IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3254 of 2019
and
Cros.Obj.No.44 of 2021
and
C.M.P.No.18671 of 2019

C.M.A.No.3254 of 2019

The Branch Manager,
United India Insurance Co. Ltd.,
Indian Complex Main Road,
Oddanchatram. ... Appellant / 3rd Respondent

Vs.

1.Amutha

2.Minor Arthi
Rep. by G/M Amutha

3.Minor Aravindhan
Rep. by G/M Amutha ... Respondents 1 to 3 / Petitioners

4.S.M.Mohamed Hanee ... 4th Respondent / 1st Respondent

5.S.Venkatesan ... 5th Respondent / 2nd Respondent

Cros.Obj.No.44 of 2021
in C.M.A.No.3254 of 2019

1.Amutha
2.Minor Arthi
3.Minor Aravindhan
Minors Rep. by Natural Guardian/mother/Amutha ... Cross Objectors

Vs.

1.The Branch Manager,
United India Insurance Co. Ltd.,
Indian Complex Main Road,
Oddanchatram.

2.S.M.Mohamed Hanee
3. S.Venkatesan ... Respondents

[The respondents 2 & 3 remained ex-parte before the Tribunal.
Hence, notice may be dispensed with]

Prayer in C.M.A.: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.02.2014 made in M.C.O.P.No.1078 of 2011 on the file of the Motor Accident Claim Tribunal, (Subordinate Judge, Tirupur).

Prayer in Cros.Obj.: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the decree and judgement in M.C.O.P.No.1078 of 2011 dated 18.02.2014 on the file of MACT/Sub Court at Tiruppur.

C.M.A.No.3254 of 2019

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Mr.Ma.P.Thangavel [R1 to R3]
Not Ready in Notice [R4 & R5]

Cros.Obj.No.44 of 2021

For Cross Objectors : Mr.Ma.P.Thangavel

For Respondents : Mr.A.Dhiraviyanathan [R1]
Not Ready in Notice [R2 & R3]

*****

COMMON JUDGEMENT

The Insurance Company has filed this appeal challenging the award passed by the Motor Accident Claims Tribunal (Subordinate Judge, Tirupur) in M.C.O.P.No.1078 of 2011 dated 18.02.2014 on the grounds of liability and quantum of compensation.

2. The Cross Objection has been filed by the claimants seeking an enhancement of the compensation.

3. As per the claim petition, on 13.08.2011 at about 20.30 hours, when the deceased was travelling in the auto bearing Reg.No.TN 39 AM

6955 as load man being driven by its driver in a rash and negligent manner, the said vehicle capsized due to the said rash and negligent driving, thereby, the deceased sustained grievous injuries, for which, initially the deceased was taken to Tirupur Government Hospital and thereafter, transferred to CMCH Coimbatore. Inspite of the treatment given, the deceased passed away. Due to the death of the deceased, the claimants have filed a claim petition claiming a sum of Rs.5,00,000/- before the Tribunal in M.C.O.P.No.1078 of 2011.

4. Before the Tribunal, the claimants examined four witnesses viz., P.W.1 to P.W.4 and marked 4 documents viz., Ex.P.1 to Ex.P.4. On the side of the respondents, they have examined one witness viz., R.W.1 and marked two documents viz., Ex.R.1 and Ex.R.2. On considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.10,86,000/- under various heads as compensation to the claimants. Aggrieved by the same, the present appeal has been preferred by the insurance company and the cross objection has been filed by the claimants seeking enhancement by claiming that the quantum of compensation is inadequate.

5. The learned counsel appearing for the appellant submitted that, though the Tribunal had relied on Ex.P.1/FIR to hold that the vehicle was driven in a rash and negligent manner, however, the author of the said document has not been examined and the reliance on the said document is erroneous. He further submitted that, though the seating capacity of the auto is only one person, however, three persons were travelled at the time of accident, which is evident from the FIR, which is violation of policy condition. Therefore, the appellant/insurance company is not liable to compensate the claimants. It is also submitted that fixing a sum of Rs.7,000/- as notional income is grossly excessive as the same has been fixed without any proof relating to income and the same is on the higher side. Further, he submitted that the compensation awarded under heads loss of estate and funeral expenses is on the higher side and the same requires to be reduced.

