IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3404 of 2011
and M.P.No.1 of 2011
and
Cros.Obj.No.186 of 2011

(Through Video Conferencing)

C.M.A.No.3404 of 2011

The Divisional Manager,
United India Insurance Co. Ltd.,
Vellore. ...Appellant/2nd Respondent

Vs.

1.Munuswamy
2.Andal
3.Jamunarani
4.Deepa ... Respondents 1 to 4 /petitioners

5.M.Vasu ... 5th Respondent/1st Respondent
(r5 set exparte in lower court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.573 of 2003, dated 31.10.2005, on the file of the Motor Accident Claims Tribunal (District Judge) at Tiruvannamalai.

For Appellant : Ms.G.Sudha
for Ms.N.Mala
For Respondents :
For R1 to R4 : Ms.M.Malar
For R5 : Set exparte

Cros.Obj.No.186 of 2011

1.Munusamy
2.Andal
3.Jamuna Rani
4.Deepa ... Cross Objectors/Petitioners

Vs

1.The Divisional Manager,
United India Insurance Co. Ltd.,
Vellore.

2.M.Vasu ... Respondents/Respondents

Cross Objection filed under Order 41 Rule 22 of C.P.C, against the Judgment and decree in M.C.O.P.No.573 of 2003, dated 31.10.2005, on the file of the Motor Accidents Claims Tribunal (District Judge) at Tiruvannamalai.

For Cross Objectors: Ms.M.Malar
For R1 : Ms.G.Sudha
for Mr.N.Mala
R2 : Set exparte

COMMON JUDGMENT

By this Common Judgment, both civil miscellaneous appeal and cross objection are being disposed. To avoid confusion, the parties are referred as claimants and Insurance Company as in civil miscellaneous appeal.

2. The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 31.10.2005 passed by the Motor Accidents Claims Tribunal (District Judge) at Tiruvannamalai in M.C.O.P.No.573 of 2003.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,57,000/- as compensation payable to the respondents No.1 to 4/claimants, together with interest at 7.5% per annum from the date of filing of the claim petition, till the date of payment as against the total claim of Rs.5,00,000/-. The Tribunal has awarded the aforesaid compensation under the following heads:-

Sl.No.	Heads of Compensation	Amount awarded by the Tribunal
1.	Loss of Income	Rs.4,50,000/-
2.	Loss of Love and Affection	Rs. 5,000/-
3.	Funeral Expenses	Rs. 2,000/-
	Total	Rs.4,57,000/-

4. The respondents No.1 to 4/claimants have filed a cross objection and sought for enhancement of compensation awarded by the Tribunal. They have restricted the enhancement of compensation by another sum of Rs.1,50,000/- in this appeal.

5. The brief facts of the case is that the deceased (Raj Kumar) aged about 26 years, met with an accident on 03.06.2003. He was working as a Lathe Operator and was a Bachelor.

6. The claimants filed a claim petition before the Tribunal as Legal Representatives and dependants of the deceased. The Tribunal considered a notional income of the deceased as Rs.3125/- per month and has awarded the aforesaid compensation by deducting 1/3rd towards personal expenses of the deceased. The Tribunal has also awarded compensation by applying the multiplier of 18 considering the age of the deceased.

7. The learned counsel for the appellant/Insurance Company submits that the amount awarded to the claimants who are cross objectioners is disproportionate and therefore prayed for modification of the impugned order. On the other hand, the learned counsel for the cross objectioners/claimants who are the respondents No.1 to 4 in C.M.A.No.3404 of 2011 submitted that the Tribunal has wrongly considered the income of the deceased as Rs.3125/- though he was earning Rs.5,000/- per month. He further submits that the Tribunal ought to have awarded amount towards future prospects and towards filial consortium and love and affection as per the decision of the Hon'ble Supreme Court recently pronounced in Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130.

8. The learned counsel for the appellant/Insurance Company also submits that the Tribunal erred in deducting only 1/3rd from the income of the deceased towards his personal expenses. It is submitted that the Tribunal was required to deduct half of the income of the deceased towards personal expenses as he was a Bachelor.

9. The learned counsel for the cross objectioners/claimants submits that the Tribunal ought to have awarded 40% towards future prospects finally. The learned counsel for the cross objectioners/claimants further submitted that the Tribunal ought to have awarded amount on the conventional heads as per the decision of the Hon'ble Supreme Court in Santosh Devi Vs Mahaveer Singh & others , 2018 (2) TNMAC 296.

10. I have considered the arguments advanced on behalf of the learned counsel for the appellant and the respondents.

11. The appeal filed by the appellant/Insurance Company is devoid of merits. The Tribunal has not committed any error based on the understanding of law at the time when the impugned Judgment and Decree was passed on 31.10.2005 except while deducting 1/3rd of the income towards the personal expenses of the deceased. Further, the impugned Judgment and Decree was

passed, the Hon'ble Supreme Court has clarified the position in the following cases:-

(i) Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

(ii) National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

(iii) Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130.

(iv) Santosh Devi Vs Mahaveer Singh & others, 2018 (2) TNMAC 296.

12. In the light of the above, the amount awarded by the Tribunal as compensation is to be increased. That apart, the Tribunal has considered a sum of Rs.3125/- as notional income of the deceased. The deceased was Lathe Worker and supporting his aged parents and two unmarried sisters. I am inclined to modify the income of the deceased as Rs.3,500/- for the purpose of awarding compensation.

13. Therefore, the compensation of Rs.4,57,000/- awarded by the Tribunal is requantified as follows:-

Heads and Calculation	Amount
Loss of earning capacity:- Monthly Income : Rs.3,500/- Add: Future Prospects at 40 % (3,500 x 40/100) : Rs1,400/- ----------- : Rs.4,900/- Less: Personal Expenses 1/2nd (4900 x 1/2) : Rs.2,450/- ----------- : Rs.2,450/- Annual Contribution to the family (2450 x 12) : Rs.29,400/- Multiplier 18 (29,400 x 18) Rs.5,29,200/-	Rs.5,29,200/-
Loss of filial consortium to the respondents (15,000x2)	Rs. 30,000/-
Loss of Love and Affection (15,000x2)	Rs. 30,000/-
Funeral Expenses	Rs. 3,500/-
Total	Rs.5,92,700/-

14. The appellant/Insurance Company is therefore directed to deposit an amount of Rs.5,92,700/-, together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of the copy of this Judgment.

15. On such deposit being made by the appellant/Insurance Company, the respondents No.1 to 4/claimants are permitted to withdraw the same together with interest accrued thereon in the same proportion awarded by the Tribunal, less any amount already withdrawn if any, by filing suitable application before the Tribunal.

16. In the result, the present appeal filed by the appellant/Insurance Company is dismissed. The cross objection filed by the cross objectioners/respondents 1 to 4/claimants is partly allowed. Connected Miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

arb

To:
The Motor Accidents Claims Tribunal,
District Judge, Tiruvannamalai.

COPY TO:

The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Ms.M.Malar, Advocate Sr No.37601

C.M.A.No.3404 of 2011
and M.P.No.1 of 2011
and
Cros.Obj.No.186 of 2011

GJ(CO)
RG.20.04.2021