BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.145 of 2023
and
CROS.OBJ(MD)No.8 of 2023

C.M.A(MD)No.145 of 2023

1.R.Vinotha

2.Minor Yuvanesh ...Petitioners/ Appellants
(Minor appellant represented by his natural guardian and next friend mother Vinotha)

Vs

1.T.Kamaraj

2.The Branch Manager,
M/s.United India Insurance Company Limited,
No.1-A, Kungumam Complex,
Thanjavur Main Road,
Thiruverumbur,
Trichy.

3.P.Rayappan

4.M/s.Reliance General Insurance Company Limited,
2nd Floor PLA Kanagu Towers,
No.15 A, Thillai Nagar 11th Cross,
Trichy-18.

5.Southern Travels,
No.14, Karunagara Pillai Street,
Kosapalayam,
Pondicherry-625 014.

6.ICICI Lombard General Insurance Company Limited,
United Arcade 3rd Floor,
Anna Malai Nagar,
Karur Bye-pass Road,
Thillai Nagar,
Trichy. ...Respondents/Respondents

(Respondents 1, 3 and 5 were set ex-parte before the Tribunal. Hence notice may be given up against them)

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow the appeal to the tune of Rs.5,00,000/- in addition to compensation awarded by the Tribunal modifying the judgment and decreetal order made in M.C.O.P.No.155 of 2015, dated 03.12.2016 by the Motor Accidents Claims Tribunal (Principal District Judge), Tiruchirappalli.

For Appellant	: Mr.R.Pranavi
For R2	: Mr.A.S.Mathialagan
For R3 & R5	: No Appearance
For R4	: Mr.V.Sakthivel
For R6	: Mr.P.Pethu Rajesh

CROS.OBJ(MD)No.33 of 2022

ICICI Lombard General Insurance Company Limited,
United Arcade 3rd Floor,
Anna Malai Nagar,
Karur Bye-pass Road,
Thillai Nagar,
Trichy. ...Appellant/6th Respondent

Vs

1.R.Vinotha

2.Minor Yuvanesh ...Respondents 1 and 2/
Appellants 1 and 2

(Minor appellant represented by his natural guardian and next friend mother Vinotha)

3.T.Kamaraj

4.The Branch Manager,
M/s.United India Insurance Company Limited,
No.1-A, Kungumam Complex,
Thanjavur Main Road,
Thiruverumbur,
Trichy-13.

5.P.Rayappan

6.M/s.Reliance General Insurance Company Limited,
2nd Floor PLA Kanagu Towers,
No.15 A, Thillai Nagar 11th Cross,
Trichy-18.

7.Southern Travels,
No.14, Karunagara Pillai Street,
Kosapalayam,
Pondicherry-625 014. … Respondents 3 to 7/
Respondents 1 to 5

PRAYER :-

This cross objection is filed under Order 41 Rule 22 C.P.C. to set aside the fair and decreetal order passed in M.C.O.P.No.155 of 2015 on the file of Motor Accident Claims Tribunal/Principal District Judge, Tiruchirappali, dated 03.12.2016 in so far as contributory negligence fixed against appellant.

For Appellant : Mr.P.Pethu Rajesh

For R1 & 2 : Mr.R.Pranavi

For R3 & R5 : No Appearance

For R4 : Mr.A.S.Mathialagan

For R6 : Mr.V.Sakthivel

COMMON JUDGMENT

The appeal and the cross appeal arise out of the order dated 03.12.2016 passed in M.C.O.P.No.155 of 2015 by the Motor Accidents Claims Tribunal (Principal District Judge), Tiruchirappalli.

2.The claimants have filed the appeal for enhancement of compensation. The sixth respondent has filed the cross appeal, challenging the finding on negligence.

3.Before entering into the merits of the appeal filed by the claimant for enhancement of compensation, the cross appeal filed by the sixth respondent is taken up first, as the maintainability of the cross appeal is raised by the claimants as well as the contesting respondents.

