IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.10.2023	12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS. 1840 & 2774 OF 2004
AND
C.M.P. NO.453 OF 2011

M/s. United India Insurance
Co. Ltd., 38, Anna Salai
Chennai – 2. .. Appellant in CMA 1840/2004

1. T.Saraswathy
2. T.Elango
3. T.Senthil Kumar (Minor)
4. T.Sangeetha (Minor)
5. T.Maheswari (Minor) .. Appellants in CMA 2774/2004

- Vs -

1. T.Saraswathy
2. T.Elango
3. T.Senthil Kumar (Minor)
4. T.Sangeetha (Minor)
5. T.Maheswari (Minor)
6. A.K.Sekar .. Respondents in CMA 1840/2004

1. A.K.Sekar

2. The United India Insurance
Co. Ltd., No.38, Anna Salai

Chennai 600 002. .. Respondents in CMA 2774/2004

Civil Miscellaneous Appeals filed against the Judgment and Decree dated 9.10.2003 in M.C.O.P. No.5126 of 2000 on the file of the Motor Accidents Claims Tribunal (I Judge, Small Causes Court), Chennai.

For Appellants	:	Mr. S.Arunkumar in CMA 1840/2004 Ms.Saleem Fathima in CMA 2774/2004
For Respondents	:	Ms.Saleem Fathima for RR-1 to 5 in CMA 1840/04 Mr. S.Arunkumar for R-2 in CMA 2774/2004 Mr. V.Karthikeyan for R-6 in CMA 1840/04 & for R-1 in CMA 2774/2004

COMMON ORDER

One of the oldest appeals relating to a motor accidents claim has come enlivened to see the light of the day by being listed before this Court and also the counsel for either side actively participating in the adjudication of the same this Court, with great alacrity is doubly inclined to take up the same together and dispose it of by this common order.

2. While C.M.A. No.1840/2004 has been filed by the insurance company challenging the compensation awarded as unjust, arbitrary and illegal, C.M.A. No.2774/2004 has been filed by the claimants, viz., the legal heirs of the deceased, seeking enhancement of compensation by assailing the judgment and decree dated 9.10.2003 passed by the Motor Accident Claims Tribunal, Chennai in M.C.O.P. No.5126/2000.

3. For the sake of convenience, the appellants in the respective appeal will be referred to as insurance company and claimants, who are in turn respondents in the other appeals.

4. The admitted case of the parties is that Thangasamy, the deceased, who is survived by his legal heirs, viz., the appellants in C.M.A. No.2774/2004, at the relevant point of time was aged about 45 years and was employed as a Loadman in Priya Gas Company and earning a sum of Rs.2,000/- per month and a daily batta of Rs.200/-. The deceased, on 16.3.2000, at about 12.30 hours, when riding his bicycle near Madras Refineries Ltd., at Manali, the

tipper lorry, bearing Regn. No.TN-22-B-9077, driven in a rash and negligent manner, dashed against the cycle as a result of which the deceased sustained multiple injuries. The deceased was admitted at the Government Stanley Hospital from where he was discharged and readmitted at Government General Hospital, Chennai, where he succumbed to the injuries on 19.3.2000. On the basis of the written complaint given by P.W.2, an eye-witness to the occurrence, who had taken the deceased to the hospital and admitted him, a case in Crime No.143/2000 was registered by H-2, Manali Police Station against the driver of the tipper lorry. Aggrieved by the loss of the bread winner of the family, the appellants in CMA No.2774/2004, have filed the claim petition seeking compensation in a sum of Rs.9 Lakhs, to be paid jointly and severally, by the owner and the insurer of the lorry.

5. Before the Tribunal, the claimants examined two witnesses as P.W.1 and 2 and marked Exs.P-1 to P-9. On the side of the insurance company, three witnesses were examined as R.W.s 1 to 3 and Exs.R-1 to R-6 were marked. The Tribunal, considering the evidence, both oral and documentary, awarded compensation, in favour of the claimants, in a sum of Rs.3,91,800/-. Aggrieved

by the said compensation awarded, the insurance company as well as the claimants have preferred the respective appeals, the insurance company questioning the compensation and the claimants, seeking enhancement.

