IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

PRONOUNCED ON : 01.02.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.3135 of 2021 and CMP No.17699 of 2021
and
Cross Objection No.13 of 2022

CMA No.3135 of 2021

M/s.Cholamandalam MS General
Insurance Company Limited,
Rep. By its Manager,
Meena Agencies, I Floor,
South Main Street,
Tanjore Taluk and District. ... Appellant/2nd Respondent

Vs.

1. Maharani
2. Kumar @ Sekhar
3. Kavitha ... Respondents/Claim Petitioners
4. P.Gurumurthy ... Respondent/1st Respondent

PRAYER in CMA No.3135 of 2021: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.09.2018 passed in MCOP No.43 of 2015, by the Motor Accidents Claims Tribunal (Sub Court), Mannargudi.

For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.Ma.P.Thangavel (For R1 to R3)
for Mr.M.Lokesh
No Appearance (For R4)

CROSS OBJ.NO.13 of 2022

1. Maharani
2. Kumar @ Sekhar
3. Kavitha ... Cross Objectors/Claim Petitioners

Vs.

1. M/s.Cholamandalam MS General
Insurance Company Limited,
Rep. By its Manager,
Meena Agencies, I Floor,
South Main Street,
Tanjore Taluk and District.

2. P.Gurumurthy ... Respondents

PRAYER in Cross Obj.No.13 of 2022: This Cross Appeal is filed under Order 41 Rule 22 of Code of Civil Procedure, to enhance the compensation awarded vide judgment and decree dated 05.09.2018 passed in MCOP No.43 of 2015, by the Motor Accidents Claims Tribunal (Sub Court), Mannargudi.

For Appellants : Mr.Ma.P.Thangavel
for Mr.M.Lokesh

For Respondents : Mr.J.Michael Visuvasam (For R1)
No Appearance (For R2)

COMMON JUDGMENT

For the sake of convenience the parties are hereinafter referred to as per their ranking before the claims tribunal.

2. The claim petition has been filed by the legal representatives of the deceased Duraisami, who died in the road transport accident on 19.02.2010. The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle, are not in dispute and hence, the findings rendered by the trial Court stand confirmed.

3. Learned counsel for the insurance company/appellant could contend that there is violation of policy condition. The vehicle involved in the accident is a tractor-cum-trailer and two persons were injured, out of which one person succumbed to the injuries and another person though injured, not filed MCOP and the present MCOP No.43 of 2015, is filed by the legal representatives of the deceased claiming compensation for the death of her husband.

4. Before the trial Court, PW1 was examined and Exs.P1 to P5 were marked. The owner of the vehicle remained exparte and the insurance company has not let in any oral or documentary evidence.

5. On consideration of both oral and documentary evidence, the claims tribunal has passed an award of Rs.9,25,001.52p and ordered the insurance company to pay and recover from the owner of the vehicle. As against the pay and recovery clause and also the quantum of compensation awarded, the insurance company has filed the above Civil Miscellaneous Appeal.

6. Having not satisfied with the quantum of compensation awarded by the claims tribunal, the claim petitioners have preferred this cross appeal.

7. Though the learned counsel for the insurance company could contend that there is violation of policy condition, on perusal of the award passed by the claims tribunal, I find that on behalf of the insurance company the policy copy was not marked. Further, there is neither oral nor

documentary evidence to substantiate the fact that there are terms and conditions in the policy and such terms and conditions of the policy were violated by the owner of the vehicle, so as to exonerate the insurance company in toto.

8. In short, the insurance company though raised that pay and recovery clause cannot be ordered, they have not even marked the policy copy to demonstrate before the Court, what is the nature of the policy? what is the extent of the coverage of the policy? and what is the terms and conditions, the policy provides for? so as to substantiate the plea, the terms of the policy was violated and hence, in the absence of any copy of the policy being marked and no oral evidence either by the insurance company staff or by the private investigation agency, I find that such a plea raised by the Insurance company cannot be countenanced. Accordingly, I have no hesitation to hold that the pay and recovery ordered by the claims tribunal cannot be modified and the said plea is rejected.