6. Per contra, the learned counsel appearing on behalf of the cross objectors submitted that, whatever is given in the FIR is not an encyclopaedia as held by the Tribunal, merely because it states that three

persons were travelled in the auto. In the absence of other credible evidence apart from FIR, the Tribunal properly appreciated the materials and awarded compensation to the claimants is only because one claim relating to the said accident being filed and they were no other claims by other persons, who are allegedly travelled in the auto. Further, the amount of compensation under the heads loss of love and affection is grossly inadequate and no compensation towards loss of consortium has been awarded to the wife of the deceased. Therefore, he submitted that necessary enhancement has to be made to the award passed by the Tribunal.

7. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials on records.

8. The happening of the accident and the travelling of the deceased in the said vehicle and the death of the deceased is not in dispute. The only dispute relates to the number of persons, who were travelled in the auto which according to the appellant is three in numbers, which is in

violation of policy condition and therefore, no compensation can be awarded to the claimants. Though such a stand is taken by the appellant, it is to be pointed out that the FIR is not an encyclopaedia, which gives minutus details, need not be given in the FIR. Further, when the appellant on the one hand questions the credibility of the FIR and on the other hand, the appellant claims that three persons have travelled in the auto. The appellant cannot blow hot and cold about the FIR. In case, the credibility of the FIR is attacked by the appellant, necessarily requisite proof has to be filed by the appellant to counter the credibility of the FIR. In the absence of contra evidence, the FIR has to be accepted and the fact that even if three persons had travelled in the auto as alleged by the appellant, the fact that one claim has been made against the insurance company and even according to the insurer, the carrying capacity of the auto is one, necessarily the claim has to be called by the appellant. Therefore, appreciating all the documents and the oral evidence of the witnesses, the Tribunal has fastened the insurer to pay the compensation, which cannot be interfered with.

9. Insofar as the quantum of compensation is concerned, the claimants claims that the deceased was working as a tailor and was earning a sum of Rs.9,000/- per month. However, no documents have been filed to substantiate the monthly income of the deceased. In such a scenario, the Tribunal has fixed the notional income at Rs.7,000/- by following the ratio laid down by the Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459*** and added future prospects at 30% as held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month was arrived at Rs.9,000/- and after reducing 1/3rd towards personal expenses, the loss of income to the family was arrived at Rs.6,000/- per month. Further, by applying the ratio laid down by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the Tribunal has adopted the multiplier of 13 and awarded a sum of Rs.9,36,000/- towards loss of income to the family, which is perfectly in order.

10. Insofar as the compensation awarded under the heads loss of estate, loss of love and affection and funeral expenses is concerned, the compensation awarded under the head loss of estate is a bit excessive, however, the compensation under the head loss of love and affection for three persons/claimants is on the lower side. Further, the compensation awarded under the head funeral expenses is also a bit excessive. Though certain modifications needs to be made for the compensation to be in tune with *Pranay Sethi's case*, however, it is to be pointed out that modifying the compensation by adding amounts towards loss of love and affection by granting compensation under the head loss of consortium and modifying the compensation under the heads funeral heads and loss of estate would workout almost to the amount, which has been awarded by the Tribunal. Therefore, this Court is of the considered view that no modification on the above heads needs to be made only for the purpose of computing compensation in a different fashion. Therefore, the compensation awarded by the Tribunal at Rs.10,86,000/- payable by the appellant/insurance company is confirmed.

11. When the claim petition was filed in the year 2011, the claimants 2 and 3/respondents 2 and 3 in C.M.A.No.3254 of 2019 were aged about 16 and 14 years. Now, they should be aged about 29 and 27 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the claimants 2 and 3/respondents 2 and 3 in C.M.A.No.3254 of 2019 as major and discharges their mother Amutha from the guardianship. The Registry shall carry out the necessary amendments.

12. In the result, the Civil Miscellaneous Appeal is dismissed and consequently, the cross objection is also dismissed. The appellant/Insurance Company is directed to deposit the entire award amount, with proportionate accrued interest from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, to the credit of M.C.O.P.No.1078 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Tirupur within a period of four (4) 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 claimants through RTGS within a period of two (2) weeks thereafter, as per the apportionment of the Tribunal. No costs. Consequently, the connected miscellaneous petition is also dismissed.

20.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accident Claim Tribunal, (Subordinate Court, Tirupur).
2.The Section Officer, V.R.Section, High Court, Madras.

<u>M.DHANDAPANI, J.,</u>

sp

<u>C.M.A.No.3254 of 2019</u>
and
<u>Cros.Obj.No.44 of 2021</u>
and
<u>C.M.P.No.18671 of 2019</u>

<u>20.11.2023</u>