6. Learned counsel appearing for the insurance company submitted that the whole genesis of the case bristles with fraud committed to cheat the insurance company. It is the submission of the learned counsel that the FIR, which was registered by P.W.2, who is the eye witness to the occurrence, at the earliest point of time, reveals that the lorry number is mentioned as TN-04-C-9669, but thereafter, the lorry number had been corrected as TN-22-B-9077. It is the submission of the learned counsel that for the purpose of aiding the claimants, the lorry number has been corrected to show as TN-22-B-9077. It is the submission of the learned counsel that the claimants, in collusion with the police authorities, having found that the lorry bearing Regn. No.TN-04-AC-9669 being not insured or having a lapsed insurance policy, for the purpose of claiming insurance, had interpolated the FIR to show the lorry number as TN-22-B-9077, which is said to have a valid insurance.

7. It is therefore the submission of the learned counsel that the said fraud is writ large on all the documents right from the FIR to the charge sheet, which is inclusive of the original complaint lodged by the eye witness, P.W.2, viz., Ex.R-5 as also the original express report, Ex.R-6. It is the submission of the learned counsel that all the documents, which bear the registration number of the vehicle, which is alleged to have dashed against the deceased, have been corrected to read as TN-22-B-9077. It is therefore the submission of the learned counsel that while at the earliest point of time when the FIR was registered at about 3.00 p.m. on 16.3.2000, without knowledge about the valid insurance policy for the vehicle, the vehicle number has been rightly given as TN-04-C-9669, but later in the course of investigation, having realised that the said vehicle is not having a valid insurance policy, the vehicle number had been changed as TN-22-B-9077, which is only for the purpose of aiding the cause of the claimants. Therefore, the claimants also having clear knowledge of the fraud perpetrated by modifying the vehicle number in the contemporaneous records, the compensation awarded by the Tribunal is wholly impermissible, as the genesis of the occurrence had been manipulated

by the claimants with the connivance of the police authorities and, therefore, the compensation awarded should be forfeited from the claimants.

8. In respect of the aforesaid submission with regard to fraud played by the claimants, learned counsel for the insurance company relied upon the decision of the Apex Court in ***United India Insurance Co. Ltd. – Vs – Rajendra Singh & Ors. (2000 (3) SCC 581)***, wherein the Supreme Court had deprecated the practice of playing fraud on the insurance company for the purpose of claiming compensation by practicising fraud and, therefore, the claimants would not be entitled to claim compensation, much less enhancement of compensation.

9. It is the further submission of the learned counsel that the above interpolation in the documents have not been gone into in proper perspective by the Tribunal, while appreciating the documents, which have been placed by the claimants as well as the insurance company and the Tribunal had adopted two different yardsticks to measure the evidence, one by the insurance

company and the other by the claimants and, therefore, the compensation awarded by the Tribunal deserves to be set aside.

10. Learned counsel appearing for the claimants submitted that the income of the deceased has been erroneously fixed by the Tribunal. It is the submission of the learned counsel that though the deceased was earning a monthly income of Rs.7,000/=, which was inclusive of daily batta, however, the income of the deceased has been fixed at Rs.2,800/- by the Tribunal, which is wholly unreasonable.

11. It is the further submission of the learned counsel that no amount has been given towards the future prospects of the deceased. It is the submission of the learned counsel that had the deceased lived his life, definitely he would have earned more for his family, considering the number of dependants and to that end, the Tribunal ought to have quantified the loss by taking future prospects into consideration.

12. It is the further submission of the learned counsel that even in respect of the amount of compensation awarded towards love and affection and funeral expenses, only a very paltry sum of Rs.10,000/- and Rs.3,000/- has been awarded under the said heads, which require enhancement at the hands of this court.

