BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2023	Delivered on: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.(MD).No.715 of 2022
and
C.M.P.(MD)No.6260 of 2022
and
Cros.Obj(MD)No.28 of 2023

C.M.A.(MD).No.715 of 2022

M/s.Shriram General Insurance Company Limited,
Represented through its Authorized Signatory,
E.8, RIICO, Industrial Area,
Sita Pura, Jaipur,
Rajasthan-302 022 .. Appellant / Respondent No.2

Vs.

1.Vijayasamundeeswari
2.Minor Prathana
3.Victor
4.Iruthayamary .. Respondents 1 to 4 / Petitioners
[Minor 2nd respondent represented by
her mother and next friend, the first respondent herein]

5.Jeya Prakash

6.Eswaran

7.National Insurance Company Limited,
Represented through its authorized signatory,
63, Rasi Plaza,
2nd Floor, West Prathachinam Road,
Karur-639 002. .. Respondents 5 to 7 / Respondents 1, 3 & 4

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 21.12.2021, passed in M.C.O.P.No.190 of 2015 on the file of the Motor Accident Claims Tribunal [Additional District Judge], Dindigul.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.S.Pugalendhi for R1 to R4
		M/s.P.Malini for R7
		No Appearance for R5
		Dispensed with for R6

<u>Cross.Obj.(MD).No.28 of 2023</u>

1.Vijayasamundeeswari
2.Minor Prathana
3.Victor
4.Iruthayamary .. Cross objectors / Respondents 1 to 4
[Minor 2nd respondent represented by
her mother and next friend, the first respondent herein]

Vs.

1.M/s.Shriram General Insurance Company Limited,

Represented through its Authorized Signatory,

E.8, RIICO, Industrial Area,

Sita Pura, Jaipur,

Rajasthan-302 022 .. 1st Respondent / Appellant

2.Jeya Prakash

3.Eswaran

4.National Insurance Company Limited,
63, Rasi Plaza,
2nd Floor, West Prathachinam Road,
Karur-639 002. .. Respondents 2, 3 and 4/ Respondents 5 to 7

Prayer:- Cross Objection filed under Order 41 Rules 22 of the Code of Civil Procedure, to enhance the compensation award to cross objection and set aside in C.M.A(MD)No.715 of 2022 as against the order passed in MCOP No.190 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul, 21.12.2021.

For Cross objectors : Mr.S.Pugalendhi

For Respondents : Mr.V.Sakthivel for R1

M/s.P.Malini for R7

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The appellant/Insurance Company challenging the award in M.C.O.P.No.190 of 2015 on the ground of negligence and quantum.

2.The claim petitioners have filed Cross Objection seeking enhancement of compensation on the grounds discussed infra.

3.The respondents 1 to 4 are the claim petitioners filed claim petition before the Tribunal claiming compensation for the death of the husband of the first respondent viz., Vijay Amirtharaj in the road accident on 21.09.2014 and after trial, a sum of Rs.1,07,39,224/- has been awarded and hence, the appeal.

4. The claimants have also filed the cross-objection alleging that the multiplier method adopted by the Tribunal is erroneous and the claimants are entitled for more than the amount as claimed. It is the specific case of the claim petitioners herein is that the income of the deceased was taken only Rs.49,464/- based upon the last drawn salary which is Rs.67,104/-

and also stated that the Form-16 has not properly appreciated by the Tribunal.

5. The learned counsel for the appellant drew our attention to the fact that on the date of accident, the deceased was aged about 33 years and hence, 40% has to be added as future prospects as per the Pranay Sethi Case.

6. Per contra, the learned counsel for the claim petitioners relied upon the decision in K.Anusha and Others Vs. Regional Manager, Shriram General Insurance Co., Ltd., reported in 2022 (1) TN MAC 152 (SC), wherein, 50% has been given as future prospects and also contended that consortium alone has been granted for the wife and the loss of love and affection for the minor child and parents of the deceased was not considered by the Tribunal.

