IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.264 of 2021 and
Cross.Objection.No.23 of 2021
and
C.M.P.No.1775 of 2021

C.M.A.No.264 of 2021

The United India Insurance Co. Ltd
Silingi Buildings, N.No.134,
O.No.40-45, Greams Road,
Chennai-600 006.

... Appellant/2nd Respondent

Vs.

1.L.Vijaya
2.L.Dhinakaran
3.L.Deepthi

...Respondents 1 to 3/ Petitioners

4.Yuvaraj

... 4th Respondent/ 1st Respondent

Cross. Objection No.23 of 2021

1.L.Vijaya
2.L.Dhinakaran
3.L.Deepthi

...Cross Objectors

Vs.

1.The United India Insurance Co. Ltd
Silingi Buildings,

N.No.134, O.No.40-45, Greams Road,
Chennai-600 006.
2.Yuvaraj

... Respondents

Prayer in C.M.A.No.264 of 2021: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award and Decree dated 26.11.2019 made in M.C.O.P.No.3994 of 2018 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Prayer in Cross. Objection No.23 of 2021: Cross Objection is filed under Order 41, Rule 22 of CPC, against the Judgment and Decree dated 26.11.2019 in M.C.O.P. No.3994 of 2018 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

Appearance for C.M.A.No.264 of 2021
For Appellant : Mr. S.Arunkumar
For RR1 to 3 : M/s. S.Meenakshi
For R4 : No Appearance

Appearance for Cross. Objection No.23 of 2021
For Cross Objectors: Mr.A.Prabhakaran and
Mr.K.Ganeshbabu
For R1 : Mr.S.Arunkumar
For R2 : No Appearance

JUDGMENT

The appeal is filed by the Insurance Company, challenging the quantum of compensation. The claimants have filed Cross-objection for enhancement of compensation.

2. For convenience, the rank of the parties is taken as per their rank before the Tribunal.

3. The claim petition was filed by the widow and children of one K.Lakshmanan, who died in a motor accident on 23.02.2018. On the fateful day, when the deceased was riding his motor cycle from Poonamallee to Avadi Main Road, the first respondent's lorry bearing Registration Number: TN 61-B 2977, driven by its driver in a rash and negligent manner, hit the said motor cycle from behind, due to which, the deceased fell down and died on the spot.

4. According to the claimants, at the time of the accident, the deceased was aged about 56 years and he was a Havildar, retired from Army. Post retirement, he joined as an Operational Manager in Cherubim Security Force, Chennai. At the time of his death, the deceased was getting a pension of Rs.20,000/- and salary of Rs.30,000/- from the private employment. In all the deceased was earning Rs.50,000/- per month. Therefore, the claimants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

5. The first respondent/ owner of the lorry, remained ex-parte before the Claims Tribunal.

6. The claim petition was contested by the 2nd respondent, Insurance Company, which filed a detailed counter denying the negligence, liability and also the quantum of compensation claimed by the claimants, apart from denying all the claim petition averments.

7. Before the Motor Accidents Claims Tribunal, the first claimant examined herself as P.W.1 and 2 other witness as P.W.2 and P.W.3. On the side of the claimants Ex.P.1 to P.19 were marked in support of their claim. On the side of the respondents, no evidence either orally or documentary was adduced.

8. The Claims Tribunal, on an assessment of entire evidence on record, returned a finding of negligence against the driver of the first respondent's lorry, assessed the compensation at Rs.19,05,000/- and mulcted the liability on the 2nd respondent /Insurance Company.

9. Aggrieved by the impugned award passed by the claims Tribunal, the 2nd respondent/ Insurance Company has filed the present appeal and the claimants have filed the cross-objection in the appeal.

10. The learned counsel for the appellant/ Insurance Company submitted that the assessment of income by the Claims Tribunal was untenable and it was against the evidence on record. The learned counsel further submitted that though the deceased a retired Havildar from Army was getting a pension of Rs.20,000/- per month, after his demise his wife/first claimant was getting 50% of the pension amount and therefore, the loss towards pension was only Rs.10,000/-. The learned counsel further submitted that from Ex.P.19, the Bank Statement and Ex.P.16, the Salary Certificate of the deceased, it was clearly established that the claim of the claimants that the deceased was earning Rs.30,000/- per month from the private employment was unsustainable.

11.The learned counsel for the appellant/Insurance Company stated that the entries in Ex.P.19 related to reimbursement of money spent by the deceased for his conveyance and Ex.P.19 was thus liable to be rejected.

