IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.242 of 2021
and
C.M.P.No.1542 of 202
and
CROS.OBJ.No.75 of 2021

The Branch Manager,
National Insurance Co. Ltd.,
Branch Office,1st Floor, Sharadamma Buildings,
Bye-pass Road,
Housur-635 109 ... Appellants in C.M.A.No.242 of 2021

Vs.

1.Nagalakshmi
2.Sathya
3.Minor Tamil Selvan
rep., by his N.F./Mother 1st respondent
4.Jayamma
5.S.Chandramohan ... Respondents in C.M.A.No.242 of 2021

1.Nagalakshmi
2.Sathya
3.Minor Tamil Selvan
rep., by his N.F./Mother 1st respondent
4.Jayamma ....Cross Objectors in CROS.OBJ.No.75 of 2021

vs.

1.The Branch Manager,

National Insurance Co. Ltd.,
Branch Office,
1st Floor, Sharadamma Buildings,
Bye-pass Road,
Housur-635 109

2.S.Chandramohan ....respondent in CROS.OBJ.No.75 of 2021

PRAYER in C.M.A.No.242 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the appeal and enhance the compensation in M.C.O.P.No.793 of 2019 dated 06.10.2020 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

PRAYER in CROS.OBJ..No.75 of 2021: Cross Objection was filed under Order 41 Rule 22 of C.P.C, to enhance the compensation amount awarded in the Judgment and decree dated 06.10.2020 made in M.C.O.P.No.793 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

In C.M.A.No.242 of 2021:

For Appellant : M/s.J.Chandran

For respondents : Mr.S.P.Yuvaraj for R1 to R4

In CROS.OBJ.No.75 of 2021:

For Cross Objectors : Mr.S.P.Yuvaraj

JUDGMENT

The Appeal is filed by the Insurance Company Challenging both quantum as well as liability.

2. The summary of facts leading to the appeal are as follows:

On 24.09.2017, while the deceased was walking on the left side of the road on Karugondapalli to Kelamangalam Road, the driver of the tractor belonging to the first respondent drove the tractor in a rash and negligent manner and hit against the deceased due to which the deceased sustained fatal injuries and died on the spot. The deceased was aged 38 years at the time of accident and was earning an income of Rs.13,000/- per month by doing business in Brick Manufacturing. The claimants therefore filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

3. The first respondent owner of the Tractor contested the claim petition by filing the counter. According to the first respondent he had insured his tractor with the second respondent insurance company and

therefore the liability ought to be mulcted on the insurance company.

4.The second respondent/ insurance company filed a counter generally denying all the averments made in the claim petition. The second respondent/ insurance company denied that the driver of the tractor was holding a valid driving license at the time of accident. The insurance company therefore contended that it was not liable to pay the compensation to the claimants as there was a violation of policy conditions.

5. Before the Claims Tribunal, the first claimant examined herself as P.W.1 and another eyewitness/ Srinivansan as P.W.2 and marked Exs.P.1 to P.14 in support of the claim and on the side of the respondent, two witness were examined as R.W.1 and R.W.2 and four documents were marked as Exs.R.1 to R.4.

6. The Claims Tribunal on assessment of the entire evidence on record, returned a finding of negligence against the Driver of the first respondent, mulcted the liability on the second respondent/ insurance company and awarded a sum of Rs.18,91,000/- as compensation along

with interest at the rate of 7.5% per annum. The appellant/ Insurance Company aggrieved by the said award has filed the appeal challenging the liability as well as quantum of compensation.

7. The claimants have filed Cross Objection seeking for enhancement of compensation. The learned counsel for the appellant/ insurance company submits that the Tribunal had erred in mulcting the liability on Insurance Company overlooking that the first respondent had failed to prove that Driver was holding a valid Driving license at the time of accident. According to the learned counsel, in the absence of a valid Driving license, the insurance company ought to have been exonerated on the ground of violation of policy conditions. The learned counsel further submitted that quantum of compensation awarded by the Tribunal was highly excessive and unsustainable.

8. The learned counsel for the claimant on the other hand submitted that the Tribunal had given cogent reasons for mulcting the liability on the appellant/ insurance company. The learned counsel further submitted that on the facts of the case, the quantum of compensation was unfair and unjust and prayed that the cross objection be allowed.