4.The learned counsel for the cross-appellant submitted that the cross appeal was maintainable, whereas the claimant as well as the other co-respondents submitted that the cross appeal was not maintainable. According to the learned counsel for the respondents, in an appeal filed by the claimant for enhancement of compensation, the cross appeal questioning the finding on negligence, which was effective against the co-respondent and not against the appellant is not maintainable.

5.Though the learned counsel for the cross objector and the respondents referred to several Judgments in support of their respective contentions, in my view the following judgments are relevant for deciding the said issue.

> The question of maintainability of the cross objection against a co-respondent was considered by a Full bench of this Hon'ble Court of Five Judges in the case of ***Vadlamudi Venkateswarlu and Another Vs. Ravipati Ramamma and Another*** reported in ***AIR 1950 Mad 379***. The Hon'ble Chief Justice Rajamannar in the said Judgment held as follows:

> *"7.The Legislature by describing the objection which could be taken by the respondent as a "cross-objection" must have deliberately adopted the, view of the other High Courts, One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant."*

6.The said observation of the Full bench of this Court in the above Judgment was approved by the Hon'ble Supreme Court of India in the case of ***Panna Lal Vs. State of Bombay and others*** reported in ***AIR 1963 Supreme Court 1516***. The Hon'ble Supreme Court held as follows:

> "We think, with respect, that these observations put the matter clearly and correctly."

7.It is to be further noted that both these Judgments were referred to by a Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Rajammal and others*** reported in ***1992 (2) ACC 489***. The Hon'ble Division Bench following the above said Full bench Judgment and the Hon'ble Supreme Court Judgments held that in an appeal by the Insurance Company questioning the liability, the claimant could not maintain a cross objection for enhancement of compensation. The above said

Judgment would clearly show that the cross objection should be one in which the appellant is interested. The cross objection which is in effect an objection against a co-respondent, is not maintainable.

8.In the case on hand, the appeal is filed by the claimant seeking enhancement of compensation. The cross objection is filed by the sixth respondent challenging the decree mulcting liability on it on the basis of the Tribunal's finding on negligence. It cannot be said that the appellant/claimant is interested in the cross objection as his claim is for enhancement of compensation. The cross objection of the sixth respondent would not in anyway effect his claim for higher compensation. The cross objection of the second respondent is in reality targeted against the co-resondent and not the appellant. To put it in otherwords, it is not the concern of the appellant if A insurance company pays or B insurance company pays, the claimant is interested only in getting higher compensation. Therefore by filing the cross objection, the sixth respondent, is in effect seeking to enlarge the liability of the second and fourth respondents (i.e.) the co-respondents. As the cross objection is targetted against the co-respondents, it cannot be entertained. I am therefore of the considered view that the cross objection filed by the sixth respondent is not maintainable in view of the law and facts as discussed above.

9.The learned counsel for the cross appellant then contended that the said issue can be raised by him by invoking the provisions of Order 41 Rule 33 of CPC. In my view, the said contention is misconceived. The learned counsel for the appellant relied on the Judgment in the case of ***United India Insurance Company Limited Vs. R.Sathiyanarayanan and S.Gopalakrishnan*** reported in ***(2005) 1 LW 358***, wherein while summarizing its conclusions, the Hon'ble Division Bench held that even if cross objection was not filed in appropriate cases the principle laid down in Order 41 Rule 33 of CPC could be invoked. It is to be noted that the Hon'ble Division Bench has stated that only in appropriate cases the principle laid down under Order 41 Rule 33 CPC can be invoked. In any event the facts of the case are completely different. That was a case where in an appeal filed by the Insurance Company questioning the quantum of compensation, which was dismissed for not obtaining leave under Section 170 of the Motor Vehicle act, the question of maintainability of the cross objection of the claimant seeking enhancement of compensation was considered. In that context, the Hon'ble Division Bench held that even if Cross Objection was not filed enhancement could be considered invoking Order 41 Rule 33. At this stage, I deem it fit to refer to few Judgments of the Hon'ble Supreme Court on the underlining principles for invoking the provisions of Order 41 Rule 33 of CPC. The Hon'ble Supreme Court in the case of ***Banarsi and Others Vs. Ram Phal*** reported in ***(2003) 9 SCC 606***, held as follows:

