

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3202 of 2014 & M.P.Nos.1,2 of 2014  
and Cross Objection No.82 of 2015

C.M.A.No.3202 of 2014

Kalaidevi ... Appellant/Petitioner

Vs.

1.Kumar

2.Mohan ... Respondents 1&2/Owner of Vehicle

3.The Manager  
ICICI Lombard General Insurance  
Company Limited  
No.1/D, Chottabai street  
Opp. to Land mark book stall  
Nungambakkam, Chennai.

4.The Manager  
AIG General Insurance Company Limited  
Ra-Enaja Towers, 9<sup>th</sup> floor  
Bettavis  
No.177, Anna salai  
Chennai.

5.Usha Vigneswaran

6.Gangabhavani ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.06.2014 made in M.C.O.P.No.135 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

|               |   |                                |
|---------------|---|--------------------------------|
| For Appellant | : | Mr.R.Rajaramani                |
| For R3        | : | Mrs.R.Sreevidhya               |
| For R5 and R6 | : | Ms.A.Subadra<br>for Ms.M.Malar |

Cross Objection No.82 of 2015

1.Usha Vigneswaran

2.Gangabhavani

.. Cross objectors/Respondents 5&6

Vs.

1.Kalaidevi

2.Kumar

3.Mohan

4.The Manager

ICICI Lombard General Insurance  
Company Limited

No.1/D, Chottabai street  
Opp. to Land mark book stall  
Nungambakkam, Chennai.

5.The Manager

Tata AIG General Insurance Company Limited  
Ra-Enaja Towers, 9<sup>th</sup> floor

Bettavis  
No.177, Anna salai  
Chennai.

.. Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 18.06.2014 made in M.C.O.P.No.135 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Cross Appellants : Ms.A.Subadra  
for Ms.M.Malar

For R1 : Mr.R.Rajaramani

For R4 : Mrs.R.Sreevidhya

JUDGMENT

The matter is heard through "Video-conferencing".

The Civil Miscellaneous Appeal has been filed by the appellant/2<sup>nd</sup> claimant seeking enhancement of compensation granted by the Tribunal in the award dated 18.06.2014 made in

M.C.O.P.No.135 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

The Cross-Objection has been filed by the respondents 5 and 6/claimants 1 and 3 seeking enhancement of compensation granted by the Tribunal in the award dated 18.06.2014 made in M.C.O.P.No.135 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

2.The appellant and the respondents 5 and 6 are the claimants in M.C.O.P.No.135 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Vigneshwaran, who died in the accident that took place on 13.04.2010.

3. Parties are referred to as per their respective ranks in the appeal for the sake of convenience.

4. According to the appellant and the respondents 5 and 6, on the date of accident i.e., on 13.04.2010 at 8.45 a.m., while the deceased Vigneshwaran was driving Toyota Qualis car on the left hand side in Chengam to Tiruvannamalai road, the driver of the van belonging to the 1<sup>st</sup> respondent drove the same in a rash and negligent manner, dashed against the car and caused the accident. Due to the accident, the deceased Vigneshwaran died on the spot. Therefore, the appellant and the respondents 5 and 6 filed the above claim petition claiming compensation against the respondents 1 to 4.

5.The respondents 1 and 2, owners of the van and car respectively, remained exparte before the Tribunal.

6.The 3<sup>rd</sup> respondent/Insurance Company being insurer of the van filed counter statement denying the averments made in the claim petition and contended that the driver of the van was not responsible for the accident. The accident has occurred only due to rash and negligent driving by the deceased, the driver of the car belonging to the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellant and the respondents 5 and 6 is excessive and prayed for dismissal of the claim petition.

7.The 4th respondent/Insurance Company being insurer of the car filed counter statement denying the averments made in the claim petition and contended that the claim petition is not maintainable under Section 166 or 163A of the Motor Vehicles Act in view of the bar under Section 165(1) of the Motor Vehicles

Act. The deceased is not a third party. The driver of the van belonging to the 1st respondent is responsible for the accident. The 4th respondent is not a necessary party to the proceedings. The 4th respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellant and the respondents 5 and 6 is excessive and prayed for dismissal of the claim petition.

