



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2021
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CMA(MD)No.121 of 2020
and
CROS.OBJ(MD)No.2 of 2021
and
CMP(MD)Nos.2283 of 2020 and 597 of 2021

CMA(MD)No.121 of 2020:-

The Divisional Manager,
The New India Assurance Company Limited,
No.105, 1st Floor,
Madurai Road,
Virudhunagar-626 001. ... Appellant/2nd Respondent

vs.

1)R.Sankaramariyammal ...1st Respondent/Petitioner
2)A.Shanthi ...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.11.2019 made in MCOP.No.162 of 2018 on the file of learned Additional District Court, Virudhunagar.

For Appellant : Mr.A.Ilango
For R1 : Mr.D.Sakkaravarthi
For R2 : No appearance

CROS.OBJ(MD)No.2 of 2021:-

R.Sankaramariyammal ... Petitioner/1st Respondent/Petitioner

vs.

1)The Divisional Manager,
The New India Assurance Company Limited,
No.105, 1st Street, Madurai Road,
Virudhunagar-626 001. ...1st Respondent/Appellant/2nd Respondent
2)A.Shanthi ...2nd Respondent/2nd Respondent/1st Respondent

Prayer : Cross Objection filed under order XL1, rule 22 r/w Section 96(1) and (2) of code of Civil Procedure 1988, to enhance the compensation and modify the decree and judgment dated 27.11.2019 made in MCOP.No.162 of 2018 on the file of the MACT/Additional District Court, Virudhunagar.



For Petitioner
For R1

: Mr.D.Sakkaravarthi
: Mr.A.Ilango

COMMON JUDGMENT

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The Civil Miscellaneous Appeal has been filed against the decree and judgment dated 27.11.2019 made in MCOP.No.162 of 2018 on the file of learned Additional District Court, Virudhunagar.

Cross Objection has been filed to enhance the compensation and modify the decree and judgment dated 27.11.2019 made in MCOP.No.162 of 2018 on the file of the MACT/Additional District Court, Virudhunagar.

2.In an accident which occurred on 20.05.2018, son of the 1st respondent/claimant, aged 21 years died. The mother of the deceased filed a claim petition in MCOP.No.162 of 2018 before the Motor Accident Claims Tribunal, Additional District Court, Virudhunagar, claiming compensation of Rs.40 Lakhs. The appellant insurance company who is the insurer of the offending vehicle driven by the 2nd respondent, filed counter disputing the manner of accident and also disputed the compensation claimed under various heads. The Tribunal considering the oral and documentary evidence adduced on both sides, held that the accident had occurred due to the rash and negligent driving of the 2nd respondent's vehicle insured with the appellant and directed the appellant to pay compensation of Rs.20,46,000/- with 7.5% interest per annum. Aggrieved by the quantum of compensation, the insurance company has filed the present appeal and not satisfied with the quantum of compensation, the claimant has filed cross objection seeking enhancement.

3.The learned counsel for the appellant/insurance company would state that while the claimant claimed that the deceased was working as a Cook in M/s.Jayam Caterings at Kanchipuram District and earned Rs.17,000/- per month, in Ex.P1-FIR lodged by the paternal uncle of the deceased, it has been stated that the deceased was working in a Bakery at Goa and when there is a contradiction in the avocation of the deceased itself in the claim petition and Ex.P1-FIR, the learned Judge ought not to have fixed the notional income at Rs.10,000/- which is on the higher side. He would further state that at the time of accident, the deceased was aged 21 years and he was a bachelor, but the Tribunal instead of deducting 50% towards the personal expenses, has erroneously deducted 1/3rd. Except the above, the compensation under other heads are not disputed.

4.The learned counsel for the cross objector/claimant would state that the Tribunal without considering Ex.P7-salary certificate of the deceased marked through PW3-employer of the deceased, to prove that the deceased was earning Rs.17,000/- per month by working as a Cook, has erroneously fixed the notional income of the deceased



at Rs.10,000/- per month, which is contrary to the judgment of this Court reported in **2019 (1) TN MAC 54 (DB), Andal vs. Avinav Kannan**, wherein, the Division Bench evolving formula for determining notional income considering rise in inflation index, fixed Rs.11,000/- as notional income for the accident occurred therein in 2014. In the present case, the accident is of the year 2018 and therefore, the Tribunal ought to have fixed the monthly income of the deceased as per Ex.P7 and arrived at the compensation and if it is calculated so, then the compensation under the head 'loss of income' would be more. He would further state that the Tribunal ought to have awarded Rs.10,000/- towards transportation and Rs.40,000/- towards loss of consortium and Rs.50,000/- towards damage to clothes and articles and as per the judgment in **National Insurance Company Ltd., vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**, the Tribunal ought to have awarded Rs.40,000/- towards loss of love and affection. Thus, he would pray for enhancement on the quantum.