> *"The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party."*

10.Further in the case of ***Harihar Prasad Singh and others Vs. Balmiki Prasad Singh and others*** reported in ***(1975) 1 SCC 212***, the statement of law made by Justice Venkatarama Aiyar, in the Division Bench Judgement in the case of ***Krishna Reddi Vs. Kota Ramireddi*** reported in ***AIR (1954) Madras 848*** was cited with approval and the relevant paragraph is extracted hereunder:

> *"Though Order 41, Rule 33 confers wide and unlimited jurisdiction on Courts to pass a decree in favour of a party who has not preferred any appeal, there are,*

however, certain well-defined principles in accordance with which that jurisdiction should be exercised. Normally, a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under Order 41, Rule 33."

11.So also in the case of ***Lakshminath and others Vs. G.Ayyaswamy*** reported in ***2016 13 SCC 165***, the Hon'ble Supreme Court following the judgment in the case of ***Pralhad and Ors. vs. State of Maharashtra and Anr.***, *reported in* ***(2010) 10 SCC 458,*** *on an interpretation of Order 41 Rule 33 CPC held that in the absence of an independent appeal or cross-objection being filed by the aggrieved party, the relief which was denied by the courts below cannot be granted in the second appeal filed by the appellant.*

12.Therefore from an overview of the Judgments referred to above it is clear that the provisions of Order 41 Rule 33 cannot be invoked in favour of a party, who allows the decree to achieve finality. Though the sixth respondent has filed a cross objection in this case, the cross objection is held to be not maintainable and so in my view in the absence of an appeal, against the decree mulcting 25% of the liability on the sixth respondent, the provisions of

Order 41 Rule 33 cannot be invoked in its favour. Therefore, the cross appellant is not entitled to the relief even under Order 41 Rule 33 CPC.

13.Now the appeal of the claimant is taken up for consideration. On 14.09.2013, the deceased Ravi @ Ravichandran was travelling as an attender in the third respondent bus, which proceeded from Chennai to Bodianayakkanur and when the said bus was proceeding on Trichy National Highway Road at about 02.00 a.m., while the bus came near Veppur cross road over bridge, the first respondent's lorry which was driven by its Driver in rash and negligent manner with uncontrollable speed suddenly turned on the right side and dashed the bus causing the accident. The omni bus belonging to the fifth respondent, insured with the sixth respondent, which was following the third respondent bus dashed the bus from behind. Due to the impact of the collusion of the three vehicles, the deceased sustained grievous injuries particularly on his head and died on the spot. According to the claimants, the deceased was aged 26 years at the time of the accident and earning Rs.10,000/- per month by doing attender job in the bus belonging to the third respondent. The claimants, who are the wife and minor child of the deceased filed the claim petition claiming a sum of Rs.20,00,000/- with interest as compensation.

14.The owners of the respective vehicles remained *ex-parte* and the insurers of all the three vehicles filed counter affidavits denying the negligence of the respective drivers.

15.The Tribunal on an assessment of the entire evidence on record and on the basis of the Exhibit P.1, FIR and the evidence of P.W.1 and P.W.2, having regard to the fact that the respondents 2, 4 and 6 did not let any contra, evidence either oral or documentary, returned a finding of negligence against the drivers of all the three vehicles.

16.The Tribunal on the basis of the evidence on record awarded a compensation of Rs.9,14,000/- along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the above appeal. The only issue to be decided in the claimant's appeal is whether the quantum of compensation awarded by the Tribunal is just, fair and reasonable.

