BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGEMENT RESERVED ON : 21.03.2023

JUDGEMENT PRONOUNDED ON : 06 .04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD).No.1167 of 2014
and
Cross Objection (MD).No.5 of 2015

CMA(MD).No.1167 of 2014

National Insurance Company Limited
Srinivasa Market Complex
No.1974, Cinema Road
Doddaballapur
Bangalore Rural
Karnataka 561 203 ….Appellant

Vs

1.P.Thangam (died)
2.A.Pavithra
3.A.Prabha
4.Nagaraja
5.Lalitha ….Respondents

Cross Objection No.5 of 2015:

1.P.Thangam (died)
2.A.Pavithra

3.A.Prabha ...Cross Objectors

Vs

1.National Insurance Company Ltd.,
Karnataka 561 203

2.Nagaraja

3.Lalitha ...Respondents

(1st Respondent/1st Cross Objector namely P.Thangam died -memo dated 21.03.2023 is recorded vide Court order dated 21.03.2023)

Prayer in CMA(MD).No.1167 of 2014: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil in MCOP.No.145 of 2011 dated 26.09.2012.

Prayer in Cross Objection No.5 of 2015: Cross Objection is filed under Order 41 Rule 22 of C.P.C, to enhance the compensation awarded in the judgement and decree in MCOP.No.145 of 2011 on the file of the Motor Accident Claims Tribunal, Nagercoil (District Judge, Kanyakumari at Nagercoil) dated 26.09.2012 as prayed for by allowing this cross objection.

For Appellant
& 1st Respondent in
Cross objection : Mr.D.Sivaraman

For R1 to R3 in the appeal
& Cross Objectors : Mr.C.Dhanaseelan

Respondents 4 & 5
in the appeal &
Respondents 2 & 3
in the Cross Objection No Appearance

COMMON JUDGEMENT

The present appeal has been filed by the Insurance Company challenging the award made in MCOP.No.145 of 2011 on the file of the Motor Accident Claims Tribunal, Kanyakumari at Nagercoil primarily on the ground of negligence.

2.Cross Objection No.5 of 2015 has been filed by the claimants seeking enhancement of compensation.

3.It is the case of the claimants that the first claimant is the wife and the claimants 2 and 3 are the daughters of the deceased person. The 3rd claimant and her father had travelled in a State Express Transport Corporation bus on 07.01.2011 and the bus was under repair, when it reached near Pullakottai bye-pass junction at Virudhunagar. The bus driver and a mechanic were undertaking the repair work. When the deceased got down from the bus and came on the southern side of the road, the driver of the vehicle owned by the second respondent and insured with the third respondent, a Tempo Jeep came in a rash and negligent manner and dashed against the deceased who died on the spot.

4.According to the claimants, the accident has taken place only due to the rash and negligent driving of the first respondent. The claimants had contended that the deceased was the only earning member of the family and he was doing a business in the Anna Bus Stand, Meenakshipuram at Nagercoil in the name and style of Narayana Fruits Stall. The petitioners have claimed a compensation of Rs.25 lakhs.

5.The driver of the Jeep and the owner of the Jeep have remained exparte.

6.The Insurance Company had filed a counter contending that the deceased had tried to cross the Virudhunagar-Madurai main bye pass road near Pullakottai Vilakku at about 10.00 p.m on 07.01.2011 without noticing the movement on the road and thereby fell into the vehicle and sustained injuries. The Insurance Company had further contended that the first respondent driver had noted the injured in a close quarter and applied brake and even then the deceased fell down and sustained injuries and subsequently succumbed to the said injury. Since the accident had occurred due to the negligence of the deceased, the Insurance Company is not liable to pay any amount as compensation to the petitioners.

7.The Insurance Company had further contended that the deceased sustained injuries by crossing the four-way road without noticing the moving vehicles and thereby, he contributed to the accident and therefore, the petitioners cannot claim any amount as compensation from the respondent. The Insurance Company had disputed the quantum of compensation claimed by the petitioners. The Tribunal after considering Exhibit P1-F.I.R, Exhibit P2-Rough Sketch and Exhibit P3-Observation Magazer, had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the first respondent. The Tribunal had further found that the respondents have not adduced any oral or documentary evidence to establish that there was contributory negligence on the part of the deceased.

8.The Tribunal had further found that the Insurance Police was in force and therefore, concluded that the appellant company is liable to satisfy the award. The Tribunal had rejected Exhibits P8 and P9-Auditor's report on the ground that the Auditor has not been examined to prove the said document. The Tribunal has also rejected Exhibit P10-Income Certificate and arrived at a finding that the deceased was earning a sum of Rs.4,500/- per month and the annual income is arrived at Rs.54,000/-. The Tribunal had deducted 1/3rd towards personal expenses and after applying multiplier of 13, the total loss of income was arrived at Rs.4,68,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the wife and each one of the minor claimants. Another sum of Rs.10,000/- was awarded towards transport expenses and another sum of Rs.10,000/- towards funeral expenses. Totally a sum of Rs.5,18,000/- was awarded as compensation. Challenging the said award, the Insurance Company has filed the appeal on the ground of negligence and the claimants have filed the cross objection seeking enhancement.