13. Insofar as the contention of the insurance company relating to fraud played by the claimants in connivance with the police, it is the submission of the learned counsel that at no point of time before the Tribunal, perpetration of fraud by the claimants has been raised. Further, insofar as the interpolation of vehicle numbers, the Tribunal has given a clear finding that there is no averment in the counter that there is interpolation and that the vehicle No.TN-22-B-9077 was not involved in the accident. What has been pleaded before the Tribunal is only that the accident had occurred due to the reckless act of the deceased and, therefore, the insurance company cannot be fastened with any liability. However, the Tribunal has considered the said issue in detail and negatived the same holding that no pleading has been made to the said effect by the insurance company and further the claimants

are only third parties and are in no way connected with the complaint and, therefore, perpetration of fraud claimed by the insurance company is not made out. Therefore, on the basis of the above contentions, learned counsel prays for allowing the appeal by enhancing the compensation awarded on all the heads.

14. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decision relied on, on behalf of the insurance company.

15. The first and foremost issue that requires determination is whether fraud, as alleged by the insurance company, has been perpetrated and if so, whether the claimants have also connived in the said act.

16. The whole case of the insurance company lingers on the issue of fraud played by the investigating agency in connivance with the claimants for the purpose of obtaining compensation. A perusal of the order passed by the

Tribunal reveals that in the counter before the Tribunal, the insurance company had merely denied the accident and had stated that negligence was contributory on behalf of the deceased as well. It was not the case of the insurance company that the vehicle TN-22-B-9077 was not involved in the accident in issue.

17. It is the further finding of the Tribunal that there is no averment of fraud by the claimants and there is no pleading with regard to altering of registration number of the tipper lorry in the police records. It is the further finding of the Tribunal that the claimants are third parties, who were not aware of the complaint and the lorry, which is said to have caused the accident. It is the further finding of the Tribunal that neither the Medical Officer of Stanley Medical College Hospital, who attested the accident register nor the Sub-Inspector of Police who attested the FIR, which shows that the lorry involved in the accident was in fact holding the Regn. No.TN-04-C-9669.

18. Be that as it may. It is to be pointed out that the FIR is a contemporaneous document and any fraud alleged to have been committed,

the insurance company ought to have preferred a petition challenging the said FIR. However, the FIR, which is alleged to have been tampered with, has not been challenged by the insurance company. However, the whole genesis of the case of the insurance company rests on Ex.R-2, the report of the insurance investigator, who in the said report has submitted that initially the tipper lorry, which was involved in the accident had the Regn. No.TN-04-C-9669 and that the lorry was duly insured carrying a valid insurance upto 8.5.2000. The accident in the present case had taken place on 16.3.2000.

19. While fraud has not been alleged by the insurance company before the Tribunal, however, before this Court, it is the case of the insurance company that the registration number of the lorry, which caused the accident, though was TN-04-C-9669, which was initially reflected in the FIR, as well as all the other documents, which formed the basis of Ex.R-2, the insurance investigator's report, however, the said lorry was replaced with a lorry bearing Regn. No.TN-22-B-9077 as the lorry with Regn. No.TN-04-C-9669 was not holding a valid insurance. However, the said contention stands negated by the document, Ex.R-2 of the insurance company, which establish that even the

lorry with Regn. No.TN-04-C-9669 was having valid insurance. That be the case, there would have arisen no necessity for any of the parties to make any alteration in the FIR, in pursuance of a fraud, as even the other lorry was validly insured. Therefore, the contention of the insurance company that only for the purpose of claiming insurance, as the lorry bearing Regn. No.TN-04-C-9669 was not possessed of a valid insurance, the lorry details was altered in the FIR with Regn. No.TN-22-B-9077.