17.The learned counsel for the appellant submitted that assessment of income by the Tribunal was erroneous on the facts of the case. The learned counsel submitted that as the accident took place in the year 2013 and as the deceased was aged about 26 years at the time, the Tribunal ought to have fixed the income at Rs.10,000/- per month, that the Tribunal failed to take future prospects into consideration and that the Tribunal awarded a sum of Rs. 40,000/- only towards love and affection when there were two dependents. Even the award of Rs.10,000/- towards funeral expenses was very meagre and hence the quantum of compensation had to be reassessed.

18.The learned counsel for the respondents on the other hand submitted that in the absence of any evidence in support of the income of the deceased, the Tribunal was justified in fixing the income of the deceased at Rs.6,000/- per month. The learned counsel further submitted that the compensation awarded by the Tribunal is just, fair and reasonable and needed no interference.

19.I have heard the learned counsels and perused the materials on record.

20.The short point to be considered in the appeal is whether the claimants are entitled for higher compensation. The accident occurred on

14.09.2013 and the deceased was aged about 26 years at the time of the accident and was further employed as an attender in the third respondent bus. I am therefore of the view that the income of the deceased can be safely assessed at Rs.8,000/- per month. The claimants are entitled to future prospects of 40%. If the 40% future prospects is added to the income of the deceased the income would be Rs.11,200/-. If 1/3 is deducted towards personal expenses, the monthly income of the deceased is Rs.7,467/- per month. Therefore, the loss towards loss of income would be Rs.16,12,872/- (7467 X 12 X 18). The claimants would be entitled to Rs.40,000/- each towards loss of consortium, Rs.15,000/- towards transport expenses and Rs. 15,000/- towards funeral expenses. The Award of the Tribunal is therefore modified as follows:

Particulars	Tribunal	Court
Loss of Income	Rs.8,64,000/-	Rs.16,12,872/-
Loss of Consortium	Rs. 20,000/-	Rs. 80,000/-
Loss of Love and affection	Rs. 20,000/-	--
Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-
Transport Charges	--	Rs. 15,000/-
Loss of Estate	--	Rs. 15,000/-
Total	Rs.9,14,000/-	Rs.17,37,872/-

21.The claimants shall be entitled to enhanced compensation of Rs.

8,23,872/- (Rs.17,37,872/- – Rs.9,14,000/-). The learned counsel for the respondents then contended that the appeal was restricted to Rs.5,00,000/- and so the enhancement should be restriced to the said restricted claim. I am afraid the said contention cannot be accepted. It is trite in law that an amount in excess of claim can be allowed. I am fortified in this view of mine by the Judgment of the Hon'ble Supreme Court in the case of ***Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Others*** reported in ***2022 LiveLaw (SC) 841*** and the relevant paragraph is extracted hereunder:

> *"14.At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in Nagappa Vs. Gurudayal Singh and Others (2003) 2 SCC 274, it was observed that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount."*

22.The apportionment of liability, as also the compensation awarded to the claimants shall be in the ratio as directed by the Tribunal. The insurance companies are directed to deposit the enhanced compensation along with 7.5% interest within a period of eight weeks from the date of receipt of copy of this order. Thereafter, the first appellant is permitted to withdraw her share of the compensation amount. The share of the minor claimant shall be deposited in any one of the nationalised Bank earning interest till the minor child attains majority. The first respondent is permitted to withdraw the accrued interest from the Bank directly once in three months for the benefit of the minor child. It is made clear that the claimant shall not be entitled to interest for the period of 1753 days being the period of delay in filing the appeal. The appellant is further directed to pay the difference of Court fee for the enhanced compensation.

23.In view of the above discussions, the appeal is allowed and the cross appeal is dismissed. No costs.

02.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sn/ah

To

1.The Motor Accidents Claims Tribunal

(Principal District Judge), Tiruchirappalli.

2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J

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CROS.OBJ(MD)No.8 of 2023

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