



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

HONOURABLE MR. JUSTICE R.SUBBIAH
AND
HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.13 of 2018 & C.M.P.No.222 of 2018
and Cross Objection No.52 of 2019

C.M.A.No.13 of 2018:

The Oriental Insurance Company Limited,
"Oriental House",
O.No.15, N.No.16,
Prakasam Salai, II Floor,
Broadway, Chennai-600 108.

.. Appellant / 2nd Respondent

Vs.

1.S.Ajikumar (Died)
S/o.M.N.Sundaresan

2.Minor Alwin J.Aji

LR of the deceased R1 is now

(Represented by parental grand-father & N.F., M.N.Sundaresan)

... Respondent 1 & 2 / Petitioners

3.B.Veema Reddy

S/o.Ramasamy Reddy

.. 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2017 made in M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.V, Chennai.

For Appellant : Mr.J.Chandran

For RR1 & 2 : Mr.A.A.Venkatesan

Cross Objection No.52 of 2019:

1.S.Aji Kumar, (Died)
S/o.M.N.Sundaresan



2.Alwin J.Aji (Minor)

LR of the deceased R1 is now

Rep by his Grandfather & N.F. M.N.Sundaresan)

.. Cross objectors / Petitioners

WEB COPY

Vs.

1.B.Veema Reddy

S/o.Ramaswamy Reddy

2.Oriental Insurance Co.Ltd.,

Oriental House,

Old No.15, New No.16

Prakasam Salai, II Floor, Broadway,

Chennai-600 102.

.. Respondents / Respondents 1 & 2

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 19.07.2017 made in M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.V, Chennai.

For Cross Objectors : Mr.A.A.Venkatesan

For R2 : Mr.J.Chandran

COMMON JUDGMENT

(Judgment of the Court was delivered by SATHI KUMAR SUKUMARA KURUP,J.)

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 19.07.2017 made in M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.V, Chennai.

2.The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 19.07.2017 made in M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal/Court of Small Causes No.V, Chennai.

3.Both the appeal and cross-objection are arising out of the same accident and same award and hence, they are disposed of by this common judgment.



4.The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

5.The appellant-Insurance Company is second respondent in M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.V, Chennai. The claimants/cross objectors filed the above claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Jolly P.Das, who died in the accident that took place on 10.01.2012.

6.According to the respondents 1 and 2 when the deceased along with his wife and minor son were travelling in a motorcycle bearing Registration No.KL-20-A-0475 on the Poonamallee by pass road, opposite to Telephone Exchange, Poonamallee Chennai-56, from East to West direction. At that time, a lorry bearing Registration No.TN-23-BA-1675 driven by its driver coming from the same direction in a rash and negligent manner, at terrific speed, endangering to the public safety and dashed against the motorcycle by its front left side bumper. Due to the said accident, the deceased got fatal grievous injuries and later he died in the hospital. According to the respondents 1 and 2/claimants, the 3rd respondent being the owner and appellant is the insurer of the vehicle respectively, are liable to pay compensation.

7. Per contra, on behalf of the appellant/Insurance Company, a counter affidavit has been filed, inter alia denying the averments made in the claim petition, it is stated that the driver of the lorry involved in the accident had not possessed valid driving licence or had a valid authorization to drive the vehicle and that there is a delay in filing the FIR in respect of the accident. It is also stated that the claim made by the claimants is excessive and exorbitant there is no liability on the part of the Insurance Company to pay the compensation.

8.Before the Tribunal, two witnesses have been examined as P.W.1 and P.W.2, and marked 17 documents as Exs.P1 to P17. On the side of the appellant/Insurance Company, neither oral nor documentary evidence has been adduced.

9.The Tribunal, on consideration of the pleadings, oral and documentary evidence, held that the accident occurred only



due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent and directed the appellant-Insurance Company being the insurer of the vehicle to pay a sum of Rs.41,85,000/- as compensation to the respondents 1 and 2/claimants.

10. Against the said award dated 19.07.2017 made in M.C.O.P.No.2398 of 2012, the appellant/Insurance Company has come out with the present Civil Miscellaneous Appeal. While, not being satisfied with the award amount granted by the Tribunal, the claimants have come out with the Cross-Appeal seeking enhancement of compensation awarded by the Tribunal.

