IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2024

CORAM

THE HON'BLE MRS. JUSTICE **R.KALAIMATHI**

C.M.A.No. 113 of 2005
and Cros. Obj.No.27 of 2019

The New India Assurance
Company Ltd.,
46, 2nd Line Beach,
Moore Street, Chennai. ... Appellant in CMA.No.113/2005
and 1st Respondent in
Cros. Obj. No.27/2019

Vs.

1. R.Saraswathi

2. R.Yuvaraj (Minor)
(Rep by his mother and next
friend 1st respondent Saraswathi) ...Respondents in

CMA.No.113/2005 and
Cross Objectors in
Cros. Obj. No.27/2019

3. B.Anand ...Respondent in
CMA.No.113/2005 and
2nd Respondent in
Cros. Obj. No.27/2019

Prayer in C.M.A.No. 113 of 2005: Civil Miscellaneous Appeal filed under

Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal Order dated 19.01.2004 made in M.C.O.P.No.1626 of 2001 on the file of the Motor Accident Claims Tribunal and Additional District and Sessions Court (Fast Track Court No.2), Chennai.

Prayer in Cros. Obj.No.27 of 2019: Cross Objection filed under Order XXXXI Rule 22 of Civil Procedure Code, 1908 as amended, against the fair and decretal order dated 19.01.2004 in M.C.O.P.No.1626 of 2001 on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Court (Fast Track Court No.II), Chennai.

For Appellant in Appeal
and First Respondent in
Cross Objection :Mr.J.Michael Visuvasam

For Respondents in Appeal
and Cross Objectors in Cros. Obj. :Mrs.Ramya V. Rao

COMMON JUDGMENT

The Civil Miscellaneous Appeal is preferred by the Insurance Company against the Judgment and Decree passed in M.C.O.P.No.1626 of 2001 dated 19.01.2004 on the file of the MACT/Additional District and Sessions Court, (Fast Track Court No.2), Chennai as regards the liability issue.

2. The claimant Smt.Saraswathi Ramachandran has filed the cross objection No.27 of 2019 for enhancement of compensation.

3.The claim petition was filed under Section 163-A of Motor Vehicles Act r/w rule 3 of the Motor Vehicles Rules, claiming compensation of Rs.20,00,000/- for the death of one Ramachandran who died due to the road traffic accident that occurred on 27.05.2000.

C.M.A.No.113 of 2005:

4. The Tribunal upon consideration has passed an award for a sum of Rs.6,53,360/- with interest at the rate of 9% per annum from the date of filing of petition till the date of realisation for the accident that had occurred due to the rash and negligent driving of the driver of the Santro Car bearing Registration No.TN-09-M-0283 and the compensation was ordered to be payable by the owner of the Car (R-1) and its Insurance Company (R-2). The liability which is saddled upon the Insurance Company is questioned in this Appeal.

5.The learned counsel appearing for the appellant, Mr.J.Michael Visuvasam vehemently contended that the deceased being a Grade-I Constable at the relevant point of time was on duty. When the driver of the first respondent Car was given signal to stop the vehicle, he slowed down the vehicle, lowered the glass of the Car on the driver side, abused the Police and drove the Car in a rash and negligent manner will not come under the purview of Section 304 (A) of IPC. On the part of claimant side, proof of negligence was not properly established. Hence, the liability of the Insurance Company is questioned and prayed to allow the appeal.

6. Per contra, the learned counsel Ms.Ramya V.Rao appearing for the respondents/claimants strenuously contended that the rash and negligent driving of the driver of the first respondent Car need not be established, as the claim petition was filed under Section 163A of the Motor Vehicles Act and prayed for dismissal of appeal.

7. The claim petition has been filed under Section 163 (A) of Motor Vehicles Act r/w. Rule 3 of the Motor Vehicles Rules. It is the evidence of

P.W-2, who was an Armed Reserve Constable, that on 25.05.2000, at the time of accident, he was on duty along with the deceased. They were standing opposite to Loyola College in the work hours. It is his further evidence that when they were conducting vehicle check up, a vehicle bearing Registration No.TN-09-M-0283 came with high speed did not stop. At the time of accident, when the Car hit on the deceased, the number plate fell on the road.

8. It has come on record through the evidence of R.W-1-Staff of Insurance Company that the Car which is involved in the accident is insured with the appellant Insurance Company.

9. At trial, on the petitioner's side, wife of the deceased and ocular witness were examined and nine documents were marked. Ex.P-6 is the final report laid by the Inspector of Nungambakkam Police Station in Cr.No.512/2000 of the said police station. On the respondent's side, two witnesses were examined and two documents were marked. Copy of the Insurance Policy is Ex.R-1 and the Investigation Report is Ex.R-2.