8. Before the Tribunal, the 5<sup>th</sup> respondent examined herself as P.W.1, one Sasikumar, Administrative Officer of SVK Enterprises in which the deceased was working, was examined as P.W.2, one Chakravarthy, eye-witness to the accident, was examined as P.W.3 and marked ten documents as Exs.P1 to P10. On the side of the respondents 3 and 4, one Mr.S.Baskaran, Official from RTO, Tiruvannamalai, was examined as R.W.1 and one Naveenkumar was examined as R.W.2 and three documents were marked as Exs.R1 to R3.

9. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the 1<sup>st</sup> respondent and directed the 3<sup>rd</sup> respondent/Insurance Company being insurer of the said van to pay a sum of Rs.8,00,000/- as compensation to the appellant and the respondents 5 and 6 at the first instance and recover the same from the 1<sup>st</sup> respondent as the driver of the van did not possess valid driving license to drive the van and dismissed the claim petition as against the respondents 2 and 4, owner and insurer of the car.

10. Not being satisfied with the amounts awarded by the Tribunal, the appellant/2<sup>nd</sup> claimant has come out with C.M.A.No.3202 of 214 and the respondents 5 and 6 have come out with Cros.Obj.No.82 of 2015 seeking enhancement of compensation awarded by the Tribunal.

11. The learned counsel appearing for the appellant contended that the deceased was working as a driver in SVK Enterprises and was earning a sum of Rs.14,100/- per month. To prove the income, P.W.2 produced Ex.P9/salary certificate, but did not appear for cross-examination and his evidence was discarded. The monthly income of the deceased cannot be fixed as Rs.6,000/- just because evidence of P.W.2 is discarded. The Tribunal erred in fixing the monthly income based on the oral evidence of P.W.1 against documentary evidence viz., Ex.P9. The Tribunal failed to grant any enhancement towards future prospects. The Tribunal erred in deducting 1/3<sup>rd</sup> towards personal expenses. The Tribunal ought to have seen that the deceased was working as a driver and even after retirement, he could have worked as a driver and

earned till his life time beyond the age of 58 years. The Tribunal ought to have awarded more compensation towards loss of love and affection. The 5<sup>th</sup> respondent, who is the first claimant in the claim petition married one Nasar and gave birth to a female child on 22.04.2009. In view of second marriage, the 5<sup>th</sup> respondent/1<sup>st</sup> claimant is not a dependent on the deceased, she is not entitled to claim compensation and prayed to hold that the 5th respondent is not entitled to any compensation for the death of Vigneswaran as she suppressed the material facts, played fraud and prayed for enhancement of compensation and dismissal of the cross-objection filed by the respondents 5 and 6.

12.The learned counsel appearing for the respondents 5 and 6 contended that the appellant having filed the claim petition along with the respondents 5 and 6, her mother and grand mother, has come out with a new invented case after getting award. The appellant filed O.S.No.5360 of 2010 for partition and separate possession before XX Additional City Civil and Sessions Court, Bangalore. In the said suit, the 5<sup>th</sup> respondent was allotted 1/8<sup>th</sup> share. After the decree, the property was sold to one Javid Idris and Mrs.Fathima for a sum of Rs.15,60,000/- by sale deed dated 21.04.2014 before the Sub-Registrar, Banaswadi, Bangalore. The appellant has not approached this Court with clean hands and prayed for enhancement of compensation and dismissal of the appeal filed by the appellant.

13.The learned counsel appearing for the 3<sup>rd</sup> respondent/Insurance Company being insurer of the van contended that the appellant and the respondents 5 and 6 have failed to prove that the deceased was working as a driver and was earning a sum of Rs.14,100/- per month. The 5<sup>th</sup> respondent, who was examined herself as P.W.1 admitted that the deceased was earning a sum of Rs.6,000/- per month. P.W.2, Administrative Officer of the Company in which the deceased was alleged to have worked appeared before the Tribunal and was examined in chief and produced Ex.P9/salary certificate to show that the deceased was earning Rs.14,100/- per month. Subsequently, he did not appear for cross-examination and his evidence was discarded. The Tribunal in the absence of any material evidence, accepting the evidence of P.W.1 fixed monthly income of the deceased as Rs.6,000/-. There is no error in the said award of the Tribunal and the appellant and the respondents 5 and 6 are not entitled for any enhancement of compensation and prayed for dismissal of the appeal filed by the appellant and cross-objection filed by the respondents 5 and 6.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3<sup>rd</sup> respondent/Insurance Company and the learned counsel appearing

for the respondents 5 and 6 and perused the entire materials on record.

