

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.453 OF 2011

AND

CROSS OBJECTION NO.87 OF 2012

AND

M.P.NO.1 OF 2011

C.M.A.No.453 of 2011

M/s.The National Insurance Co. Ltd.,
Having Office at No.1,
Division No.10, Flat No.101-106,
S.M.C.House, Connaught Place,
New Delhi 110 001.

.. Appellant/2nd Respondent

Vs.

1.Rajamani

2.Minor Saravanakumar

3.Minor Themozhi

(Minors Rep. By their mother/guardian, 1st respondent)

4.Rajammal

... Respondents/ Petitioners

5.Kalyanasamy

... Respondent/1st Respondent

6. Murugesan

(R5 & R6 set exparte before the Tribunal)

7. M/s.The National Insurance Co. Ltd.,
2nd Floor, BIB Chetty, Street,
Thiruchengode, Namakkal District.

.. Respondents/
3 & 4 Respondents

(R7 given up)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.11.2009, made in M.C.O.P.No.180 of 2006, on the file of the Additional District Judge, Fast Track Court No.IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

For Appellant : Mrs.R.Sreevidhya

For Respondents: Mr.M.Lokesh (for R1 to R4)
for M/s.Ma.P.Thangavel

R5 & R6 : Exparte

R7 : Given up

Cross Objection No.87 of 2012

1.Rajamani

2.Minor Saravanakumar

3.Minor Themozhi

(Minors Rep. By their mother/guardian, 1st respondent)

4.Rajammal

... Cross Objectors/
1 to 4 Respondents/
Petitioners

Vs.

1. The National Insurance Co. Ltd.,
Having Office at No.1,
Division No.10, Flat No.101-106,
S.M.C. House, Connaught Place,
New Delhi 110 001.

... Respondent/Appellant/2nd Respondent

2. Kalyanasamy
(R2 was set exparte before the Tribunal.)

... Respondent/5th Respondent/
1st Respondent

3. Murugesan

4. M/s.The National Insurance Co. Ltd.,
2nd Floor, BIB Chetty, Street,
Thiruchengode, Namakkal District.

.. Respondents/
6 & 7th Respondents/
3 & 4 Respondents

(R3 and R4 were exonerated. Hence, notice
is dispensed with for the respondents 2 to 4.)

Prayer:

This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 09.11.2009, made in M.C.O.P.No.180 of 2006, on the file of the Additional District Judge, Fast Track Court No.IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

For Cross Objectors : Mr.M.Lokesh
1 to 4 for Mr.Ma.P.Thangavel

For Respondent : Mrs.R.Sreevidhya (for R1)

R2 & 3 : Exparte

R4 : Given up

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 09.11.2009, made in M.C.O.P. No.180 of 2006, on the file of the Additional District Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

Cross Objection No.87 of 2012 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 09.11.2009, made in M.C.O.P. No.180 of 2006, on the file of the Additional District Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

2.The appellant is the 2nd respondent in M.C.O.P. No.180 of 2006, on the file of the Additional District Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Nataraj who died in the accident that took place on 15.01.2006.

3.The parties are referred to as per their rank in appeal for the sake of convenience.

4.According to the respondents 1 to 4, on the date of accident viz., 15.01.2006, the deceased was traveling in the Car bearing Registration No.TN-39-W-5445 driven by the 5th respondent, owner-cum-driver. The 5th respondent drove the Car in a rash and negligent manner and dashed against the Lorry bearing Registration No. KA-02-AC-2445, belonging to the 6th respondent, which was parked on the centre of the road without any parking lamp or any signal and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident has occurred due to the negligent parking of Lorry belonging to the 6th respondent and also due to rash and negligent driving by the 5th respondent, driver-cum-owner of the Car and hence, the respondents 1 to 4 filed the claim petition, claiming compensation against the appellant, as insurer of the Car and respondents 5 to 7 as owner of the Car, owner of the Lorry and insurer of the Lorry respectively.

5.The appellant-Insurance Company, insurer of the Car filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the accident did not occur due to rash and negligent driving by the driver of the Car insured with them and they denied the manner of accident as alleged in the FIR. The drivers of both the vehicles did not possess valid driving license, permit and fitness certificate to ply the vehicles and hence, for the breach of policy conditions, the appellant is not liable to pay compensation to the respondents 1 to 4. The respondents 1 to 4 have to prove the age, avocation and income and health condition of the deceased at the time of accident, by documentary evidence to claim compensation. In any event, the total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.The respondents 5 and 6 remained exparte before the Tribunal.

7.The 7th respondent-Insurance Company, insurer of the Lorry, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the 7th respondent, the Lorry was parked by the driver with parking lamps and signals in the extreme left of the road. The 5th respondent, driver-cum-owner of the Car drove the same in a rash and negligent manner and dashed against the parked Lorry. Hence, the 7th respondent is not liable to pay any compensation to the respondents 1 to 4. The FIR was also registered against the 5th respondent, driver of the Car. The respondents 1 to 4

have to prove the age, avocation and income and health condition of the deceased at the time of accident, by documentary evidence to claim compensation. In any event, the total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Mr.Kadhirvel, eye-witness as P.W.2 and marked 5 documents as Exs.A1 to A5. The 5th respondent/driver-cum-owner of the Car examined himself as R.W.1 and marked one document as Ex.B1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 5th respondent, driver-cum-owner of the Car and directed the appellant as insurer of the said vehicle, to pay a sum of Rs.6,32,400/- as compensation to the respondents 1 to 4 and dismissed the claim petition as against the respondents 6 and 7.

