IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1951 of 2016
and Cross Objection No.39 of 2021
& C.M.P.No.14182 of 2016

C.M.A.No.1951 of 2016

The United India Insurance Company Ltd.,
Divisional Office II,
Peramanoor Main Road,
Salem 636 007. .. Appellant/2nd Respondent

Vs.

1.Jayammal

2.Saitu ... 1 & 2 Respondents/1 & 2 Petitioners

3.Amarnath .. 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.03.2016 in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem.

For Appellant : Mr.J.Chandran

For Respondents: Mr.S.P.Yuvaraj for R1 and R2

Cross Objection No.39 of 2021 in CMA No.1951 of 2016:

1.Jayammal
2.Saitu .. Cross Appellants/Respondents 1 & 2

Vs.

1. The United India Insurance Company Ltd.,
   Divisional Office II,
   Peramanoor Main Road,
   Salem 636 007. ... 1st Respondent/Appellant

2. Amarnath .. 2nd Respondent/3rd Respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against C.M.A.No.1951 of 2016 which has been filed against the judgment and decree dated 31.03.2016 made in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem.

For Cross Appellants : Mr.S.P.Yuvaraj

For R1 : Mr.J.Chandran

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 31.03.2016 made in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem.

2.The Cross-Objection has been filed by the claimants in M.C.O.P.No.92 of 2014 seeking enhancement of compensation granted by the Tribunal in the award dated 31.03.2016 made in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem.

3.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem. The respondents 1 and 2 filed the said claim petition against the appellant as well as the 3rd respondent being insurer and owner of the offending vehicle, claiming a sum of Rs.25,00,000/- as compensation for the death of one Selembarasan, who died in the accident that took place on 17.04.2013.

4.According to the respondents 1 and 2, on the date of accident i.e., 17.04.2013 at about 2.30 a.m., while the deceased Selembarasan was travelling as a pillion rider in the motorcycle driven by the 3rd respondent, rider-cum-owner of the motorcycle rode the same in a rash and negligent manner on Salem to Tirupathy road, near Ambur, hit against the Eicher van and fell down. In the said accident, the said Selembarasan sustained grievous head injury and died. Therefore, the respondents 1 and 2 have filed the claim petition claiming a sum of Rs.25,00,000/- as compensation against the 3rd respondent as well as the appellant being owner and insurer of the motorcycle.

5.The appellant/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that when the deceased was travelling as a pillion rider in a motorcycle driven by the 3rd respondent/owner, near Ambur bus stand, the driver of the Eicher van drove the same behind the motorcycle in a rash and negligent manner and dashed on the rear side of the motorcycle. Due to that impact, the deceased fell down from the motorcycle and sustained head injuries and died at Government Hospital, Vellore. The accident occurred only due to the negligence of the Eicher van. The First Information Report was also registered against the said driver of the Eicher van and it is a clear case of "Hit and Run". Since the respondents 1 and 2 could not find out the registration number of the Eicher van, with a malafide intention to make out a wrongful gain, falsely averted that accident occurred due to negligence of the 3rd respondent/rider of the motorcycle. The Motor Vehicles Inspector's Report revealed that the Eicher van ran over the motorcycle and hence, the insurer of the Eicher van alone is liable to pay compensation to the respondents 1 and 2. The claim petition is bad for non-joinder of owner and insurer of the Eicher van and mis-joinder of appellant, insurer of the motorcycle. The respondents 1 and 2 without any evidence claim that at the time of accident the deceased was a Sales Man, earning a sum of Rs.12,000/- per month besides doing B.Ed Course. In any event, the compensation claimed by the respondents 1 and 2 are excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Thangaraj, eye-witness as P.W.2 and marked 6 documents as Exs.P1 to P6. The appellant/Insurance Company examined their official, one Jeyavel as R.W.1 and marked Insurance Policy as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the negligence of both the driver of the eicher van as well as the rider of the motorcycle. The Tribunal considering the evidence of P.W.2, eye-witness to the accident, held that 3rd respondent/ rider-cum-owner of the motorcycle while trying to over take the eicher van, hit against the eicher van and caused the accident and directed the appellant/Insurance Company being insurer of the motorcycle to pay a sum of Rs.8,01,000/- as compensation to the respondents 1 and 2.

8.Against the said award dated 31.03.2016 made in M.C.O.P.No.92 of 2014, the appellant-Insurance Company has come out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the respondents 1 and 2 have come out with the present cross objection, seeking enhancement of compensation.

9.The learned counsel appearing for the appellant/Insurance Company contended that the accident occurred due to rash and negligent driving by driver of the Eicher van. The 3rd respondent who was rider of motorcycle gave a complaint that the accident occurred due to rash and negligent driving by driver of Eicher van. As per the statement of the 3rd respondent, the driver of the Eicher van did not stop the van and hence, he could not note down the registration number of the Eicher van. The Police, after registering the First Information Report against the driver of the Eicher van, filed referred charge sheet as undeductable. In view of the same, the respondents 1 and 2 have claimed that the accident has occurred due to rash and negligent driving by 3rd respondent, rider-cum-owner of the motorcycle. In any event, the Tribunal having held that the accident occurred due to negligence of both 3rd respondent, rider of the motorcycle as well as the driver of the Eicher van, erroneously fastened the entire liability on the appellant/Insurance Company, without apportioning 50% liability on the other vehicle. The respondents 1 and 2 failed to prove the avocation and income of the deceased and the notional income fixed by the Tribunal is excessive. The respondents 1 and 2 have not made out any case for enhancement and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 and 2 filed cross objection and contended that the accident occurred only due to rash and negligent driving by the 3rd respondent, rider-cum-owner of the motorcycle. The 3rd respondent, rider-cum-owner of the motorcycle, in order to escape from his liability, gave a false complaint that the accident occurred only due to rash and negligent driving by driver of the Eicher van. The respondents 1 and 2 examined one Thangaraj, eye-witness to the accident as P.W.2, to prove that the accident occurred only due to rash and negligent driving by 3rd respondent, rider-cum-owner of the motorcycle. The Tribunal erroneously held that both the driver of the Eicher van as well as the 3rd respondent, rider-cum-owner of the motorcycle, were negligent and caused the accident. At the time of accident, the deceased was working as a Sales Man in Men's Wear and was earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed a meagre amount of Rs.7,000/- per month as notional income of the deceased. The deceased was aged 24 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects and compensation for loss of estate. The Tribunal has awarded a meagre amount towards loss of love and affection and prayed for enhancement of compensation and dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

