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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.03.2022
Delivered on	20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.4003 of 2019
and
Cross Objection No.36 of 2022
and
C.M.P.No.22621 of 2019

C.M.A.No.4003 of 2019

M/s Reliance General Insurance Co. Ltd.,
Balmer Lawrie House, 628,
Anna Salai, Teynampet,
Chennai.

... Appellant

Vs.

1.P.Dhanalakshmi
2.P.Selvasundari
3.P.Indhira
4.P.Shanthi
5.Unnamalai

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 12.12.2018 made in MCOP No.270 of 2009 on the file of the Motor Accident s Claims Tribunal, Subordinate Judge, Gingee.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.N.Nataraj for R1 & R2
No appearance for R3 & R4
R5-Not Ready in Notice

Cross Objection No.36 of 2022

1.P.Dhanalakshmi
2.P.Selvasundari
3.P.Indhira

<https://hcservices.ecourts.gov.in/hcservices/>

... Cross Objectors



Vs.

1.M/s Reliance General Insurance Co. Ltd.,
Balmer Lawrie House, 628,
Anna Salai, Teynampet,
Chennai.

2.P.Shanthi

3.Unnamalai

... Respondents

PRAYER: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Memorandum of Cross Civil Miscellaneous Appeal in C.M.A.No.4003 of 2019 filed by the first respondent herein before this Court against the Judgment and Decree dated 12.12.2018 made in MCOP No.270 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gingee.

For Cro.Objector : Mr.K.N.Nataraj
For Respondents : Mr.S.Arunkumar for R1

COMMON JUDGMENT

V.SIVAGNANAM, J.

CMA No.4003 of 2019 is filed by the Insurance Company assailing the award dated 12.12.2018 passed in MCOP No.270 of 2015 by the Motor Accident Claims Tribunal, Subordinate Judge, Gingee. The claimants in the said O.P, have come up with Cross Objection No.36 of 2020 seeking enhancement of compensation. Since both the appeal and the cross objection arise out of the same order passed in the MCOP dated 12.12.2018, both are heard together and disposed of by this common Judgment.

2.For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

3.The facts of the case in nutshell:-

This is the case of fatal. On 11.02.2009, the deceased Palaniyandi was riding his TVS Scooty Pept motorcycle bearing Reg.No.PY-01-AR-0976. When he was nearing at Thirukoilur on the Thenpennai River Bridge 6th Cement Post, at about 11.45 a.m, the first respondent Lorry bearing Reg.No.TN-32-6633 driven by its driver in a rash and negligent manner, dashed behind the deceased. As a result, he fell down and sustained crush injuries on his head and he died on the spot. At the time of accident, the deceased was working as "Senior Pipe Line Engineer" in Sven Kaiser Engg and Projects Structures and Piple Lines Maersk Oil quarter as at Doha, State of quarter and thereby, earning Rs.3,00,000/- per month. The first



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claimant is the wife, claimants 2 and 3 are the daughters and the third respondent/Unnamalai is the mother of the deceased. The first and second respondents are the owner and insurer of the offending lorry. Hence, the claimants laid a claim petition before the Tribunal claiming compensation of Rs.2,00,00,000/-.

4.The Insurance Company filed their counter disputing the manner of accident and occupation and income of the deceased and its liability to pay the compensation. Further, in the counter, it has been contended that the deceased also contributed the negligence. It was also contended that the claim is excessive and exorbitant.

5.To substantiate the case of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to Ex.P.17 were marked. On the side of the Insurance Company, R.W.1 to R.W.4 were examined and Exs.R.1 to R.4 were marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.73,82,500/- to the dependents. Challenging the said award, these appeals have been filed as stated supra.

7.The learned counsel appearing for the Insurance Company Mr.S.Arunkumar contended that the Tribunal erred in holding that the driver of the lorry was responsible for the accident, since there is no strong evidence to prove the negligence upon the driver of the lorry. He further contended that even though the claimants failed to prove the employment and income of the deceased, the Tribunal erroneously fixed the notional income of the deceased as Rs.50,000/- per month, which is unsustainable. He further submitted that the award is on the higher side and it requires reduction.

8.Per contra, the learned counsel appearing for the claimants Mr.K.N.Nataraj submitted that the accident occurred due to the negligent driving of the driver of the lorry. To prove the same, First Information Report (Ex.P1) has been produced and eyewitness P.W.2-Mounpetan Prabu has been examined. Under this circumstance, the Tribunal rightly fixed the negligence upon the driver of the lorry. He further contended that the salary details (Ex.P.14), Statement of Accounts (Ex.P.12) and Passport Application (Ex.P.17) were not properly considered by the Tribunal and the monthly income fixed by the Tribunal as Rs.50,000/- is very low. Hence, the learned counsel prays for enhancement of compensation.

