IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3260 of 2019
and C.M.P.No.18732 of 2019
and Cross Objection No.15 of 2021

C.M.A. No.3260 of 2019

The Divisional Manager,
National Insurance Co. Ltd.,
Divisional Office, No.91,
Officers Line, Vellore. ..Appellant/2nd Respondent

..Vs..

1.Kaliyamma

2.Madhamma @ Lakshmi

3.Parvathi

4.Meena ..1 to 4 Respondents/1 to 4 Petitioners

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

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.08.2018, made in M.C.O.P.No.39 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

For Appellant : Mr.J.Chandran

For Respondents: Mr.SP.Yuaraj (For R1 to R4)

Cross Objection No.15 of 2021

1.Kaliyamma

2.Madhamma @ Lakshmi

3.Parvathi

4.Meena ..Cross Objectors

..Vs..

1. The Divisional Manager,
National Insurance Co. Ltd.,
Divisional Office, No.91,
Officers Line, Vellore.

2. A.Saravanan ..Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 03.08.2018, made in M.C.O.P. No.39 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

For Cross Objectors : Mr.SP.Yuaraj

For Respondents : Mr.J.Chandran (For R1)

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company questioning the quantum of compensation granted by the Tribunal in the award dated 03.08.2018, made in M.C.O.P. No.39 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

Cross Objection No.15 of 2021 has been filed against C.M.A.No.3260 of 2019, seeking enhancement of the compensation granted by the Tribunal in the award dated 03.08.2018, made in M.C.O.P. No.39 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

2.The appellant is the 2nd respondent in M.C.O.P. No.39 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Hanumanth who died in the accident that took place on 14.03.2015.

3.According to the respondents 1 to 4, on the date of accident, when the deceased was standing with his friend Saravanan on the side of the Krishnagiri to Hosur Road at Thorapalli diversion, the 5th respondent, rider-cum-owner of the Motorcycle bearing Registration No.TN-23-BC-9698 drove the same in a rash and negligent manner, at an uncontrollable speed, without sounding horn and without minding the rules of the road, from Krishnagiri side, dashed on the deceased Hanumanth as well as on the said Saravanan and caused the accident. Due to the said impact, Hanumanth sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent riding by the 5th respondent, rider of the Motorcycle and hence, the respondents 1 to 4 filed the said claim petition against the 5th respondent and appellant as owner and insurer of the offending vehicle respectively.

4.The 5th respondent, rider-cum-owner of the Motorcycle, remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, on the date of accident, when the deceased Hanumanth tried to cross the Krishnagiri to Hosur NH road at Thorapalli without noticing the vehicle passing at the NH Road from Krishnagiri side to Hosur, slipped in front of the Motorcycle driven by the 5th respondent. In spite of the fact that the 5th respondent/rider of the Motorcycle stopped the vehicle by applying brake, the deceased Hanumanth fell down on the road and sustained injury and subsequently died. Had the deceased Hanumanth not crossed the trunk road, the accident would not have occurred. The place of accident is the Bus Stand and the vehicles are coming and going with a slow speed and there is no possibility of rash driving of Motorcycle by the 5th respondent. The accident occurred only due to the carelessness and negligence of the deceased Hanumanth. In any event, at the time of accident, the 5th respondent, rider of the Motorcycle did not possess valid driving license. Hence, the appellant is not liable to indemnify the 5th respondent. The respondents 1 to 4 have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eyewitness as P.W.2 and marked 12 documents as Exs.P1 to P12. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by 5th respondent, rider-cum-owner of the Motorcycle and directed the appellant-Insurance Company to pay a sum of Rs.20,96,101/- as compensation to the respondents 1 to 4.

8.Challenging the quantum of compensation granted by the

Tribunal in the award dated 03.08.2018, made in M.C.O.P. No.39 of 2017, the appellant-Insurance Company has come out with C.M.A.No.3260 of 2019.

9.Not being satisfied with the amounts awarded by the Tribunal, the respondents 1 to 4 have filed Cross-Objection No.15 of 2021, seeking enhancement of compensation.

10.The learned counsel appearing for the appellant-Insurance Company contended that in the absence of any documents by the respondents 1 to 4 in support of the avocation and income of the deceased as Hotel Master and Cook for functions and marriages, the Tribunal erroneously fixed the notional income of the deceased as Rs.10,000/- per month and deducted 1/3rd towards personal expenses, without considering the fact that the deceased was a bachelor at the time of accident. The total compensation awarded by the Tribunal for a 19 years old boy, in favor of the mother and 3 elder sisters is excessive and prayed for reducing the compensation granted.

11.The learned counsel appearing for the respondents 1 to 4/Cross Objectors contended that the deceased was aged 19 years, working as a Master in Hotel and he used to cook for functions in a contract basis and was earning a sum of Rs.20,000/- per month, at the time of accident. The deceased was the sole bread-winner of the family. The Tribunal fixed only a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have considered the judgments of the Hon'ble Apex Court and awarded more compensation. The total compensation awarded by the Tribunal is meagre and prayed for dismissal of the appeal filed by the appellant/Insurance Company and for allowing the Cross Objection filed by them for enhancement of the compensation.

12.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

13.It is the contention of the respondents 1 to 4 that at the time of accident, the deceased was working as a Master in Hotel and also cooking for functions and marriages and was earning a sum of Rs.20,000/- per month. They failed to prove the same. In the absence of any materials, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The deceased was aged 19 years at the time of accident. The accident is of the year 2015. Considering the date of accident and nature of work done by the deceased, a sum of Rs.13,000/- per month is fixed as notional income. The deceased was a bachelor at the time of accident. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, instead of deducting 50% and applied correct multiplier '18'. Hence, deducting 50% towards personal expenses of the deceased and applying the multiplier '18', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.14,04,000/- [Rs.13,000/- x 12 x 18 x ½]. The amounts granted by the Tribunal under 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	14,40,072/-	14,04,000/-	Reduced
2.	Loss of love and affection to respondents 1 to 4	40,000/-	40,000/-	Confirmed
3.	Loss of future prospects	5,76,029/-	5,76,029/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
	Total	20,96,101/-	20,60,029/-	Reduced by Rs.36,072/-

14. In the result, C.M.A.No.3260 of 2019 is partly allowed and Cross-Objection No.15 of 2021 is partly allowed in respect of fixing monthly income. The amounts awarded by the Tribunal at Rs.20,96,101/- is modified to Rs.20,60,029/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-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.39 of 2017. On such deposit, the respondents 1 to 4 are permitted to withdraw their 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 appellant-Insurance Company is permitted to withdraw the excess amount available in the deposit to the credit of M.C.O.P. No.39 of 2017, if any already

deposited by them. It is made clear that if the respondents 1 to 4 have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
   (Motor Accident Claims Tribunal),
   Hosur.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.11470
+1cc to M/s.S.P.Yuaraj, Advocate, S.R.No.11664

C.M.A. No.3260 of 2019
and
Cross Objection No.15 of 2021

SPD(CO)
RGA(15/09/2021)