11. The learned counsel appearing for the appellant in C.M.A.No.13 of 2018 submitted his arguments. As per his submissions, the award passed by the Tribunal is on the higher side. The deceased was a woman who is alleged to have been working as a college Tutor and studying M.Tech as proof of her salary, the salary certificate issued by Maamallan Institute of Technology, Mahabalipuram, has been furnished as Ex.P.16 and also the appointment order appointing deceased when she was alive as Tutor, Maamallan Institute of Technology, Mahabalipuram, was also marked as Ex.P.17. It is the case of the appellant/Insurance Company that for all practical purposes, the deceased was only a student and not a Lecturer. The document under Ex.P.17/the appointment order and salary certificate are self serving documents created by the family members of the claimants for enhanced compensation. Based on the said salary certificate, the Tribunal had calculated the compensation and 50% of the amount was not deducted towards personal expenses. The Tribunal had deducted only 1/3rd and granted the award. On the date of accident, the deceased was aged 26 years. But, the Tribunal had chosen the multiplier for the age up to 25 as 18 as the proper multiplier. It is not the case that on the date of the accident, the claimant who is the husband of the deceased had claimed compensation. The deceased was aged 25 years as per the Tribunal but as per the records would show that the deceased was only aged 25 years and she was not employed and instead of notional income, the salary certificate issued by the Maamallan Institute of Technology, Mahabalipuram, was taken up as truth and accepted by the Tribunal in calculating the compensation. Therefore, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.



12.Per contra, the learned counsel appearing for the respondents 1 and 2 claimants/cross objectors submitted his arguments. It is the submission that the deceased met with an accident and died. The husband had filed the claim petition. The deceased left behind her husband and a minor child. During the pendency of this Civil Miscellaneous Appeal, the husband of the deceased also died. Therefore, the three year old child is orphaned now. The claimants had marked documents. The salary certificate issued from Maamallan Institute of Technology, Mahabalipuram, where the deceased was serving as Tutor/Lecturer during the time of the accident. The Maamallan Institute of Technology, Mahabalipuram, is run by the JPR Educational Trust belonging to the Former Politician and the Proprietor of Sathiyabama Deemed University where B.E. and B.Tech graduates are being offered teaching job and at the same time, they can pursue post graduate degree. Here, as per the petition, the deceased was serving as Tutor in Maamallan Institute of Technology, Mahabalipuram, where she was undergoing M.Tech studies. The objection regarding the document furnished by the claimants as salary certificate and appointment order Maamallan Institute of Technology, Mahabalipuram, is rejected as it is a recognized Deemed University. The learned counsel for the Insurance Company argued that the notional income alone shall be fixed and not the original salary certificate to be accepted. This argument is also found un-acceptable. Now the infant child is under the care of the deceased Jolly P.Das' parents. Therefore, the infant had to be protected by granting just award. The arguments of the learned counsel for the respondents 1 and 2 in C.M.A.No.13 of 2018 and the arguments of the learned counsel in the Cross Objection.No.52 of 2019 is found reasonable. The arguments of the learned counsel for the appellant regarding the claim that the Tribunal had granted excessive compensation cannot be accepted and hence rejected.

13.On perusal of the records, it is found that the deceased Jolly P.Das had completed her 25th year on the date of the accident. Therefore, as pointed out by the learned counsel for the appellant/Insurance Company for the age up to 25, because the deceased had completed 18, she is considered as 25 years old and therefore, the appropriate multiplier is '17'. The claim of the learned counsel for the appellant that the appellant is to be treated as college student also cannot be accepted. The salary certificate ought to have been marked through the staff of the



Maamallan Institute of Technology, Mahabalipuram, along with the acquaintance register regarding the salary of the deceased had been filed and the same was marked as Ex.P.17. The appointment order could have been accepted. In the absence of such witness from the Maamallan Institute of Technology, Mahabalipuram, cannot be accepted is found unreasonable.

