

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 3352 & 3434 of 2014
and M.P. Nos. 1 & 1 of 2014
and C.M.P. No. 4988 of 2017
in Cross Objection SR 20368 of 2017

C.M.A. No. 3352 of 2014

The Divisional Manager,
The United India Insurance Company Limited
1, Katpadi Road,
Vellore.

.. Appellant in CMA.3352/2014/
1st respondent in Cross objection

Vs.

Narayanaswamy (Deceased)

1.Pattu Ammal
2.Thulasi
3.Thavamani
4.Dhanalakshmi
5.Kuppan

: Respondent 1 to 5 in CMA.3352/2014
Cross objector in cross objection in
SR.No.20368/2017

6.P.Kannaiya Reddiar
7.Mohana

: Respondent 6&7 in CMA.3352/2014
2 & 3 respondents Cross objector in
cross objection in SR.No.20368/2017

(R3 to R5 are impleaded in the proceedings as legal heirs of the deceased Narayanaswamy as per orders made in M.P.No.2618/2008 and amended claim petition filed on 15.11.2012 vide orders made in M.P. No. 2069 of 2012.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 04.03.2014, made in M.C.O.P.No. 41 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Tiruvannamalai.

For Appellant : Mr. D.Bhaskaran

For Respondents : Mr. F.Terry Chella Raja (For R1 to R5)
No appearance (For R6)
Mr. B. Jawahar (For R7)

Cross Objection SR 20368 of 2017

Narayanaswamy (Deceased)

- 1.Pattu Ammal
- 2.Thulasi
- 3.Thavamani
- 4.Dhanalakshmi
- 5.Kuppan

... Cross Objectors

Vs.

- 1.The United India Insurance Company Limited
1, Katpadi Road, Vellore.
- 2.Kannaiya Reddiar
- 3.Mohana

... Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 04.03.2014, made in M.C.O.P. No. 41 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Chennai.

For Cross Objector : Mr. F. Terry Chellaraja

For Respondents : Mr. D.Bhaskaran (For R1)
No appearance (For R2)
M/s.B.Jawahar (For R3)

C.M.A. No. 3434 of 2014 सत्यमेव जयते

The Divisional Manager,
The United India Insurance Company Limited
1, Katpadi Road,
Vellore. ... Appellant/2nd Respondent

Vs.

- 1.Mohana
- 2.P. Kannaiya Reddiar
- 3.Pattammal
- 4.Thulasi

.. Respondents

Impleaded as 4th respondent vide orders dated 12.12.2006 in M.P.No.575/2006)

(Amended claim petition filed vide orders dated 28.03.2007 made in M.P. No. 2076/2006)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 04.03.2014, made in M.C.O.P. No. 42 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Tiruvannamalai.

For Appellant : Mr. D. Bhaskaran

For Respondents : Mr. B. Jawahar (For R1)

No appearance (For R2)

Mr. F. Terry Chella Raja (For R3 & R4)

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

These Civil Miscellaneous Appeals have been filed by the appellant-Insurance Company against the common award dated 04.03.2014, made in M.C.O.P. Nos. 41 and 42 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Chennai.

Cross Objection SR. 20368 of 2017 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 04.03.2014, made in M.C.O.P. No. 41 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Chennai.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their ranks in their claim petitions.

3.The appellant is the 2nd respondent in M.C.O.P. Nos. 41 and 42 of 2012, on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Chennai. The claimants in M.C.O.P. No. 41 of 2012 who are the parents and siblings of the deceased and the claimant in M.C.O.P. No. 42 of 2012, who is the wife of the deceased, filed the said claim petitions, claiming a sum of Rs.25,00,000/- and Rs.15,00,000/- respectively as compensation for the death of one Arumugam who died in the accident that took place on 09.09.2004.