12. The learned counsel for the respondent/ Cross-objector vehemently argued that the award of the Tribunal was very much on the lower side and not commensurate with the evidence on record and therefore prayed that the compensation should be enhanced.

13. I have heard both the learned counsels and I have perused the entire materials placed before me.

14. On a conspectus of the entire evidence on record, I am of the view that the salary from private employment claimed at Rs.30,000/- per month is not supported by reliable evidence. I find that the salary certificate Ex.P.16 is against the evidence of P.W.2 the employer, who stated that the deceased was paid consolidated salary only. A perusal of Ex.P.16 shows that consolidated salary was not paid, as break up payments under various heads is given. Further P.W.2 in her evidence admitted that the deceased was employed with her security force for 3 years only before the accident. In the Bank statement marked as Ex.P.19, only 3 entries for Rs.30,000/- are found. I am therefore not inclined to accept Ex.P.16 and Ex.P.19. In the absence of any reliable evidence on the income earned from private employment, but considering that the employer was examined to prove that the deceased was privately employed Post retirement, I fix the notional income from private employment at Rs.10,000/- per month.

15. The deceased was working as a Havildar in the Army and getting pension of Rs.20,504/- per month as evidenced by Ex.P.6 (Ex servicement

identity) and Ex.P.7 (Pension Payment order). As the widow of the deceased is drawing 50% of the pension amount the loss is assessed at Rs.10,252/- towards pension.

16. I am therefore of the view that the income of the deceased can be fixed at Rs.10,252/- towards loss of pension and Rs.10,000/- from private employment. Therefore, total income of the deceased is assessed at Rs.22,277/- (Rs.20,252 + 2,025 (10% future prospects) = 22,277/-) and the loss of dependency is assessed at Rs.12,02,958 /- (22,277x12x9=24,05,916/- and 50% i.e. Rs.12,02,958/-)

17. It is conceded by the learned counsel for the 2nd respondent/Insurance Company that the loss towards loss of love and affection and loss of consortium is not in conformity with the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs.Pranay Sethi and others* reported in *2017 (16) SCC 680*. It is therefore held that 1st claimant would be entitled to Rs.40,000/- towards loss of consortium and the 2nd and 3rd claimant would be entitled to Rs.80,000/- at Rs.40,000/- each towards loss of love and affection. The loss towards funeral expenses is confirmed.

18. The Tribunal did not award any amount towards loss of estate and therefore Rs.15,000/- is awarded towards loss of estate.

19. In view of the above discussion, the award of the Tribunal is modified as follows:-

S.No	***Various Heads***	***Award by Tribunal***	***Award by this Court***
1.	Loss of Dependency	Rs.18,00,000/-	Rs.12,02,958/-
2.	Funeral Expenses	Rs.15,000	Rs.15,000/-
3.	Loss of Love and Affection	Rs.60,000/-	Rs.80,000/- (Rs.40,000 x 2)
4.	Towards Consortium	Rs.30,000/-	Rs.40,000/-
5.	Loss of estate	Nil	Rs.15,000/-
Total Compensation		Rs.19,05,0000/-	Rs.13,52,958/- **rounded off to Rs.13,53,000/-**

20. In the result, the claimants are entitled to compensation at Rs.13,53,000/- along with interest at 7.5% from the date of claim petition till the date of payment.

21. The learned counsel for the 2nd respondent/ Insurance Company submits that 50% of the award amount was already deposited before the Claims Tribunal. In view of the same, the Insurance Company is directed to deposit the balance amount as assessed by this Court along with 7.5% interest, within a period of six (6) weeks from the date of receipt of copy of the order.

22. The apportionment of liability shall be in the ratio fixed by the Claims Tribunal. On such deposit being made by the Insurance Company before the Tribunal, the Tribunal is directed to credit the compensation to the Bank account of the first claimant/wife by following the Division Bench decision of this Court vide order dated 11.03.2016 made in C.M.A.No.428 of 2016, reported in *2016(2) LW 561 (Madras) (Division Bench)* in the case of *The Divisional Manager, The Oriental Insurance Co. Ltd., Kannur Vs. Rajesh & Others.*

23. In fine, the appeal filed by the Insurance Company is partly allowed and the Cross-objection filed by the claimants are dismissed. Consequently connected Miscellaneous Petition is closed. There shall be no order as to costs in the appeal as well as the Cross objection.

20.04.2023

dsn
Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA.J.,

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C.M.A.No.264 of 2021
and
Cross.Objection.No.23 of 2021

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