IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1447 & 1449 of 2022
and C.M.P.Nos.10650 & 10664 of 2022
and Cross Objection Nos.49 & 50 of 2023

C.M.A.Nos.1447 & 1449 of 2022

Royal Sundaram Alliance Insurance Co., Ltd.,
No.4A, 4th floor, Thirumalai Towers,
723, Avinashi Raod,
Coimbatore – 641 018. ... Appellant in both the C.M.As.

Vs.

1.Suppathal
2.Babu
3.Natarajan
4.New India Assurance Compnay Limited,
Office at Annapurna Building,
Mettupalayam – 641 301. ... Respondents in both the C.M.As.

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2019 in MCOP.Nos.229 & 230 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundhurai.

In both the C.M.As.

For Appellant : Mr.G.Vasudevan

For Respondents : Ms.H.Kavitha for R1
for Ms.S.Kathamalai Kumaran

: Ms.R.Sree Vidhya for R4
R2 & R3 - Set *ex-parte*

Cross Objection Nos.49 & 50 of 2023

Suppathal … Cross Objector in both Cross Objections

Vs

1.Royal Sundaram Alliance Insurance Co., Ltd.,
No.4A, 4th floor, Thirumalai Towers,
723, Avinashi Raod,
Coimbatore – 641 018.
2.Babu
3.Natarajan
4.New India Assurance Compnay Limited,
Office at Annapurna Building,
Door No.1/38A, Hosur Tholampalayam,
Mettupalayam – 641 301.
Coimbatore District. … Respondents in both the Cross Objections

For Cross-objector : Ms.H.Kavitha for R1
for Ms.S.Kathamalai Kumaran

For Respondents : Mr.G.Vasudevan for R1
Ms.R.Sree Vidhya for R4
R2 & R3 - Set *ex-parte*

COMMON JUDGMENT

The Insurance company has challenged the award passed in two claim petitions, aggrieved by the finding with regard to the negligence. The claimants in two claim petitions have preferred the Cross Objections seeking enhancement of compensation.

2. The appellant filed the claim petition stating that, on 13.05.2013, while the deceased/son was driving his car; a Eicher Van, insured with the fourth respondent came in a rash and negligent manner and dashed against the car driven by her son, insured with the appellant, as a result of which her son by name Ravindran, her daughter-in-law and grand-daughter sustained fatal injuries.

3. C.M.A.No.1447 of 2022 pertains to the compensation awarded for the death of the grand daughter to the cross objector. The C.M.A.No.1449 of 2022pertains to the compensation awarded to the daughter-in-law of the cross objector.

4. The second and third respondents in the instant appeals remained *ex-*

parte before the Tribunal, who were arrayed asfirst and second respondents in the claim petition.

5. The appellant filed counter denying the averments in the claim petition and stated that the accident took place only due to the negligence of the driver of the Eicher Van, insured with the fourth respondent herein and that they were not liable to pay any compensation.

6. The fourth respondent filed a counter stating that the FIR and the Rough Sketch would indicate that the accident took place only due to the negligence of the deceased/driver of the car and hence, they are not liable to pay any compensation.

7. The Tribunal after considering the oral and documentary evidence decided three claim petitions filed for the death of the son, daughter-in-law and grand daughter of the cross-objector holding that the accident occurred due to rash and negligent driving by both the deceased as well as the second respondent and fixed negligence in ratio 60:40 respectively. The Tribunal had awarded a sum of Rs.14,30,800/- in MCOP.No.230 of 2013 which is challenged in C.M.A.No.1447 of 2022 and Rs.6,32,500/- as compensation in MCOP No.229 of 2023, which is

challenged in C.M.A.No.1449 of 2022. The Tribunal directed the fourth respondent/New India Insurance Company to pay 40% of the compensation and the appellant/Royal Sundaram Alliance Insurance Co.Ltd to pay balance 60% of the compensation.

8. The learned counsel for the appellants in both the appeals submitted that the Tribunal had erred in fixing 60% contributory negligence on the deceased/driver of the car. The learned counsel submitted that the evidence of P.W.2 would show that the entire negligence is on the driver of the Eicher van, insured with the fourth respondent herein. The Tribunal, however, had erroneously taken into consideration the criminal case records such as Eicher Van; examined before Tribunal. The learned counsel therefore submitted that the finding of the Tribunal in fixing 60% contributory negligence on the driver of the vehicle insured with the appellant is erroneous and prayed for allowing the appeals.

9. Per contra, Ms.Sree Vidya, learned counsel for the fourth respondent submitted that Tribunal had taken into consideration the evidence of PW2 and other evidence on record and rightly came to a conclusion that the driver of the car was guilty of 60% of contributory negligence. The learned counsel submitted that there is no reason to interfere with the award of the Tribunal and prayed for dismissing the appeals.

10. The learned counsel for the Cross Objector submitted that the claim in respect of C.M.A.No.1447 of 2022 is for the death of the grand daughter of the first respondent/claimant. The deceased was a first year student of B.Tech studying in Thindar Vellalar Engineering College, Erode and the notional monthly income fixed by the Tribunal is meagre. The learned counsel also submitted that the award under the other heads are also meagre and prayed for enhancement of compensation.