4. According to the claimants, on the date of accident viz., 09.09.2004, when the deceased was riding his Motorcycle bearing Registration No. TN-25-D-8847 in Somavarakula Street Main Road, the driver of the 1st respondent, drove the Tractor bearing Registration No. TN-25-A-2496 along with the Trailer bearing Registration No. TN-25-A-6877 in a rash and negligent manner in the opposite direction, dashed against the deceased and caused the accident. In the accident, the said Arumugam succumbed to injuries. Hence, parents and sister of the deceased filed M.C.O.P. No. 41 of 2012, claiming compensation for the death of their son, impleading wife of the deceased as 3rd respondent. Pending claim petition, the father/1st claimant Narayanaswamy died and his legal heirs were impleaded as respondents 3 to 6. The wife of the deceased filed M.C.O.P. No. 42 of 2012, impleading the mother and sister of the deceased as respondents 3 and 4 and claiming compensation for the death of her husband.

5. The 1st respondent filed counter statement in M.C.O.P. No. 41 of 2012 and denied all the averments made by the claimants in the claim petition. According to the 1st respondent, the driver of Tractor-Trailer drove the vehicle carefully in a slow manner, but the deceased drove the Motorcycle in a rash and negligent manner in opposite direction and dashed against the Tractor-Trailer. The accident occurred due to the negligent driving of the deceased. The Tractor-Trailer belonging to the 1st respondent was insured with the 2nd respondent and hence, the 2nd respondent-Insurance Company is liable to pay compensation to the claimant and prayed for dismissal of the claim petition as against the 1st respondent.

6. The 1st respondent remained exparte before the Tribunal in M.C.O.P. No. 42 of 2012.

7. The 2nd respondent-Insurance Company filed separate counter statements in both the claim petitions and denied all the averments made by the claimants in both the claim petitions. According to the 2nd respondent, the claimants have to prove that the Tractor-Trailer involved in the accident was insured with the 2nd respondent-Insurance Company and the driver of the Tractor had valid driving license to ride the same at the time of accident. The 2nd respondent also denied the age, avocation, income, manner of accident and legal heirs of the deceased and prayed for dismissal of both the claim petitions.

8. The 3rd respondent in M.C.O.P. No. 41 of 2012, wife of the deceased, filed counter statement and denied the averments made in the claim petition by the claimants with regard to dependency. According to the 3rd respondent, she is the wife of the deceased Arumugam, the deceased 1st claimant is the father,

2nd claimant is the mother and 3rd claimant who is the sister of the deceased Arumugam is working as Teacher in an Elementary School and she is taking care of herself as well as the 2nd claimant and hence, the claimants 2 and 3 are not the dependants of the deceased. On 07.04.2003, the deceased Arumugam was married to the 3rd respondent herein in the presence of the parents and she is the only legal heir and dependant of the deceased. The deceased Arumugam was living separately with the 3rd respondent and the parents and sister of the deceased were not depending on the income of the deceased. The 1st claimant, father of the deceased Arumugam was doing provisional business and was never dependent on the income of the deceased. Pending claim petition, he died. Hence, the claimants 3 to 6 who are the legal heirs of the father of the deceased are not entitled to claim any compensation and prayed for dismissal of this claim petition.

9.The 3rd respondent in M.C.O.P. No. 42 of 2012, mother of the deceased filed counter statement and denied the averments with regard to dependency made in the claim petition filed by the wife of the deceased. According to the 3rd respondent, the respondents 3 and 4 in M.C.O.P. No. 42 of 2012 are the only legal heirs of the deceased Arumugam and the claimant in M.C.O.P. No. 42 of 2012 is not legally married to the deceased Arumugam. The deceased Arumugam never married the claimant in M.C.O.P. No. 42 of 2012 and he died as a bachelor. Hence, the claimant in M.C.O.P. No. 42 of 2012 is not entitled to claim compensation. The father, mother and sister of the deceased, has filed claim petition in M.C.O.P. No. 41 of 2012, claiming compensation and prayed for dismissal of claim petition in M.C.O.P. No. 42 of 2012.