9.The learned counsel for the appellant mainly relied upon Exhibit P1-F.I.R and Exhibit P2- rough sketch and contended that when the bus was standing in the middle of the road and all other passengers were waiting in the service road and there was no necessity whatsoever for the deceased to cross the road from North to South. When the bus is stopped in the northern side of the road, the deceased had attempted to cross over to the southern side of the road and he himself had invited the said accident. The learned counsel had further contended that the accident has happened in the middle of the four way and therefore, the first respondent driver cannot be attributed with rash and negligent driving. When the deceased was attempting to cross the road from the northern side to southern side, he should have noticed the speeding vehicle on the four way before crossing the road.

10.The learned counsel for the appellant had further contended that the parked bus was not damaged in the said accident. Therefore, it is clear that the deceased had invited the accident only by attempting to cross the road and not because of the fact that he is assisting the driver and the conductor in repairing the bus. The road being a four way, the speed had maintained by the first respondent at about 10.00 p.m cannot be found fault with. When all the passengers from the repaired vehicle were waiting in the service road on the northern side including the daughter of the deceased, the deceased attempted to cross over the road. Therefore, the entire negligence is attributable only to the deceased person. Hence, the Insurance Company is not liable to pay any compensation.

11.The learned counsel for the appellant had further contended that in the counter it has been specifically contended that the deceased has also contributed to the accident. Therefore, the Tribunal ought to have considered the contribution of the deceased to the accident and reduce the compensation by 50%. Therefore, even assuming that there was some kind of negligence on the part of the first respondent, contributory negligence of the deceased person should also been taken into account by the Tribunal.

12.Per contra, the learned counsel for the respondent had contended that the accident has taken place at around 10.00 p.m in the night. The deceased and his daughter were travelling from Nagercoil to Bangalore. When the bus under repair got stranded on the main road, in order to help the driver and conductor, the deceased had got down from the bus. When a bus is standing on a high way that too at 10.00 p.m, the first respondent ought to have slowed down the vehicle. Exhibit P2-rough sketch prepared by the police officials will clearly indicate that the northern lane of the four way is having 15 feet width. Out of the 15 feet width, the northern side of the northern lane got 8 feet and southern side got 7 feet. The bus was stopped only in the northern side and as per the rough sketch, the accident has happened within the northern side of the lane. The first respondent could have very well driven the vehicle in the southern half having a width of 7 feet without disturbing any one who are standing on the northern side. However, due to rash and negligent driving, the first respondent had dashed against the deceased who was standing within the northern side

13.The learned counsel had further contended that the northern and southern side of the lane have been ear marked by way of white marking. The first respondent had crossed over the white marking and entered into the northern side and had dashed against the deceased person. In view of these facts, no negligence could be attributable to the deceased person and hence, the contention of the Insurance Company that the deceased had also contributed to the accident is neither factually nor legally sustainable.

14.The learned counsel for the respondent had further pointed out that Exhibit P4-motor vehicle report of the offending vehicle in Serial No.14 has been pointed out that the brake is having only 66% efficiency.

The learned counsel had further relied upon Exhibit P9-Income Tax certificate for the assessment year 2009-2010 which was filed before the authorities on 13.12.2010. As per the said income returns, the gross total income of the deceased was Rs.1,49,140/- for the assessment year 2009-2010 and therefore, the monthly income of the deceased could be revised at Rs.12,428.50. However, the Tribunal has not properly appreciated Exhibit P9 and has taken a monthly income at the rate of Rs. 4,500/-. The learned counsel had further contended that the Tribunal has not taken into consideration the future prospects of the self-employed person who was running a fruit shop. He had further contended that only Rs.10,000/- was awarded towards funeral expenses and no amount was awarded under the head of loss of estate because he was running a tea stall and fruit stall business. He had further contended that the loss of consortium should have been awarded at the rate of Rs.40,000/- for each claimant and the transport expenses have been awarded on a lower side of Rs.10,000/-. Hence, he prayed for enhancement of compensation to a further sum of Rs.12,99,614/-.

15.This Court carefully considered the submissions made on either side and perused the records.

16.It is the specific case of the claimants that the deceased had got down from the bus and came to the southern side of the road in order to help the driver and the mechanic in repairing the vehicle. However, the Insurance Company has filed a counter contending that the deceased had attempted to cross the road from the northern side to the southern side of the lane without noticing the moving vehicle which had resulted in the accident.