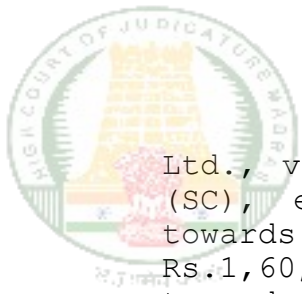
9.We have considered the rival submissions of the learned counsel appearing for the parties and perused the materials available on record.



10. In the case on hand, the contention of the learned counsel appearing for the Insurance Company insofar as the negligence is that the deceased also contributed the negligence. A perusal of the records shows that in respect of the accident, First Information Report (Ex.P.1) was registered against the driver of the lorry and P.W.2 eyewitness has also deposed about the accident. The Insurance Company did not let in any evidence contrary to the said fact. In the absence of any contra evidence, the Tribunal rightly held that the accident happened due to the negligent driving of the driver of the lorry and fixed the negligence upon the driver of the lorry. We find no reason to interfere with the said finding and the same is confirmed.

11. Insofar as the quantum is concerned, the claimants stated that the deceased was "Senior Pipe Line Engineer" and worked at Kathar and earned not less than Rs.3,00,000/- per month. Though the claimants filed B.E Certificate of the deceased Palaniyandi as Ex.P.9, his Statement of Accounts as Ex.P.12, Email details send from Seven Kaiser Company as Ex.P.15 and Passport Application as Ex.P.17, which are not disclosed the monthly income received by the deceased. Further, the job of the deceased was not permanent one and it was temporary one. The details of the passport and Visa and work permit are not produced by the claimants before the Tribunal. The documents filed by the claimants before the Tribunal are not sufficient to arrive at the monthly income of the deceased. Further, the claimants did not file any income tax returns to show the income of the deceased as claimed by them. In the absence of any evidence, the Tribunal, considering the B.E. Certificate alone, fixed the monthly of the deceased as Rs.50,000/-. In the considered opinion of this Court, fixing of monthly income as Rs.50,000/- is on the higher side. Hence, considering the educational qualification of the deceased as B.E., degree holder, we fix the monthly notional income at Rs.25,000/-.

12. At the time of accident, the deceased was aged about 49 years. As per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled to 25% addition towards future prospects and as per the decision of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1, proper multiplier would be '13'. Since the dependents are four in number, $\frac{1}{4}^{\text{th}}$ of the income has to be deducted towards personal expenses. Hence, after adding 25% towards future prospects and after deducting $\frac{1}{4}^{\text{th}}$ towards personal and living expenses and by applying multiplier '13', the loss of dependency is assessed as Rs.36,56,250/- ($25000+6250=31250 \times 12 \times 13 \times \frac{3}{4}$). As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co.



Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), each of the dependents are entitled to Rs.40,000/- towards consortium and Filial consortium, which comes to Rs.1,60,000/-. Hence, the amount of Rs.40,000/- awarded towards consortium is enhanced to Rs.1,60,000/-. The amount of Rs.15,000/- awarded towards funeral expenses and Rs.15,000/- towards loss of estate are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is unaltered.

13. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	73,12,500/-	36,56,250/-	reduced
Loss of Consortium	40,000/-	1,60,000/-	enhanced
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Total	73,82,500/-	38,46,250/-	Reduced
Rounded off		38,46,000/-	

14. In fine, C.M.A.No.4003 of 2019 filed by the Insurance Company is partly allowed and Cross Objection No.36 of 2022 filed by the claimants is dismissed. The award amount of Rs.73,82,500/- is reduced to Rs.38,46,000/-. Out of which, the first claimant/wife of the deceased is entitled to Rs.18,00,000/-; the claimants 2 and 3/children of the deceased are entitled to Rs.8,00,000/- each and the mother of the deceased is entitled to Rs.4,46,000/-. The Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their respective share after filing a memo, along with a copy of this Judgment, less the amount if already withdrawn. There is no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar



skn

To

1. Motor Accident s Claims Tribunal,
Subordinate Judge, Gingee.

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Copy to:

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

+2 ccs to Mr.K.N.Nataraj, Advocate Sr.NO.27289,27270

+1 cc to Mr.S.Arunkumar, Advocate Sr.NO. 26289

C.M.A.No.4003 of 2019

and

Cross Objection No.36 of 2022

and

C.M.P.No.22621 of 2019

SSV(CO)

A.SK(19/05/2022)