11. As regards the compensation in C.M.A.No.1449 of 2022 it pertains to death of the daughter-in-law of the first respondent/claimant. The learned counsel submitted that the first respondent had deposed before the Tribunal that her daughter-in-law was working as a tailor at the time of accident. The Tribunal had fixed very low notional income of Rs.7,500/- and sought for enhancement of compensation.

12. The questions involved in these appeals are as follows:-

(a) Whether the Tribunal was right in fixing 60% contributory negligence on the deceased/driver of the car?

(b) Whether the amount of compensation awarded by the Tribunal is just and reasonable?

13. On perusal of records and on hearing of submissions of the learned counsels appearing on either sides, it is seen that the driver of the Eicher van, insured with the 4th respondent was not examined before the Tribunal. The evidence of P.W.2 suggests that the Eicher van has over taken his vehicle and dashed against the car which resulted in the accident. P.W.2 had also admitted that the police during the investigation had prepared a Rough sketch regarding the accident and the same was marked as Ex.R1 before the Tribunal. The F.I.R was also registered against the driver of the car. The evidences, thus, placed before the Tribunal discloses that the deceased/ car driver, was predominantly at fault. The Rough Sketch indicates that car had gone on the wrong side and dashed against the Eicher Van. In the absence of any evidence, this Court is of the view that the Tribunal was right in taking into consideration the evidence of P.W.2 and accepted Ex.R1 to hold that the deceased/ driver of the car, insured with the appellant had contributed to the accident to the extent of 60%. Therefore, this Court is of the view that there is no reason to interfere with the said finding of the Tribunal and hence, the same is confirmed.

14. As regards the compensation, it is seen that the claim in respect of the grand daughter of the first respondent in C.M.A.No.1447 of 2022 no documents has been filed by the first respondent to show that the deceased was a B.Tech first

year student. However, in her deposition before the Tribunal, she had stated that the deceased was studying in first year at Thindar Vellalar Engineering College at Erode. The deceased was aged about 18 years at the time of the accident. Though no document was filed, in view of the oral evidence of the first respondent, this Court is of the view that it would be just and reasonable to fix the monthly notional income of the deceased as Rs.10,000/-.The claimant would be entitled to 40% enhancement towards future prospects. Thus the compensation under the head "loss of income" has to be Rs.10,000/- + Rs.4,000/-(40% future prospects) = Rs.14,000/- x 12 x18 x ½ (50% since the deceased was a spinster) = Rs.15,12,000/-. The compensation awarded by the Tribunal under other heads are just and reasonable and the same is confirmed.

15. 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 or reduced
1.	Loss of income	1360800	1512000	Enhanced
2.	Funeral Expenses	15000	15000	Confirmed
3	Loss of consortium	40000	40000	Confirmed

4.	Loss of estate	15000	15000	confirmed
	Total	Rs.14,30,800/-	Rs. 15,82,000 /-	Enhanced by Rs.1,51,200/-

16. As regards the daughter-in-law of the first respondent, who is the deceased in C.M.A.No. 1449 of 2022, the first respondent has claimed compensation. It is seen that the first respondent had deposed before the Tribunal that the deceased was working as a Tailor. The deceased was aged 40 years at the time of the accident. Considering her avocation, age and the year of the accident, this Court is of the view that it would be just and reasonable to fix notional income at Rs.9000/- per month. The deceased would be entitled to 25% enhancement towards future prospects. The multiplier applicable is 15% since the deceased has three dependents, $1/3^{rd}$ has to be deducted from her expenses from her income towards personal expenses. Hence the compensation awarded under the head "loss of income" would be Rs.9000/- + Rs.2250/-= Rs.11,250/- x 12 x 15 x 2/3 (1/3 deducted towards personal expenses) = Rs.13,50,000/-. The award of the Tribunal under other heads are just and reasonable, hence, the same is confirmed.

17. 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 or reduced
1.	Loss of income	562500	1350000	Enhanced
2.	Funeral Expenses	15000	15000	Confirmed
3	Loss of consortium	40000	40000	Confirmed
4.	Loss of estate	15000	15000	confirmed
	Total	Rs.6,32,500/-	Rs. 14,20,000 /-	Enhanced by Rs.7,87,500/-

18. In the result, this Civil Miscellaneous Appeals are dismissed and both the Cross-Objections are allowed. The compensation awarded by the Tribunal in M.C.O.P.Nos. 229 & 230 of 2013 at Rs.14,30,800/- and Rs.6,32,500/- are hereby enhanced to Rs.15,82,000/- and Rs.14,20,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The first respondent/cross objector is directed to pay necessary Court fee, if any, on the enhanced compensation. The appellant is liable to pay 60% of the compensation amount and the fourth respondent is liable to pay 40% of the compensation amount in both the appeals and are directed to deposit the modified award amount now determined by this Court along with proportionate interest and costs, less the amount already deposited if any, within a

period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/Cross Objector is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

19.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
gba

To

1.The Sub Court,
Motor Accident Claims Tribunal/
Perundhurai.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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