14.If what had been submitted by the learned counsel for the appellant is to be allowed, then in any other case, the award cannot be passed by the Tribunal is exercising discretion. The Maamallan Institute of Technology, Mahabalipuram, is a recognized Institute under former politician MLA, the late JPR, holds good record and good reputation among the public. Therefore, the claim made by the claimants, that the deceased was employed as Tutor in the College and was studying for her M.Tech cannot be ignored or taken in light rejecting the salary certificate under Ex.P16 and allowing the claim petition based on the notional income is found unacceptable and unreasonable. Strict rule of evidence is not applicable to enquiry by Tribunal. In such circumstances, Ex.P16-salary certificate and Ex.P17-appointment order furnished by the respondents 1 and 2 herein as the appellant before the Tribunal is found accepted and unreasonable and the same is accepted by this Court for calculating the loss of income of the deceased. On the date of accident, the deceased survived by her husband and a minor son. Therefore, from her monthly salary, towards personal expenses 50% cannot be deducted but 1/3rd alone can be deducted. The objection of the learned counsel for the appellant/Insurance Company regarding 50% deduction is rejected. The objection regarding marking of Exhibits Exs.P16 and P17, is also rejected. Rs.25,000/- was the salary of the deceased as per salary certificate and up to 40 years (40% of the income has to be added towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC) [National Ins. Co. vs. Pranay Sethi], the age of the deceased must be the basis for applying multiplier method. For the age of the deceased, the correct multiplier applicable is '17'. In view of the above, the compensation awarded by the Tribunal towards 'loss of dependency' is modified to Rs.42,84,000/- {Rs.25,000/- X 12 = Rs.3,00,000/- - (10% of Income Tax deduction of Rs.3,00,000/- = Rs.30,000) = Rs.2,70,000/- + (40% of future prospects Rs.2,70,000/- + Rs.1,08,000/-) = Rs.3,78,000/- X 1/3 (1/3 deduction of Rs.3,78,000/-) = Rs.2,52,000/- X 17 (multiplier)}. As regards the consortium is



concerned, the Tribunal awarded a sum of Rs.1,00,000/- to the husband. But now the husband is also no more and hence, the award amount granted towards consortium, cannot be confirmed and accordingly, the same is deducted.

WEB COPY

15.The Tribunal has granted a sum of Rs.2,00,000/- towards loss of love and affection to the claimants, which is excessive and the same is hereby reduced to Rs.1,00,000/-. A sum of Rs.25,000/- granted by the Tribunal towards funeral expenses is hereby reduced to Rs.15,000/-. A sum of Rs.1,00,000/- granted by the Tribunal towards loss of estate is hereby reduced to Rs.15,000/-. A sum of Rs.15,000/- granted by the Tribunal towards Transportation is hereby reduced to Rs.10,000/-. The amount awarded by the Tribunal towards loss of expectation of life is 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 pecuniary benefits	36,45,000/-	42,84,000/-	Enhanced
2.	Loss of love and affection	2,00,000/-	1,00,000/-	Reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation	15,000/-	10,000/-	Reduced
5.	Loss of estate	1,00,000/-	15,000/-	Reduced
6	Loss of Expectation of life	1,00,000/-	1,00,000/-	Confirmed
7	Consortium	1,00,000/-	-	Set aside
	Total	Rs.41,85,000/-	Rs.45,24,000/-	enhanced by Rs.3,39,000/-

16.The compensation awarded by the Tribunal at Rs.41,85,000/- is hereby enhanced to Rs.45,24,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. During the pendency of the appeal, the



claimant/Cross Objector No.1 also died and his father, i.e. Thiru M.N.Sundaresan is brought on record. The 2nd claimant/Cross Objector No.2 is a minor and now in the custody of the said M.N.Sundaresan. Therefore, the said M.N.Sundaresan is directed to pay the Court fee, if any on the enhanced amount of compensation. The appellant/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 to the credit of M.C.O.P.No.2398 of 2012 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.V, Chennai. On such deposit, the Tribunal is directed to deposit the entire award amount in a fixed deposit in the name of the minor claimant Alwin J.Aji in any nationalized bank, till he attains majority. The guardian M.N.Sundaresan is grand father of the minor 2nd respondent is permitted to withdraw the accrued interest once in every three months for the welfare of the minor claimant.

17.In the result, the Civil Miscellaneous Appeal is dismissed while the Cross Objection is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

The Judge,
Motor Accident Claims Tribunal,
Court of Small Causes No.V, Chennai.

C.M.A.No.13 of 2018 & C.M.P.No.222 of 2018
and Cross Objection No.52 of 2019

AK(CO)
SB(20/09/2021)