7. With regard to the negligence, the learned counsel for the appellant would contend that due to the sudden application of the brake by the lorry, which is proceeded in front of the car, in which, the deceased was travelled, the accident had taken place.

8. Per contra, the learned counsel for the claim petitioners would contend that it is a case of the negligence of the driver of the car, the accident had taken place.

9. After hearing the rival submissions and also on perusal of the oral and documentary evidence, we find that during the trial, on behalf of the claimants, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.15 were marked. On behalf of the respondents, R.W.1 to R.W.4 were examined and Ex.R.1 to Ex.R.4 were marked.

10(a). The learned counsel for the appellant/Insurance Company contended that due to the rash and negligent driving of the driver of the deceased Vijay Amirtharaj, the accident has occurred on 21.09.2014 at about 09.30 p.m., near Senkatampatti Pond Bridge on Batlagundu to Sempatti Main Road. The Innova Car bearing Registration No.TN-01-AH-0434, wherein, the deceased Vijay Amirtharaj travelled which was driven by its driver Rajendran in a rash and negligent manner and dashed behind the lorry and collapsed. As the said Vijay Amirtharaj is said to have seated in the front received fatal injuries and succumbed to the injuries.

10(b). Ex.P.1-FIR was registered against the driver of the Innova Car, which was insured with the appellant/Insurance Company. The registration certificate and M.V.I Report and the Insurance Policy in respect of the Innova Car was marked as Ex.P.6 to Ex.P.8 and Ex.P.15 is the driving license of the deceased. It is seen from the evidence of Ex.R.2 is the driving license of the driver of the Innova Car and FIR, charge sheet and the M.V.I. Report as well as the rough sketch was found in Ex.R.3-Police file and Ex.R.4 is the certified copy of the Insurance Company. P.W.3, the occurrence witness has deposed that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's Innova Car and based upon Ex.P.1-FIR, the charge sheet has been filed as could be seen from Ex.R.3 marked through R.W.2-Police Witness. It remains to be stated that the plausible other witness, namely, the driver of the vehicle was not examined by the respondents assumes significance.

11. The Tribunal has rightly taken into consideration, the M.V.I report of the Innova Car, in which, the deceased was travelling (Ex.P.7) and the M.V.I report of the Car (Ex.R.3) and also coupled with the rough sketch found in Ex.R.3 and thus, we find that the oral testimony of R.W.3-

occurrence witness is duly corroborated by the documentary evidence, namely, Ex.P.1, Ex.P.2 and Ex.R.3 and hence, we find that the accident has taken place due to the rash and negligent driving of the driver of the Innova Car and non-examination of the driver of the Innova Car to show that it is due to the negligence of the other vehicle being not examined before the Tribunal, a similar finding rendered by the Tribunal cannot be disturbed. Accordingly, the finding of the Tribunal in this regard is hereby confirmed.

12. In view of the admitted position that as per the evidence of Ex.R. 4, on the date of the accident, the vehicle was duly insured with the appellant/Insurance Company and therefore, both the owner of the Innova Car as well as the Insurance Company are jointly and severally liable to pay the compensation and hence, a similar finding arrived at by the Tribunal is hereby confirmed.

13. On the point of quantum of compensation, heard both sides.

14. The learned counsel for the cross objectors would contend as stated supra.

15. The learned counsel for the appellant/Insurance Company also drew our attention to the fact that on the date of the accident, the driver of the Innova Car does not possess a valid batch endorsement and relied upon Ex.R.2, wherein he has given a license and the license was granted to the driver of the first respondent's car to drive the vehicle LMV, and in respect of the Innova Car, batch endorsement is not recorded and hence, following the Judgments of the Hon'ble Supreme Court of India in ***2017 (2) TNMAC Page 145 SC [Mukund Dewangam Vs. Oriental Insurance Company Limited]*** and ***2019 (1) TNMAC Page 571 [Lakshmi and others Vs. M.Shanmuganathan and Others]***, the Tribunal has rightly come to the conclusion that the driver of the first respondent Innova Car had possessed valid driving license and in view of Ex.R.4-Insurance Policy, the Insurance company cannot escape the liability nor being exonerated from liability and accordingly, held that both the owner of the vehicle and the Insurance Company are jointly and severally liable to pay the compensation.