10.Before the Tribunal, the claimant in M.C.O.P. No. 42 of 2012 examined herself as P.W.1, examined the 3rd respondent in M.C.O.P. No. 42 of 2012 as P.W.2 and examined one eye witness as P.W.3 and marked 11 documents as Exs.P1 to P11. The respondents 1 and 2 did not let in any oral and documentary evidence.

11.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the Driver of the Tractor-Trailer belonging to the 1st respondent, awarded a sum of Rs.18,36,936/- as compensation and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,36,936/- as compensation to the 2nd claimant in M.C.O.P. No. 41 of 2012, mother of the deceased and Rs.10,00,000/- as compensation to the claimant in M.C.O.P. No. 42 of 2012, wife of the deceased. The Tribunal dismissed the claim petition as against the claimants 3 to 6 in M.C.O.P. No. 41 of 2012.

12. Against the common award dated 04.03.2014, made in M.C.O.P. Nos. 41 and 42 of 2012, the 2nd respondent-Insurance Company has come out with the present appeals.

13. Though the 2nd respondent has raised various grounds with regard to negligence and liability fastened on them, at the time of arguments, the learned counsel appearing for the 2nd respondent-Insurance Company restricted his arguments with regard to quantum of compensation granted by the Tribunal in both the claim petitions. The learned counsel appearing for the 2nd respondent contended that the Tribunal erred in granting huge sum of Rs.18,36,936/- as compensation without properly adjudicating the income of the deceased. The claimants have failed to prove the educational qualification, income and avocation of the deceased. The claimants in M.C.O.P. No. 41 of 2012, who are the mother and siblings of the deceased have stated that the deceased was working as a Civil Engineer in Bharath Engineering Constructions, Thiruvannamalai and was earning a sum of Rs.15,000/- per month, while the claimant in M.C.O.P. No. 42 of 2012, who is the wife of the deceased has stated that the deceased was earning a sum of Rs.3,000/- per month, working as a Coolie. The Tribunal failed to note the contradictory statement in both the claim petitions with regard to avocation and income of the deceased and erroneously, fixed a sum of Rs.14,000/- per month as notional income and awarded excessive amount as compensation and prayed for reducing the same.

14. The learned counsel appearing for the claimants in M.C.O.P. No. 41 of 2012 submitted that at the time of accident, the deceased was aged 33 years, working as a Civil Engineer at Bharat Engineering Consultant and was earning a sum of Rs.14,000/- per month. Though the Tribunal has fixed the monthly income of the deceased as Rs.14,000/-, it has failed to take note of the age of the deceased, to grant future prospects. The Tribunal failed to grant any amount towards transport expenses and loss of estate and ought to have awarded more compensation under the heads funeral expenses, loss of love and affection and mental agony. The Tribunal erred in dismissing M.C.O.P. No. 41 of 2012 as against the claimants 3 to 6 who are the siblings of the deceased. In any event, the total compensation awarded by the Tribunal is meagre. The claimants in M.C.O.P. No. 41 of 2012 have also filed Cross Objection and the same is pending in SR stage and prayed for dismissal of both the appeals and prayed for enhancement of the compensation.

15. The learned counsel appearing for the claimant in M.C.O.P. No. 42 of 2012, wife of the deceased made submissions

in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

16. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

17. Heard the learned counsel appearing for the 2nd respondent-Insurance Company as well as claimants in both the appeals and perused the entire materials available on record.