10.Challenging the quantum of compensation granted by the Tribunal in the award dated 09.11.2009, made in M.C.O.P. No.180 of 2006, the appellant-Insurance Company has come out with the present appeal.

11.Not being satisfied with the amounts awarded by the Tribunal, the respondents 1 to 4 have filed Cross-Objection, seeking enhancement of compensation.

12.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding huge amounts as compensation. The Tribunal failed to consider that the respondents 1 to 4 have not proved the avocation and income of the deceased. In the absence of materials, the Tribunal ought to have fixed the notional income of the deceased as Rs.3,000/- per month. The amount awarded by the Tribunal under conventional heads are excessive and prayed for setting aside the award of the Tribunal.

13.The learned counsel appearing for the respondents 1 to 4 contended that the deceased was aged 36 years at the time of accident. He was owner of Power Loom Textiles and was running the said business in Tirupur, which is a prime locality. The deceased was earning a sum of Rs.10,000/- per month. The respondents 1 to 4 filed Ex.A5 - electricity bill paid for the business done by the deceased. After the death of deceased, the respondents 1 to 4 were unable to run the business and they lost income. The Tribunal fixed a meagre amount of Rs.4,500/- per month as notional income of the deceased and not granted any

enhancement towards future prospects. There are four dependents of the deceased. The Tribunal instead of deducting 1/4th, erroneously deducted 1/3rd towards personal expenses. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium, funeral expenses and transportation are meagre and prayed for dismissal of the appeal filed by the appellant/Insurance Company and for allowing the Cross Objection filed by them for enhancement of the compensation.

14. Heard the learned counsel appearing for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

15. From the materials on record, it is seen that it is the contention of the respondents 1 to 4 that while the deceased was traveling in the Car belonging to the 5th respondent, the accident has occurred and due to the injuries, he died. It is the further contention of the respondents 1 to 4 that the deceased was owner of the Power Loom Textiles and was earning a sum of Rs.10,000/- per month. The respondents 1 to 4 have filed Ex.A5 - electricity bill to prove that the deceased had paid bimonthly charge of Rs.11,978/- in the month of October 2005, for the Power Loom business. Except, Ex.A5, the respondents 1 to 4 have not filed any document to show that the deceased was earning a sum of Rs.10,000/- per month. In the absence of any material evidence with regard to income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2006. The notional income fixed by the Tribunal is meagre. Considering the year of accident and nature of work, sum of Rs.6,500/- per month is fixed as the notional income of the deceased. The deceased was aged 36 years at the time of accident. The Tribunal failed to award any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the respondents 1 to 4 are entitled to 40% enhancement towards future prospects. There are four dependents of the deceased. The Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses of the deceased. Hence, deducting 1/4th towards personal expenses of the deceased and applying multiplier '16', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.13,10,400/- {[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 16 x 3/4}. The amounts awarded by the Tribunal for loss of consortium to the 1st respondent, loss of love and affection to the respondents 2 to 4 and funeral expenses are meagre. Hence, the same are enhanced to Rs.40,000/- is granted towards loss of consortium to the 1st respondent, Rs.20,000/- each to the respondents 2 and 3/ minor children of the deceased, towards loss of love and affection, Rs.15,000/-

towards loss of love and affection to the 4th respondent/mother of the deceased and Rs.15,000/- towards funeral expenses. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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	5,76,000/-	13,10,400/-	Enhanced
2.	Transportation	1,400/-	1,400/-	Confirmed
3.	Loss of consortium to the 1 st respondent	15,000/-	40,000/-	Enhanced
4.	Loss of love and affection to respondents 2 and 3	30,000/-	40,000/-	Enhanced
5.	Funeral expenses	5,000/-	15,000/-	Enhanced
6	Loss of love and affection to the 4 th respondents	5,000/-	15,000/-	Enhanced
7.	Loss of estate	-	15,000/-	Granted
	Total	6,32,400/-	14,36,800/-	Enhanced by Rs.8,04,400/-

16. In the result, the appeal is dismissed and the Cross-Objection is partly allowed. The Cross-Objection is dismissed as against the respondents 6 and 7. The amount awarded by the Tribunal at Rs.6,32,400/- is enhanced to Rs.14,36,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.180 of 2006. On such deposit, the respondents 1 and 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 and 3 are directed to be deposited in any

one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
Fast Track Court No. IV,
(Motor Accident Claims Tribunal),
Coimbatore, Tiruppur.

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

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.36662

C.M.A.No.453 of 2011
and Cross Objection No.87 of 2012
and M.P.No.1 of 2011

RLD(CO)
CS/06/05/2021

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