12.From the materials available on record, it is seen that at the time of accident, the deceased travelled as a pillion rider in the motorcycle bearing Registration No.TN 54 D 1652, driven by the 3rd respondent. In the accident, the deceased sustained fatal injury. According to the respondents 1 and 2, the 3rd respondent drove the motorcycle in a rash and negligent manner and dashed against the Eicher van and caused the accident. It is the further case of the respondents 1 and 2 that the 3rd respondent, in order to escape from his liability, gave a false complaint against the driver of the Eicher van. The 1st respondent examined herself as P.W.1, before the Tribunal and deposed as per the averments in the claim petition. She is not an eye-witness to the accident. The respondents 1 and 2 examined one Thangaraj, eye-witness to the accident as P.W.2, who deposed that when the 3rd respondent tried to over take the Eicher van, he lost the control. At that time, the Eicher van hit the motorcycle and thus the accident occurred. In the accident, both the 3rd respondent/rider-cum-owner of the motorcycle as well as the deceased/ pillion rider fell down and van hit the deceased and caused fatal injury.

13.On the other hand, it is the case of the appellant that the accident occurred only due to rash and negligent driving by driver of the Eicher van. The appellant/Insurance Company relied on the First Information Report to substantiate their contention. The First Information Report was registered based on the complaint given by the 3rd respondent and he is an interested person. It is the case of the respondents 1 and 2 that in order to escape from his liability, the 3rd respondent gave a false complaint against the driver of Eicher van. The 3rd respondent did not appear before the Tribunal and prove the statement given by him. Admittedly, the accident occurred near Ambur bus stand. It is also seen from the claim petition that the driver of the auto took the deceased as well as the 3rd respondent/rider of the motorcycle to the Hospital. The respondents 1 and 2 examined one of the eye-witnesses. The appellant did not examine any eye-witness to prove that the accident occurred due to negligence by driver of the van. In such circumstances, the Tribunal considered the evidence of P.W.2, to fix the negligence. P.W.2 has deposed that the 3rd respondent/rider of the motorcycle tried to over take Eicher van and lost control and at that time, the van hit the motorcycle. The evidence of P.W.2 shows that the 3rd respondent/rider of the motorcycle has also contributed negligence. The Tribunal considered this fact in proper perspective and held that both the driver of the van as well as 3rd respondent/rider of the motorcycle are responsible for the accident. There is no error in the finding of the Tribunal. Having held so, the Tribunal failed to apportion percentage of negligence on the part of the driver of the van and 3rd respondent/rider of the motorcycle. Considering the materials on record, this Court is of the view that both the driver of the van and 3rd respondent/rider of the motorcycle are equally responsible for the accident and each contributed 50% negligence to the accident. The Tribunal having held that both the driver of the van and 3rd respondent/rider of the motorcycle are responsible for the accident, erroneously fastened entire liability on the appellant/Insurance Company. Therefore, the said portion of the award alone is hereby set aside and the appellant/Insurance Company is liable to pay only 50% of the compensation awarded by the Tribunal.

14.As far as quantum of compensation is concerned, the respondents 1 and 2 claimed that the deceased was working as a Sales Man in Men's Wear and was earning a sum of Rs.12,000/- per month. They have not filed any documents, except Mark Sheet and Transfer Certificate of the deceased. In the absence of material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2013. The notional income fixed by the Tribunal is meagre. Considering the date of accident and age of the deceased, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 24 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. The deceased died as bachelor aged 24 years. Hence, the Tribunal has rightly deducted 50% towards personal expenses and applied multiplier '18'. By granting 40% enhancement towards future prospects, the amount granted by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 18 X 1/2}. The Tribunal has awarded a meagre amount of Rs.20,000/- towards loss of love and affection and the same is hereby enhanced to Rs.80,000/-. The amounts granted by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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	7,56,000/-	13,60,800/-	Enhanced

2.	Loss of love and affection	20,000/-	80,000/-	Enhanced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of estate	-	15,000/-	Granted
	Total	8,01,000/-	14,70,800/-	Enhanced by Rs.3,34,900/- (Rs.7,35,400/- - Rs.4,00,500/-)
	50% of compensation	4,00,500/-	7,35,400/-	

15.In the result, both the Civil Miscellaneous Appeal and Cross Objection are partly allowed and the amount awarded by the Tribunal at Rs.8,01,000/- is hereby enhanced to Rs.14,70,800/- 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 50% of the award amount now determined by this Court (i.e., Rs.7,35,400/-) along with proportionate interest and costs, less the amount if any already deposited, 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.92 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Salem. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, now determined by this Court as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vkr

To

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

2. The Section Officer,
   VR Section, High Court,
   Madras.

+1cc to M/s.J.Chandran, Advocate, S.R.No.4131

+1cc to M/s.S.P.Yuaraj, Advocate, S.R.No.4132

C.M.A.No.1951 of 2016
and Cross Objection No.39 of 2021
& C.M.P.No.14182 of 2016

RGN(CO)
SU(03/06/2022)