20. Further, as already pointed out above, the insurance company had not taken the defence of fraud at the earliest point of time, either in their counter or before the Tribunal and no material, worth consideration, with regard to playing fraud by the claimants in connivance with the police authorities have been placed, except for the above alteration. The alteration in the registration number of the vehicle had been carried out throughout all the documents. If really, fraud was perpetuated for the purpose of claimants enriching themselves unjustly, necessarily, the same ought to be established by the insurance company and in the absence of any contemporaneous document, which establishes fraud coupled with Ex.R-2, the report of the

insurance investigator showing that even the other lorry, which according to the insurance company was alleged to have been involved in the accident, being completely insured, the question of fraud pressed into service by the insurance company pales into insignificance.

21. Further, one other aspect, which is also to be noted at this juncture, as has been pointed out by the Tribunal is the fact that Ex.R-2, which is a Xerox copy of the FIR, alleged to have been registered at the earliest point of time by P.W.2 shows that the said Xerox copy is said to have been an attested copy by the Sub Inspector of Police. However, the original of the attested copy has not been placed, but a Xerox of the attested copy has been marked as Ex.R-2. When the original of Ex.R-2 has not been placed but only a Xerox copy has been marked, the said Xerox copy cannot be considered to be a contemporaneous document, which could be relied on to decide the issue. Further, as stated above, there is alteration in the registration number of the vehicle in all the documents, but the said alteration by itself cannot be said to be a fraud played by the claimants with the connivance of the police officials in the absence of any documents and coupled with the fact that the insurance

company has not taken any steps to have the said FIR quashed by questioning the same in accordance with law, the only inference that could be drawn from the above is that the insurance company had accepted the factum of the involvement of the vehicle, but finding the alteration in the documents, as an afterthought through erudite counsel, had raised the issue of fraud, without any proper materials, which has been rightly negatived by the Tribunal. Therefore, the said finding does not require any interference at the hands of this Court.

22. The decision of the Apex Court in *Rajendar Singh case (supra)*, relied on by the learned counsel for the insurance company would not be applicable to the case on hand, as in the said case, it was established that a fraud has been played by the claimants on the insurance company through documentary materials, which are contemporaneous in nature. However, in the case on hand, as discussed above, though interpolation has been alleged by the insurance company, which is evident, but the said interpolation has not been established to have been caused at the instance of the claimants. Further, in the absence of examining the author of the document as also not

marking the original document, which alone could have its authenticity, the applicability of the said decision to the facts of the present case does not stand attracted.

23. The next issue that requires consideration relates to enhancement of compensation as claimed by the claimants.

24. It is the case of the claimants that the income fixed is on the lower side and that the deceased was earning a sum of Rs.7,000/- which is inclusive of batta of around Rs.200/- per day, which has not been properly taken into consideration. A perusal of the order passed by the Tribunal reveals that taking into consideration the salary particulars, viz., Ex.P-9, filed by the claimants, which shows that the average salary of the deceased was between Rs.2800/- and Rs.3,000/- and more particularly during February, 2000, the salary of the deceased was shown as Rs.2,813/-, the Tribunal had fixed the income of the deceased at Rs.2,800/-. No materials have been placed before the Tribunal to show that any daily batta was received by the deceased. In the absence of any daily batta, the Tribunal had rightly not taken into

consideration the claim of the claimants with regard to the daily batta received by the deceased. Therefore, rightly the Tribunal had fixed the income of the deceased at Rs.2,800/- per month.

25. However, with regard to future prospects, no amount has been included by the Tribunal. The Constitution Bench of the Supreme Court in the case of ***National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (16) SCC 680)***, has laid down that where the deceased is employed and falling within the age group of 40 to 50 years, future prospects at the rate of 30% ought to be included in the income of the deceased, while arriving at the income for the purpose of fixing the compensation. It is evident from the order of the post mortem certificate, which is available in the typed set of documents, the doctor, who performed the autopsy, had fixed the age of the deceased at 50 years. Therefore, the Tribunal, fixing the age of the deceased at 50 years had applied multiplier of 13, which is the correct multiplier, as has been approved by the Constitution Bench in *Pranay Sethi case* following the ratio laid down in the case of ***Sarla Verma & Ors. – Vs – Delhi Transport Corporation & Ors. (2009 (6) SCC 121).***

26. From the above, while computing the future prospects on the income of Rs.2800/- at 30%, the future prospects of the deceased works out to Rs.840/- and adding the said amount to the income of the deceased, the total income is arrived at Rs.3,640/-. Deducting 1/5th towards the personal expenses of the deceased, the loss of income to the family at the hands of the deceased is quantified at Rs.2,912/- per month. Applying the multiplier of 13 fixed in *Sarla Verma case*, the loss of income to the family is quantified at Rs.4,54,272/= (Rs.2912 * 12 * 13).