5. Heard the learned counsel for the appellant as well as the respondent/claimant.

6. Perusal of record shows that the claimant claimed that at the time of accident, the deceased was aged 21 years and was earning a sum of Rs.17,000/- per month by working as a Cook in M/s. Jayam Caterings, Kanchipuram District and in this regard, the claimant marked the salary certificate of the deceased as Ex.P7 and also examined PW3-Manager of the above concern. It is the contention of the learned counsel for the appellant that there is a contradiction in the avocation of the deceased i.e., while in the claim petition, it was stated that the deceased was working as a Cook in Kanchipuram and earned Rs.17,000/- per month, in Ex.P1-FIR lodged by the paternal uncle of the deceased, it has been stated that the deceased was working in a Bakery at Goa. Though PW3-employer of the deceased was examined to prove the avocation of the deceased as Cook in Kanchipuram, the Tribunal considering his testimony that his concern is not registered and not produced any record for showing the particulars of employees and customers, rejected his evidence as not trustworthy. Be that as it may, the accident is of the year 2018 and the deceased was aged 21 years at the time of accident and therefore, in my opinion, fixation of monthly income at Rs.10,000/- cannot be said to be erroneous considering the rise in inflation index during the relevant point of time. After adding 40% future prospects as per Pranay Sethi's case, and deducting 1/3rd towards the personal expenses and applying 18 multiplier, the Tribunal arrived at the loss of income at Rs.20,15,928/-. Apart from that, a sum of Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate was awarded by the Tribunal. Altogether, a sum of Rs.20,46,000/- was awarded as compensation with 7.5% interest per annum from the date of petition till the date of deposit.



7.As rightly contended by the learned counsel for the appellant/insurance company, since the deceased was a bachelor at the time of accident, 50% of income has to be deducted towards the personal expenses instead of $1/3^{\text{rd}}$. The notional income of the deceased fixed by the Tribunal is Rs.10,000/- per month. After adding 40% towards future prospects, the monthly income would be Rs.14,000/- and if 50% of income is deducted towards the personal expenses, then the monthly income would be Rs.7,000/-. After computing annual income and applying 18 multiplier loss of income works out to Rs.15,12,000/- (Rs.7000x12x18). Accordingly, the award under the head loss of income is reduced to Rs.15,12,000/- from Rs.20,15,928/- awarded by the Tribunal.

8.Perusal of record shows that the widowed mother of the deceased aged 42 years, has lost her only son aged 21 years and she lost the love and affection of her only son, but the Tribunal has not awarded any sum for the loss of love and affection and therefore, a sum of Rs.1,00,000/- is hereby awarded for the loss of love and affection. There is no award for transportation of corpse by the Tribunal and a sum of Rs.10,000/- is hereby awarded for transportation. Considering the facts and circumstances of the case, the award of Rs.15,000/- each awarded by the Tribunal under the heads loss of estate and funeral expenses is enhanced to Rs.25,000/- each. Accordingly, the total compensation is modified and apportioned hereunder:-

Loss of income	=	Rs.15,12,000/-
Loss of love and affection	=	Rs. 1,00,000/-
Loss of estate	=	Rs. 25,000/-
Funeral expenses	=	Rs. 25,000/-
Transportation	=	Rs. 10,000/-
Damage to clothes and articles	=	Rs. 10,000/-

Modified compensation	=	Rs.16,82,000/-
(Less) Award of the Tribunal	=	Rs.20,46,000/-

Reduction on quantum	=	(-)Rs. 3,64,000/-

9.In the result, there shall be reduction of Rs.3,64,000/- on the quantum of compensation. The appellant insurance company is directed to deposit the modified compensation of Rs.16,82,000/- with 7.5% interest from the date of petition till the date of deposit, less the amount already deposited, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent/claimant is permitted to withdraw the same, without filing formal permission petition before the Tribunal.

10. With the above modification, the Civil Miscellaneous Appeal



and Cross Objection are allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Judge,
Virudhunagar.

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The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai - 2 Copies

+1 CC to M/s.D.SAKKARAVARTHI, Advocate (SR-6559[F] dated 22/02/2021)

+1 CC to M/s.A.ILANGO, Advocate (SR-6981[F] dated 24/02/2021)

CMA(MD)No.121 of 2020
DATED : 22.02.2021

MJ(CO)
KB(09.03.2021) 5P C