IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2792 OF 2019
AND
CROSS OBJECTION NO.14 OF 2021

C.M.A.No.2792 of 2019

1.Latha
2.Minor Jeeva
3.Minor Vishva
4.Minor Asha
(appellants 2 to 4 rep. By their
natural guardian/mother, 1st appellant)
.. Appellants/Claimants

..Vs..

1. Saravanan

2. The Manager,
United India Insurance Co. Ltd.,
Kamalam Complex 1st Floor,
35 C1 Kumbakonam Road,
Jayankondam. .. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2018, made in M.C.O.P. No.33 of 2017, on the file of the Additional District and Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

For Appellants : Mr.P.Parthi Kannan
for M/s.S.Kaithamalai Kumaran

For Respondents : No appearance (For R1)
Mr.M.J.Vijayaraaghavan (For R2)

Cross Objection No.14 of 2021

The Manager,
United India Insurance Co. Ltd.,
Kamalam Complex 1st Floor,
35 C1 Kumbakonam Road,
Jayankondam. .. Cross Objector/
2nd Respondent

Vs.

1.Latha
2.Minor Jeeva
3.Minor Vishva
4.Minor Asha
(appellants 2 to 4 rep. By their
natural guardian/mother, 1st appellant)

.. 1 to 4th Respondents/Claimants

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

Prayer:

This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 27.11.2018, made in M.C.O.P. No.33 of 2017, on the file of the Additional District and Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

For Cross Objector: Mr.M.J.Vijayaraaghavan

For R1 to R4 : Mr.P.Parthi Kannan
for M/s.S.Kaithamalai Kumaran

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

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the 10% income tax deducted from the compensation and for enhancement of the compensation granted by the Tribunal in the award dated 27.11.2018, made in M.C.O.P. No.33 of 2017, on the file of the Additional District and Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

Cross Objection No.14 of 2021 has been filed by the 2nd respondent-Insurance Company to set aside the award dated

27.11.2018, made in M.C.O.P. No.33 of 2017, on the file of the Additional District and Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

2.The appellants/claimants filed M.C.O.P. No.33 of 2017, on the file of the Additional District and Sessions Court, (Motor Accident Claims Tribunal), Ariyalur, claiming a sum of Rs.30,00,000/- as compensation for the death of one Arivazhagan who died in the accident that took place on 03.09.2016.

3.According to the appellants, on the date of accident, when the deceased Arivazhagan was traveling as a pillion rider in a Motorcycle bearing Registration No.TN-61-7598 rode by one Balamurugan on T.Palur to Jeyankondam main road, near Silal VSR Saw Mill, the driver of a TATA Ace bearing Registration No.TN-61-C-1874 belonging to the 1st respondent drove the same in a rash and negligent manner, without following the traffic rules and without honking, dashed against the Motorcycle in which the deceased Arivazhagan traveled and caused the accident. In the accident, the deceased succumbed to fatal injuries. Hence, the appellants filed the said claim petition claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2nd respondent, the accident occurred when one Balamurugan, rider of the Motorcycle in which the deceased traveled as pillion rider, rode the vehicle without possessing driving license and insurance coverage to the vehicle and without obeying the traffic rules, suddenly crossed on the Eastern side of the road, not noticing the TATA Ace vehicle which was coming behind. On seeing the negligent act of the rider of the Motorcycle, the driver of the TATA Ace honked, inspite of which, the rider of the Motorcycle dashed on the TATA Ace vehicle which was coming slowly and carefully, following the traffic rules and regulations and caused the accident. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. At the time of accident, the driver of the TATA Ace vehicle did not possess valid driving license and the vehicle did not have valid Fitness Certificate to ply on the road Hence, for violation of policy conditions, the 2nd respondent-Insurance Company is not liable to indemnify the 1st respondent/owner of the TATA Ace. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st appellant examined herself as P.W.1, examined eyewitness as P.W.2 and marked 7 documents as Exs.P1 to P7. The 2nd respondent examined two witnesses as R.W.1 and R.W.2 and marked two documents as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent driving by driver of the TATA Ace Vehicle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,97,200/- as compensation to the appellants.

8.Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.11.2018, made in M.C.O.P. No.33 of 2017, the appellants have come out with the present appeal.

9.Challenging the liability fixed on them and questioning the quantum of compensation granted to the appellants, the 2nd respondent-Insurance Company has filed Cross-Objection No.14 of 2021.

10.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Server in Hotel and also an Agriculturist and was earning a sum of Rs.30,000/- per month. The Tribunal erroneously fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. Considering the number of dependents, the Tribunal ought not to have deducted 1/3rd towards personal expenses of the deceased and 10% towards income tax, without considering the avocation of the deceased. The Tribunal failed to grant any amount towards loss of love and affection to the appellants 2 to 4, who lost their father. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are meagre and prayed for enhancement of compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company/Cross Objector contended that at the time of accident, the driver of the offending vehicle belonging to the 1st respondent plied the vehicle without valid Fitness Certificate and violated the terms and conditions of the policy. The Tribunal having held in para 11 of the award that the 1st respondent is at fault in plying the vehicle in the road without Fitness Certificate, erred in fastening the liability on the 2nd respondent-Insurance Company/Cross objector. In any event, the Tribunal ought to have ordered pay and recovery. The amounts awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal and setting aside the award of the Tribunal. In support of his case, the learned counsel relied on the judgment of this Court (delivered by me) reported in 2021 (1) TNMAC 112 [New India Assurance Co. Ltd., Vs. P.Suresh and another].