27. Insofar as the compensation awarded under the other heads, viz., Loss of Consortium, Loss of Love and Affection and Funeral Expenses are concerned, it is to be pointed out that all the amounts are very much on the lower side. The children, three of whom are minor, have lost their father, which cannot be filled up and towards the love and affection lost, each child is entitled to a sum of Rs.10,000/=. However, the Tribunal has awarded only a sum of Rs.10,000/- in total under the head, which is to be modified accordingly.

28. Further, the Loss of Consortium to the spouse on account of the death of the deceased, as quantified at Rs.10,000/- is very meagre. The lady would be aged about 45 years and had lost her companion and the guiding light of her life and the support and other solace, which she would have received from the deceased necessarily has broken down, which has to be compensated adequately and applying the dictum in *Pranay Sethi case*, the Loss of Consortium to the spouse is fixed at Rs.40,000/-.

29. No amount has been awarded under the head Loss of Estate and as per the ratio laid down in *Pranay Sethi case*, compensation under the head Loss of Estate has to be awarded and this Court, taking into consideration the fact that the accident is of the year 2000, is inclined to award a sum of Rs.10,000/- under the head Loss of Estate. Further, the amount of compensation awarded under the head Funeral Expenses is also very meagre, which has been quantified in a sum of Rs.3,000/-. This Court feels that a sum of Rs.10,000/- towards funeral expenses would be a just and reasonable compensation.

30. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

Head of Compensation	**Amount awarded by Tribunal**	**Amount awarded by this Court**
Loss of Income	Rs. 3,58,800/=	Rs.4,54,272/=
Loss of Love & Affection (To Children)	Rs.10,000/=	Rs.40,000/= (Rs.10,000 * 4)
Loss of Consortium (To Spouse)	Rs.10,000/=	Rs.40,000/=
Loss of Estate	-	Rs.10,000/=
Funeral Expenses	Rs.3,000/=	Rs.10,000/=
TOTAL	**Rs.3,91,800/=**	**Rs.5,54,272/= (Rounded off to Rs.5,54,300/=)**

31. In the result, while C.M.A. No.1840 of 2004 is dismissed, C.M.A. No.2774 of 2004 is allowed in part by modifying the judgment and decree passed by the Tribunal in M.C.O.P. No.5126/2000 stands modified in the above terms and ordering compensation payable to the claimants at Rs.5,54,300/= along with interest at 9% p.a. from the date of petition till the date of deposit. The apportionment of compensation between the claimants shall be as ordered by the Tribunal.

32. The insurance company is directed to deposit the entire award amount as modified by this Court above, along with interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.5126/2000 on the file of the Motor Accident Claims Tribunal, ((I Judge, Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the major claimants as per apportionment ordered by the Tribunal.

33. Insofar as the claimants, who were minors on the date of the filing of the petition, subject to their attainment of majority and production of proof thereof with regard to their majority, their share of apportionment shall also be transferred directly to the bank account of the said claimants. If any of the claimants are still minors, the Tribunal is directed to keep their share in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain

majority and interest derived from out of the said share of the minor shall be paid to the 1st claimant/mother every quarter to be utilised for the welfare of the said minor. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in these appeals.

12.10.2023

Index : Yes / No

GLN

To

The Motor Accident Claims Tribunal
(I Judge, Court of Small Causes)
Chennai.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
C.M.A. NOS.1840 & 2774 OF 2004

Pronounced on
12.10.2023