15. It is the contention of the appellant that the deceased was working as a driver in SVK Enterprises and was earning a sum of Rs.14,100/- per month. Even though the appellant and the respondents 5 and 6/claimants examined the Administrative Officer of SVK Enterprises in which the deceased was working as P.W.2 and marked the salary certificate as Ex.P9, P.W.2 subsequently did not appear for being cross-examined and his evidence was discarded. Further, the 5<sup>th</sup> respondent/1<sup>st</sup> claimant as P.W.1 in her cross-examination has admitted that the deceased was earning Rs.6,000/- per month. In view of the above materials, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2010. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The deceased was aged 40 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi). There are three dependents of the deceased and 1/3<sup>rd</sup> deducted by the Tribunal towards personal expenses is proper. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable is 15. Thus, the compensation granted by the Tribunal towards loss of dependency is modified to Rs.11,25,000/- (Rs.7,500/- + 1875 [Rs.7,500/- X 25%] X 12 X 15 X 2/3).

16. The contention of the learned counsel appearing for the appellant is that the 5<sup>th</sup> respondent married one Nasar, gave birth to a female child on 22.04.2009 and therefore, the 5<sup>th</sup> respondent is not a dependent on the deceased and she is not entitled to any compensation. The appellant has not produced any material evidence to substantiate her contention before the Tribunal and has not raised this issue before the Tribunal. On the other hand, she filed the claim petition along with the respondents 5 and 6. The Tribunal awarded compensation to all the three claimants. Now it is not open to the appellant to raise this issue. The appellant and the respondents 5 and 6 are entitled to compensation as modified by this Court. The amounts awarded by the Tribunal under all 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         | 7,20,000                        | 11,25,000                         | Enhanced                               |
| 2.   | Loss of consortium         | 30,000                          | 30,000                            | Confirmed                              |
| 3.   | Loss of love and affection | 30,000                          | 30,000                            | Confirmed                              |
| 4.   | Funeral expenses           | 20,000                          | 20,000                            | Confirmed                              |
|      | Total                      | 8,00,000                        | 12,05,000                         | Enhanced by Rs.4,05,000/-              |

17. In the result, both C.M.A.No.3202 of 2014 filed by the appellant and Cros.obj.No.82 of 2015 filed by the respondents 5 and 6 are partly allowed. The compensation awarded by the Tribunal at Rs.8,00,000/- is hereby enhanced to Rs.12,05,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant and the 5<sup>th</sup> respondent are directed to pay the necessary Court fee if any, on the enhanced compensation. Out of the enhanced award amount, the appellant being daughter of the deceased is entitled to 25% of the compensation and the respondents 5 and 6 being wife and mother of the deceased are entitled to 50% and 25% of the compensation respectively, as per the apportionment made by the Tribunal. The learned counsel appearing for the appellant contended that the 6<sup>th</sup> respondent, mother of the deceased died, but he has not filed any death certificate. He further submitted that except appellant, there is no other legal heir for the 6<sup>th</sup> respondent. In view of the above, it is open to the appellant to file a petition before the Tribunal to show that the 6<sup>th</sup> respondent died and appellant is the only legal heir. On filing such petition along with the document, the appellant is entitled to receive compensation apportioned to the 6<sup>th</sup> respondent also. The 3<sup>rd</sup> respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1<sup>st</sup> respondent, owner of the van. On such deposit, the appellant and the 5<sup>th</sup> respondent are permitted to withdraw the enhanced award amount now determined by this Court as per the apportionment as modified above along with proportionate interest and costs, less the amount if any,

already withdrawn. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge  
Motor Accident Claims Tribunal  
Tiruvannamalai.

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

+1cc to M/s.R.Rajaramani, Advocate, S.R.No.37134

+1cc to M/s.R.Sreevidhya, Advocate, S.R.No.37044

+1cc to M/s.M.Malar, Advocate, S.R.No.36807

C.M.A.No.3202 of 2014 & M.P.Nos.1,2 of 2014  
and Cross Objection No.82 of 2015

CNR (CO)  
KM(21/04/2021)

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