9. I have heard the learned counsel appearing on either side and perused the entire evidence placed on record.

10. The first respondent owner of the Tractor filed a counter to the claim petition and in the said counter, he had not whispered about the driving license of his Driver. If really the Driver of the Tractor was possessed of a valid driving license, the first respondent would have averred about the same. Therefore, having contested the claim petition by filing counter the burden was on the first respondent to plead and prove that the Driver of the Tractor was having valid driving license and that there was no violation of the policy conditions. The Tribunal in my view wrongly shifted the burden of proof on the driving license of the first respondent's driver on the second respondent/ insurance company. Even so, the second respondent examined one Tmt.M.Punitha, an Assistant, from RTO Office, Hosur, and established that the Driver of the first respondent was not having valid driving license, by marking Ex. R.2, the attested copy of the MVI Report, wherein it was clearly recorded that the first respondent's driver did not produce the driving license at the time of inspection. The Tribunal having found that the owner of the Tractor had not whispered about the driving license, ought to have drawn an adverse

inference against the owner and not the insurance company.

11. Therefore the finding of the Tribunal that the second respondent/insurance company is liable to indemnify the first respondent is set aside. In my view, the learned counsel for the claimant is justified in his contention that the Tribunal ought to have directed the 2nd respondent/insurance company to pay and recover from the owner. As the first respondent has violated the policy conditions, I am of the view that the second respondent is entitled to pay and recover the compensation amount from the first respondent.

12. On the issue of quantum of compensation, the learned counsel for the claimant/ cross objector submitted that the assessment of income at Rs.8,450/- per month by the Tribunal was untenable in the light of the fact that the deceased was doing Brick Manufacturing business and maintaining a family of four members from the income generated from the said business. The learned counsel further submitted that the accident occurred in the year 2017 and therefore the Tribunal erred in assessing the notional income at Rs.9,000/- per month only. In my view, the contentions of the learned counsel for the cross objector/claimant are

justified and fair. The learned counsel for the claimant submitted that applying the law laid down in the Division Bench in ***Andal vs. Avinav Kannan***, reported in 2019 (1) TN MAC 54 the income of the deceased should be enhanced. As the accident occurred in 2017, following the Division Bench judgment the notional income is worked out as follows: 6500 x 272/129 = 13705/- Therefore the notional income of the deceased is fixed at Rs.13,705/- per month. 40% is to be added towards future prospects which is Rs.5482/-, hence, the income of the deceased is fixed at Rs.19,187/- per month. If $1/4^{th}$ of the said amount is deducted towards deceased's personal expenses, then the monthly income of the deceased would be Rs.14,390/-. Therefore, the loss of dependency would be Rs.25,90,245/- (Rs14,390/- x 12 x 15). In my view, the award of the Tribunal under other heads are just, fair and reasonable and do not call for any interference by this Court.

The award the Tribunal is therefore modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	17,01,000/-	25,90,245/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed

3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Floss of Consortium(P.1 to P.4 Rs.40,000 x 4= Rs.1,60,000/)	1,60,000/-	1,60,000/-	Confirmed
	Total	**Rs.18,91,000/-**	**Rs.27,80,245 /-**	**Enhanced by Rs.8,89,245/-**

13. In fine the Cross Objectors/claimants would be entitled for a sum of Rs.27,80,245/- along with interest at the rate of 7.5% per annum. As regards the apportionment, the same shall be as directed by the Tribunal. The learned counsel for appellant insurance company submits that award of the Tribunal has been deposited along with interest and costs. In view of the said submission the appellant /insurance company is directed to deposit the enhanced amount of Rs.8,89,245/- along with interest at the rate of 7.5% per annum within a period of eight weeks from the date of receipt of copy of this order. On such deposit being made, the claimants/ cross objector shall be entitled to withdraw the same by making appropriate application before the Tribunal. It is made clear that the insurance company is permitted to recover the entire

N.MALA, J.
jai

compensation of Rs.27,80,245/- along with interest at the rate of 7.5% per annum from the first respondent/insured.

14. The minor's shall be dealt with in the manner directed by the Tribunal. In fine, the appeal is partly allowed and the Cross Objection is also partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.03.2023

jai
Index : Yes/No
Neutral Citation : Yes/No
To:

1.The Motor Accidents Claims Tribunal
Special District Court for Motor Accident Claims Cases,
Krishnagiri.

2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.242 of 2021
and
CROS.OBJ.No.75 of 2021