IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA NO.1757 OF 2013 AND
MP NO.1 OF 2014
AND
CROSS OBJECTION NO.130 OF 2014

In CMA No.1757 of 2013

New India Assurance Co. Ltd.,
No.17, Fort Main Road, Shevapet,
Salem. ...Appellant / II Respondent

Vs.

1.Kulandhaivel

2.Vijaya ...I,II respondent / Claimants

3.The Chairman,
M/s Muthayammal College of Arts and Science,
Kakkavari Post, Rasipuram,
Namakkal District. ...III Respondent / I Respondent

In Cross Objection No.130 of 2014

1.Kulandhaivel

2.Vijaya ...Cross Objectors

Vs.

1.The Chairman,
M/s Muthayammal College of Arts and Science,
Kakkavari Post, Rasipuram,
Namakkal District.

2.New India Assurance Co. Ltd.,
No.17, Fort Main Road,
Shevapet, Salem-2. ...Respondents

Prayer in CMA No.1757 of 2013 : Civil Miscellaneous Petitions filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 12.01.2011 passed in M.C.O.P.No.1585 of 2007 by the I Additional District Judge, Motor Accident Claims Tribunal, Salem.

Prayer in Cross Objection No.130 of 2014 : Cross Objection filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 12.01.2011 passed in M.C.O.P.No.1585 of 2007 by the I Additional District Judge, Motor Accident Claims Tribunal, Salem.

In CMA No.1757 of 2013

For appellant : Ms.A.Salomi
for Mr.C.Ramesh Babu

For Respondents : Mr.A.Murugan for R1 and R2
Notice unserved to R3

In CMA No.130 of 2014

For Cross objector : Mr.A.Murugan

For II respondent : Ms.A.Salomi
for Mr.C.Ramesh Babu

COMMON JUDGMENT

Aggrieved over the orders passed by the Tribunal, the Insurance company has filed the present appeal challenging the liability as well as the quantum of compensation, whereas, the claimants have filed the cross objection seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to as per their ranking in the MCOP No.1585 of 2007.

3. The claimants have filed a claim petition seeking compensation of Rs.25,00,000/- for the death of their son Bhoopathi Raja in a road accident that took place on 03.09.2007.

4. The brief case of the claimants is as follows:

On 03.09.2007, at about 17 hours, the deceased Bhoopathi Raja was riding a motorcycle bearing registration No.TN-34-E-4515 along Rasipuram-Attur Main road along with one Baskaran as Pillion rider and while nearing Kongu Thirumana Mandapam, a bus bearing registration No.TN-28-S3233, came behind the motorcycle dashed against the TVS 50, which was coming from opposite direction and turned over on the left side and dashed against the motorcycle. Due to the above impact, the deceased was thrown out from the motorcycle and he succumbed to the injuries. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of accident and since the owner of the bus insured his vehicle with the insurance company, both of them are liable to pay compensation to him.

5. The owner of the vehicle remained exparte before the Tribunal and the insurance company contested the claim petition by filing counter affidavit.

6. Before Tribunal, on the side of the claimants, the first claimant and two other witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P12 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

7. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.18,19,400/- under various heads, which is extracted here under.

Sl No	Heads	Amount in Rs.
1	Loss of dependency 11,200 + 50% 16,800 -50% (8400 x 12x18)	18,14,400
2	Transportation and funeral expenses	5,000
	Total	18,19,400

Aggrieved over the above said order, the insurance company has filed the present appeal challenging the liability as well as the quantum of compensation, whereas the claimants have filed the cross objection seeking enhancement of compensation.

8. According to the counsel for the claimants, the deceased Bhoopathi Raja was a brilliant student and he was a M.E. Graduate and was working as lecturer in the Muthayammal

College of Engineering at Kakkaveri and was earning a sum of Rs.20,000/- per month. According to him, the compensation awarded by the Tribunal is meagre and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted that the accident was occurred only due to the rash and negligent driving of the deceased and that the Tribunal has wrongly applied multiplier '18', but, considering the age of the parents, the proper multiplier would be adopted in this case is '16'. He further submitted that no evidence was adduced to prove the future prospects and the Tribunal ought to have added 30% of the income of the deceased by taking into account the incidence of income tax and therefore, the Award passed by the Tribunal ought to have modified.

10. Now the point for consideration are
(i) Whether the Award passed by the Tribunal has to be modified?
(ii) Whether the compensation awarded by the Tribunal has to be enhanced?

11. Point No.1 and 2:

It is the contention of the claimants that their son was the only breadwinner of the family and he was working as a lecturer in a private college and was earning a sum of Rs.20,000/- per month and due to the negligence on the part of the driver of the bus, their son died on the way to hospital and due to his death, they have suffered a lot, which could not be compensated by anything and their future life is totally affected. Though the insurance company has stated that the cause of the accident was only due to the rash and negligent driving of the deceased, they are not filed any documentary evidence to prove the same. Therefore, the findings of the Tribunal fixing the negligence on the part of the driver of the bus is perfectly correct. Since on the date of accident, the bus was insured with the appellant/ insurance company, they are liable to pay compensation to the claimants.

12. As far as the quantum of compensation is concerned, as per the salary certificate Ex.P12, the Tribunal has rightly fixed the monthly income of the deceased as Rs.11,200/-. As per the decision of the Constitution Bench of the Hon'ble Supreme

Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. In the claim petition, the age of the deceased was stated as 26 years. The Tribunal has fixed the age of the deceased as 25 years, taking into account the Ex.P6 and Ex.P9, driving licence and ration card respectively. But in the first page of the SSLC certificate, which is marked as Ex.P7, the age of the deceased was stated as 26 years. Therefore, as per the SSLC Certificate, which is the authenticated document, the age of the deceased is fixed at 26 years. Proper multiplier to be adopted in the instant case is ' 17 ', as per per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as 11,200+4480 x12x17= 31,98,720 (-) 50% = 15,99,360/-. Accordingly a sum of Rs.15,99,360/- is awarded towards " Loss of dependency ". Apart from this amount, the claimants are also entitled to Rs.40,000/- towards " loss of love and affection " and Rs.15,000/-, Rs.15,000/- towards "loss of estate" and "funeral expenses" respectively. The revised compensation awarded under various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency 11,200 + 50% 16,800 -50% (8400 x 12x18)	18,14,400	15,99,360
2	Transportation and funeral expenses	5,000	15,000
3	Loss of Love and affection	-	40,000
4	Loss of Estate	-	15,000
5	Total	18,19,400	1669360

This amount shall carry interest at the rate of 7.5% per annum. Accordingly, the compensation awarded by the Tribunal is scaled down from Rs.18,19,400/- to Rs.16,69,360/- and inview of the same the cross objection filed by the claimants fails. The points are answered accordingly.

13. In the result,

(i) The civil miscellaneous appeal in CMA No.1757 of 2013 is partly allowed and the compensation awarded by the Tribunal is scaled down from Rs.18,19,400/- to Rs.16,69,360/- No costs. The connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.16,69,360/- along with interest at the rate of of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six months from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the insurance company, the mother of the deceased (who is found to be the sole dependent, as per the order of the Tribunal) is entitled to withdraw the same, after following due process of law.

(iv) The Cross objection No.130 of 2014 is dismissed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

mst

To

The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

+1cc to Mr.C.Ramesh Babu, Advocate SR.No.15599
+1cc to Mr.A.Murugan, Advocate SR.No.15607

CMA No.1757 of 2013 and
MP No.1 of 2014
and
Cross Objection No.130 of 2014

KJ(CO)
RVM(09/11/2021)