12.Heard the learned counsel appearing for the appellants as well as the learned counsel for the 2nd respondent who appeared through video conference and perused the materials available on record.

13.From the award of the Tribunal, it is seen that the Tribunal held that at the time of accident, the offending vehicle did not have Fitness Certificate. The Tribunal having held that the 1st respondent committed fault, erroneously fastened the liability on the 2nd respondent-Insurance Company on the ground that the driver of the offending vehicle possessed driving license and vehicle was insured with the 2nd respondent-Insurance Company. As per the judgment of the Hon'ble Apex Court reported in 2013 (2) TN MAC 515 (DB) [The Manager, United India Insurance Co. Ltd., Vs. Balakrishnan and others], if the owner of the vehicle violated the policy conditions by not possessing Fitness Certificate for the vehicle, the Insurance Company is not liable to pay compensation. At the same time, the Insurance Company cannot be exonerated completely. The relevant portions of the judgment referred to above reads as follows:

> "8. We find that though there was no valid Fitness Certificate for the Lorry on the date of accident, on a perusal of the evidence available on record, it is clear that the Inspector of the Insurance Company, who was examined as RW2, has admitted in his cross-examination that the Motor Vehicle Inspector has given a report stating that absolutely there is no mechanical defect in the vehicle. Thus, the evidence of RW2 would show that even on the date of occurrence, the vehicle was found to be fit to run. Moreover, we are of the opinion that the evidence on record would show that the Fitness Certificate had expired just one month prior to the date of occurrence and the same could be renewed at any time. In this situation, we are of the opinion that since the vehicle was covered by insurance on the date of accident, the Insurance Company cannot deny the payment of Compensation in respect of the claim made by the third parties. So far as the third party claims are concerned, the Insurance Company can pay the Compensation amount and recover the same from the owner of the vehicle. In view of the above discussions, we are of the view that since on the

of accident there is no valid Fitness Certificate, the Insurance Company can pay the Compensation and recover the same from the owner of the vehicle.

....

14.However, since there is no valid Fitness Certificate for the Lorry, this Court directs the Insurance Company to pay the compensation amount in both the cases to the legal heirs of the deceased Praveen and the injured Claimant Jaiganesh and recover the same from the owner of the vehicle. The Insurance Company is also directed to deposit the entire Compensation amount with accrued interest, if not so far deposited, within a period of eight weeks from the date of receipt of a copy of this Order. On such deposit, the Claimants in both the Appeals are permitted to withdraw their respective shares with proportionate interest. Connected M.Ps. are closed"

The ratio of the judgment referred to above is squarely applicable to the facts and circumstances of the present case. Hence, the 2nd respondent-Insurance Company is directed to pay the compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the vehicle. The judgment relied on by the learned counsel appearing for the 2nd respondent does not support their case.

14.It is the contention of the appellants that at the time of accident, the deceased was aged 39 years, working as a Supplier in Hotel and was earning a sum of Rs.30,000/- per month. They failed to file any documents to prove the avocation and income. In the absence of any material evidence, the Tribunal fixed the notional income of the deceased as Rs.6,000/- per month. The accident is of the year 2016. The monthly income fixed by the Tribunal is meagre. Considering the date of accident, age of the deceased and nature of work done by him, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. Considering Ex.P5 – post mortem certificate, the Tribunal rightly fixed the age of the deceased as 40 years, but erroneously granted 40% enhancement towards future prospects, instead of 25%. The Tribunal also deducted 10% towards Income Tax. If income of the deceased is fixed at Rs.12,000/- and 25% enhancement is granted towards future prospects, the annual income of the deceased comes to Rs.1,80,000/- {[Rs.12,000/- + Rs.3,000/-(25% of Rs.12,000/-)] x 12}. During the financial year 2016-2017, upto Rs.2,50,000/- there is nil tax. In view of the same, the 10% deduction made by the Tribunal towards Income Tax is set aside. The Tribunal rightly applied multiplier '15' and deducted 1/3rd towards personal expenses of the deceased. Hence, the amounts granted by the Tribunal towards loss of dependency is modified as Rs.18,00,000/- {[Rs.12,000/- + Rs.3,000/-(25% of Rs.12,000/-)] x 12 x 15 x 2/3}. The Tribunal failed to award any amount for loss of love and affection to the appellants 2 to 4 who are the children of the deceased. Hence, a sum of Rs.40,000/- each is awarded towards loss of love and affection to the appellants 2 to 4. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

15.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	9,07,200/-	18,00,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of consortium to 1st appellant	40,000/-	40,000/-	Confirmed
5.	Loss of love and affection to appellants 2 to 4	-	1,20,000/-	Granted
	Total	9,77,200/-	19,90,000/-	Enhanced by Rs.9,92,800/- (19,90,000-9,97,200)
	Amount awarded by the Tribunal	9,97,200/-	-	

Having arrived at a sum of Rs.9,77,200/- as compensation, the Tribunal erroneously awarded a sum of Rs.9,97,200/- as compensation.

16.In the result, C.M.A.No.2792 of 2019 is allowed and Cross Objection No.14 of 2021 is partly allowed. The amount awarded by the Tribunal at Rs.9,97,200/- is enhanced to Rs.19,90,000/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.33 of 2017 at the first instance and recover the same from the 1st respondent. On such deposit, the 1st appellant is permitted to withdraw her share of the award amount, now determined by this Court, 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 shares of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 to 4. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(Admin II)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Ariyalur.

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

+1cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.10796

C.M.A.No.2792 of 2019
and Cross Objection No.14 of 2021

CP(CO)
CS/17/11/2021