10. It is the evidence of R.W-2 who is the insurance claim investigator that according to his investigation it is not an accident. But he would concede that he did not witness the accident. His Investigation Report is Ex.R-2. When he has not witnessed the accident, he is not a suitable person to opine that the said occurrence is not a road traffic accident.

11. From the perusal of the connected records, it appears that initially the case was registered under Sections 332, 427, 307 of IPC. But, the final report was filed under Sections 299, 304 (A) of IPC r/w. 134 (A) and (B), 187 of Motor Vehicles Act.

12. On the Complainant's side, during examination of P.W-2 who is an ocular witness to the accident, it was made clear that the accident occurred due to the rash and negligent driving of the Car bearing Registration No. TN-09-M-0283. As per Ex.R-1-Insurance Policy, the policy was alive on the date of accident. Therefore, the trial Court has rightly saddled the liability on the second respondent cannot be found fault with.

Cross Obj.No.27 of 2019:

13. The learned counsel Mrs.Ramya V.Rao, appearing for the cross-objectors vehemently contended that no future prospects was added while computing the income of the deceased as he was working as Gr-I Police Constable at the time of accident; he had more than 18 years of service in the Police Department and he would have received a salary of more than Rs.4000/- p.m. The amounts awarded for the conventional damages are insufficient.

14. Per contra, the learned counsel Mr.J.Michael Visuvasam, appearing for the Insurance Company strenuously argue that the Tribunal after evaluating the oral and documentary evidence has granted compensation of Rs.6,53,360/- with 9% interest from the date of filing of petition.

15. From the evidence of PW1 Smt.Saraswathi Ramachandran, at the relevant point of time, age of the deceased was 41 years. As per the pay drawn particulars Ex.P9, his last drawn salary was Rs.5,368/-. The Hon'ble Supreme Court in ***National Insurance Co.Ltd., v. Pranay Sethi*** reported

in ***2017 (2) TN MAC 609 (SC)*** has standardised the details of future prospects in respect of persons in permanent job. For age group of persons between 40 to 50 years 30% to be added as future prospects while computing the income of the deceased. Details of multiplier has been tabulated by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***. For the age group of persons between 41 to 45 years, the multiplier to be adopted is 14m. As regards the deduction for personal and living expenses, if the deceased is married and if the number of dependent family members is 2 to 3, 1/3rd has to be deducted. Based on the above said details, for loss of income, the formula emerges as follows:

Age of the injured	:	41 years
Monthly income fixed	:	Rs.5,368/-
Future Prospects to be added:		30%
Notional Income Arrived at	:	Rs.5,368/- + 30% = Rs.6,978/-
After 1/3rd deduction	:	Rs.4,652/-
Multiplier to be adopted	:	14m
For Loss of Income	:	Rs.4,652/-X12X14
	:	Rs.7,81,536/-

16. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co.Ltd., v. Pranay Sethi*** reported in ***2017 (2) TN MAC 609 (SC)*** for loss of consortium Rs.75,000/- is granted in addition to the amount already awarded by the Tribunal. For loss of estate, an amount of Rs.12,800/- is granted in addition to the amount already granted. In all other aspects, the amount awarded by the Tribunal appears to be reasonable and hence, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For Loss of Income	Rs.6,44,160/-	Rs.7,81,536/-	**Enhanced**
2	For Loss of Estate	Rs. 2,200/-	Rs. 15,000/-	**Enhanced**
3	For Loss of Consortium	Rs. 5,000/-	Rs. 80,000/-	**Enhanced**
4	For Funeral Expenses	Rs. 2,000/-	Rs. 2,000/-	Confirmed
	Total	Rs.6,53,360/-	Rs.8,78,536/-	
	Rounded of to		**Rs.8,79,000/-**	

17. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.6,53,360/-** to **Rs.8,79,000/-** which would carry interest at the rate of

7.5% per annum.

18. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed.

(ii) Cross Objection No.27 of 2019 preferred by the claimant stands partly allowed.

(iii) The compensation awarded by the Tribunal is enhanced from **Rs.6,53,360/-** to **Rs.8,79,000/-**.

(iv) The Appellant / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.8,79,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.1626 of 2001 on the file of Motor Accident Claims Tribunal / Additional District and Sessions Court (Fast Track Court, No.II), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the Claimants/Cross Objectors are permitted to withdraw the same as per the apportionment made by the Tribunal along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The claimants/cross objectors are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. No costs.

28.03.2024

dh/ssn
Index: Yes/No
Speaking Order/Non Speaking order

To

1. The Motor Accidents Claims Tribunal,
   Additional District and Sessions Court (Fast Track Court No.2),
   Madras.

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

R.KALAIMATHI.J.,

dh/ssn

C.M.A.No. 113 of 2005
and
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