18. From the materials on record, it is seen that two claim petitions were filed claiming compensation for the death of one Arumugam in the accident that occurred on 09.09.2004. M.C.O.P. No. 41 of 2012 was filed by father, mother and sister of the deceased. The claimant in M.C.O.P. No. 42 of 2012 was shown as third respondent in the said claim petition. The 3rd respondent in M.C.O.P. No. 41 of 2012 filed M.C.O.P. No. 42 of 2012, claiming to be wife of the deceased Arumugam. Both the claim petitions were heard, common evidence was recorded and common award was passed. Pending claim petition, father of the deceased/1st claimant in M.C.O.P. No. 41 of 2012 died. The claimants 4 to 6 were impleaded in M.C.O.P. No. 41 of 2012 as legal heirs of the deceased 1st claimant/father of the deceased Arumugam. It is the contention of the claimants in M.C.O.P. No. 41 of 2012, who are the parents and siblings of the deceased, that at the time of accident, the deceased was a Civil Engineer at Bharat Engineering Consultant and was earning a sum of Rs.14,000/- per month, whereas the claimant in M.C.O.P. No. 42 of 2012, who is the wife of the deceased, has claimed that the deceased was working as a Coolie and was earning a sum of Rs.3,000/- per month. The Tribunal taking note of Ex.P11- Salary Certificate, filed by the claimants in M.C.O.P. No. 41 of 2012 to prove that the deceased was working as a Civil Engineer at Thiruvannamalai Bharat Engineering Consultant Company, erroneously fixed a sum of Rs.14,000/- per month as income of the deceased. The accident is of the year 2005. In the absence of examining the author of the Salary Certificate marked as Ex.P11 and taking into consideration the contradiction with regard to avocation and income of the deceased by the claimants in both the claim petitions, the monthly income fixed by the Tribunal at Rs.14,000/- is excessive. Considering the date of accident, the monthly income of the deceased is fixed at Rs.6,500/-.

19. The Tribunal considering Ex.P3 - Postmortem Certificate, fixed the age of the deceased as 33 years, but failed to award any amount towards future prospects. Considering the age of the deceased, this Court grants 40% enhancement towards the future

prospects. Applying the multiplier '16' and deducting 1/3rd towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.11,64,800/- {[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 16 x 2/3}. The amounts awarded by the Tribunal towards loss of consortium to the wife of the deceased/ claimant in M.C.O.P. No. 42 of 2012 / P.W.1, loss of love and affection to the mother of the deceased/ 2nd claimant in M.C.O.P. No. 41 of 2012 / P.W.2 and funeral expenses are meagre. Hence, the same are enhanced to Rs.40,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded under the said head. 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	17,91,936/-	11,64,800/-	Reduced
2.	Funeral expenses	10,000/-	15,000/-	Enhanced
3.	Loss of consortium to P.W.1	25,000/-	40,000/-	Enhanced
4.	Loss of love and affection to P.W.2	10,000/-	40,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	18,36,936/-	12,74,800/-	Reduced by Rs.5,62,136/-

20. In the result, both the appeals are partly allowed and the compensation awarded by the Tribunal at Rs.18,36,936/- is modified to Rs.12,74,800/- together with 7.5% interest and costs. The award amount shall be apportioned among the 2nd claimant in M.C.O.P. No.41 of 2012 and the claimant in M.C.O.P. No. 42 of 2012 as per the apportionment fixed by the Tribunal. The 2nd respondent-Insurance Company is directed to deposit the compensation now determined by this Court, together 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. Nos. 41 & 42 of 2012. On such deposit, the 2nd claimant in

M.C.O.P. No.41 of 2012 and the claimant in M.C.O.P. No. 42 of 2012 are permitted to withdraw their share of the award amount together with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw excess amount, lying in the credit of M.C.O.P. Nos. 41 & 42 of 2012, if the entire award amount has already been deposited. Consequently, M.P. Nos. 1 & 1 of 2014 are closed.

21. In view of the judgment passed in Civil Miscellaneous Appeals, C.M.P. No. 4988 of 2017 is dismissed and the Cross Objection SR. 20368 of 2017 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

C.M.A. Nos. 3352 & 3434 of 2014
and M.P. Nos. 1 & 1 of 2014
and C.M.P. No. 4988 of 2017
in Cross Objection SR 20368 of 2017

GP(CO)
CSR 20.04.2021

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