02/2021

True Copy

Sub-Assistant Registrar

jen

To:-
The Motor Accidents Claims Tribunal,
cum District Judge, Udhagamandalam.

To be substituted to the
order already despatched
On 19/01/2021

Copy to

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

+1 Cc to Mr.B.Soundarapandian, Advocate sr 24790.

C.M.A.No.3094 of 2011 and
Cross Objection No.37 of 2012
and M.P.Nos.1 of 2011 & 1 of 2012

RLD(CO)
SP(16/12/2020)

srg 17/02/2021