9. On the point of quantum of compensation, heard the learned counsel appearing on either side.

10. Perusal of the award shows that the claims tribunal has taken the age of the deceased as 50 years based upon Ex.13-Postmortem certificate and computed the pecuniary loss.

11. Learned counsel for the insurance company could contend that the age of the elder son Kumar @ Sekar is shown as 36 years. Therefore, in all probability the father cannot be said to be at the age of 50 at the time of the accident. This appears to be a reasonable argument and accordingly, by taking into consideration the averment in the claim petition that the 2nd claim petitioner/elder son of the deceased being 36 years, it cannot be stated that the father can be 50 years and therefore, the age of the deceased is fixed as 54 years and instead of multiplier '13' adopted by the tribunal, '11' multiplier is adopted.

12. Further, though the claims tribunal has taken the notional income

as Rs.6,500/-, the monthly income of the deceased is fixed at Rs.9,000/-. Therefore, by adding 25% towards future prospects i.e., Rs.9000/- + Rs.2250/- = Rs.11250/-; deducting 1/3rd [Rs.3,750/-] and by applying the correct multiplier i.e. '11', the pecuniary loss sustained by the claim petitioner is now reassessed as follows:

[Rs.11250 – Rs.3750] x 11 x 12 = Rs.9,90,000/-.

13. The claims tribunal has awarded Rs.40,000/- to the 1st claim petitioner/wife, towards loss of consortium; Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transportation and the same appears to be reasonable and hence, confirmed. However, the claims tribunal has awarded a meagre sum of Rs.15,000/- to the claim petitioners 2 and 3/son and daughter of the deceased, towards loss of love and affection. Further, there is no award under the head, 'loss of estate'. Therefore, a sum of Rs.40,000/- each is awarded to the claim petitioners 2 and 3 towards loss of 'love and affection' and a sum of Rs.15,000/- is awarded under the head 'loss of estate'. Thus, the modified compensation now awarded is as follows:

Pecuniary Loss	: Rs. 9,90,000.00
Loss of Consortium	

to the wife	: Rs.	40,000.00
Loss of love and affection to claimants 2 and 3 @ Rs.40,000/- each	: Rs.	80,000.00
Loss of Estate	: Rs.	15,000.00
Transportation	: Rs.	10,000.00
Funeral Expenses	: Rs.	15,000.00
Total	: Rs.	11,50,000.00
Compensation awarded by the tribunal	: Rs.	9,25,000.52
Amount now enhanced	: Rs.	2,25,000.00

14. In the result, it is ordered as follows:

i. The compensation of Rs.9,25,000.52, awarded by the claims tribunal is enhanced to Rs.11,50,000/- and the interest awarded by the claims tribunal, remains unaltered.

ii. The judgment and decree dated dated 05.09.2018 passed by the Motor Accidents Claims Tribunal (Sub Court), Mannargudi in MCOP No.43 of 2015 is modified, accordingly.

iii. At the time of granting interim stay, the appellant-Insurance company was directed to deposit 50% of the award amount. Therefore, the appellant-Insurance company is directed to deposit the balance award amount, now modified with proportionate accrued interest and costs to the credit of MCOP No.43 of 2015 on the file Motor Accidents Claims Tribunal (Sub Court), Mannargudi, within a period of eight weeks from the date of receipt of a copy of this order.

iv. On such deposit, the claim petitioners are permitted to withdraw the same, on making necessary applications.

v. Additional Court fee, if any, to be paid by the claim petitioners within a period of four weeks and decree to be drafted after the payment of Court fee.

15. With the above directions, the Civil Miscellaneous Appeal is dismissed and the Cross Objection, stands partly allowed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

01.02.2023

Index : Yes/No
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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To

The Sub Judge,
Motor Accidents Claims Tribunal, Mannargudi.

Pre-delivery common Judgment in
CMA No.3135 of 2021 and CMP No.17699 of 2021
and Cross Objection No.13 of 2022

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