16. As per Ex.P.15-driving license, the deceased Vijay Amirtharaj was born on 19.07.1979. On the date of the accident, he is aged about 35 years old. Since as per the date of birth, he has completed 35 years and therefore, the multiplier 16 has to be adopted.

17. On a combined reading of Ex.P.4-Appointment letter, Ex.P.5-Promotion letter, which was marked through the employer of the deceased, namely, P.W.2-Venkatesan. The income tax receipts of the deceased were marked as Ex.P.10 and Ex.P.13 and the salary certificate was marked as Ex.P.9. On the date of the accident, ie., 21.09.2014 and on that date, as per the income tax receipts and pay slip, in the month proceeding to the accident, namely, August 2014, the salary of the deceased is shown as Rs.55,537/- and Rs.66,771/- for July, and Rs.67,104/- for June, and the same is marked through the employer of the deceased and hence, the average of Rs.49,464/- was taken as a monthly income by the driver and hence, we do not find any error in taking the average monthly salary of the deceased three months prior to the accident is just and reasonable. As per the ***Pranay Sethi's case,*** he is entitled for future prospects at 40% (Rs.19786/-=(Rs.49,464/-x40/100) Since there are four claimants, the deduction has to be ¼ (Rs.17,312/-) and accordingly, the compensation was arrived at Rs.51938/-x12x16=Rs.99,72,096/-.

18. On a perusal of the calculation, we find that consortium for the wife alone, Rs.20,000/- was awarded by the Tribunal and the same is enhanced to Rs.40,000/- and awarded Rs.1,00,000/- towards loss of love

and affection for the minor/the second claim petitioner and also Rs.50,000/- each for the parents 3 and 4th claimants; Rs.15,000/- for transport charges; Rs.15,000/- for funeral expenses; and Rs.15,000/- towards loss of estate. Thus, we find that the award passed by the Tribunal is lessor for non-awarding the other expenses as stated supra. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	**Awarded by the Tribunal**	**Awarded by this Court**	**Enhanced/ reduced/ confirmed**
1. Loss of income	Rs.1,06,84,224/-	Rs.99,72,096/-	Reduced
2.Loss of consortium	Rs. 25,000/-	Rs. 40,000/-	enhanced
3.Loss of Love and affection (2nd claimants)	Rs.5,000/-	Rs. 1,00,000/-	enhanced
4.Loss of Love and affection (parents 3 and 4)	Rs.10,000/- each Rs.5,000/-	Rs.1,00,000/- each Rs.50,000/-	enhanced
4.Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
5.Transportation	....	Rs. 15,000/-	awarded
7.Loss of estate	....	Rs. 15,000/-	awarded
Total Compensation	**Rs. 1,07,39,224/-**	**Rs. 1,02,57,096/-**	**Reduced**

19. In fine, the Civil Miscellaneous Appeal stands Allowed and the Cross Objection stands dismissed. The compensation awarded by the Tribunal is reduced from Rs.1,07,39,224/- to Rs.1,02,57,096/- with interest at the rate of 7.5% per annum along with proportionate interest and costs.

20. The appellant / Insurance Company is directed to deposit the modified award amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Insurance Company.

21. On such deposit being made, the claimants 1, 3 and 4 are permitted to withdraw their share amount as apportioned by the Tribunal, along with interest and costs, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minor - second claimant, the Tribunal is directed to deposit her share amount in any one of the Nationalised Banks till she attain the age of majority. Till then, the first claimant herein - mother of the minor

shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minor. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
22.12.20233

Internet : Yes
Neutral Citation:Yes/No
SJI
To

1.The Motor Accident Claims Tribunal -
Additional District Judge, Dindigul.

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

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

SJI

Pre-Delivery Judgment made in
C.M.A.(MD).No.715 of 2022
and
C.M.P.(MD)No.6260 of 2022
and
Cros.Obj(MD)No.28 of 2023

22.12.2023