17.A perusal of the F.I.R under Exhibit P1 which was lodged by the daughter of the deceased within one hour of the accident will clearly indicate that the deceased had got down from the bus and he had gone to the southern side of the bus to help the mechanic in order to repair the bus.

18.Considering the fact that the daughter was accompanying his father at the time of accident and had immediately lodged the F.I.R within one hour, this Court does not find any reason to disbelieve the version in the F.I.R. That apart, the rough sketch marked as Exhibit P2 will clearly indicate that the accident has happened within the northern side of the lane. As per the rough sketch, the first respondent has not driven the vehicle in the southern side of the lane, but he has entered into the northern lane where the bus under repair was parked. As rightly pointed out by the Tribunal, the Insurance Company has not taken any steps to let in any contra evidence to controvert the version in the F.I.R or evidence of P.W1 to the effect that the accident has taken place only due to the negligence of the deceased, Therefore, this Court is of the clear opinion that there was no negligence on the part of the deceased person and the first respondent had driven the vehicle in a rash and negligent manner and dashed against the deceased who was standing within the northern side of the lane.

19.The claimants have filed Exhibit P9- Income Tax Returns for the assessment year 2009-2010 and the Tribunal has rejected the said document on the ground that Exhibit P9 is contrary to Exhibit P8 and the claimants have not produced any document that the deceased was running a fruit stall. A perusal of Exhibit P9 will clearly indicate that it is the Income Tax Returns that was filed for the assessment year 2009-2010 and in the said assessment returns, the name of the premises has been mentioned as Narayana Fruit Stall, Anna Bus Stand, Meenakshipuram at Kanyakumari District. The said Income Tax Returns also contain the seal of the Income Department dated 13.12.2010 indicating the fact that the returns have been filed on the said date. Therefore, it is clear that the deceased was running a fruit stall and he had filed his income returns on 13.12.2010 for the assessment year 2009-2010.

20.A perusal of Exhibit P9 will clearly indicate that the deceased had assessed the total income of Rs.1,49,140/- for the assessment year. Therefore, this Court can easily come to a conclusion that the monthly income of the deceased was Rs.12,428.50 and not Rs.4,500/- as fixed by the Tribunal. After deducting 1/3rd towards personal expenses, the monthly income could be arrived at Rs.8,285.50. Being a self-employed, taking 25% towards future prospects, the monthly income could be arrived at Rs.10,356.50. Considering the age of the deceased as 49, at the time of death, applying multiplier of 13, the total amount that could be awarded under the head of loss dependency is Rs.1,24,278/-X13= Rs. 16,15,614/-.

21.As far as the amount to be awarded under the conventional heads are concerned, the funeral expenses have been awarded at the rate of Rs.10,000/-. This Court feels is on the lower side and fixes at Rs.15,000/-. The deceased was running a fruit stall and the same have to be closed down and therefore, the loss of estate could be assessed at Rs. 15,000/-.

22.Pending appeal, the wife of the deceased had passed away, now the claimants are the daughters of the deceased. Therefore, the finial consortium could be fixed at Rs.40,000/- each, totalling a sum of Rs. 80,000/-. The Tribunal has awarded just Rs.10,000/- towards transport expenses. Considering the fact that the accident has taken place at Virudhunagar and the body was taken to Nagercoil, the transport expenses could be fixed at the rate of Rs.15,000/-. Therefore, the total compensation would be summarised as follows:

1.Loss of dependency	Rs.16,15,614.00
2.Funeral Expenses	Rs. 15,000.00
3.Loss of Estate	Rs. 15,000.00
4.Loss of finial Consortium	Rs. 80,000.00
5. Transport Expenses	Rs. 15,000.00

	Rs.17,40,614.00

23.The total compensation to be paid at Rs.17,40,614/-. The Tribunal has awarded a sum of Rs.5,18,000/-. The balance compensation to be paid by the Insurance Company is Rs.12,22,614/-. The said enhanced compensation will carry an interest at the rate of 7.5% per annum from 29.08.2011 till the date of realisation. The enhanced compensation shall be deposited by the Insurance Company within a period of 8 weeks from the date of receipt of a copy of this order.

24.In view of the above said discussions, the appeal in CMA(MD).No.1167 of 2014 stands dismissed. The Cross Objection No. 5 of 2015 is partly allowed to the extent as stated above. No costs.

06.04.2023

Index : Yes/No
Internet : Yes/No
msa

1.The Motor Accident Claims Tribunal,
District Judge, Kanyakumari at Nagercoil

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

msa

Pre-delivery order made in
C.M.A(MD).No.1167 OF 2014
and
Cross Objection (MD).No.5 of 2015

06 .04.2023