IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2123 of 2022
And
C.M.P.No.16476 of 2022
And
Cross Objection No.87 of 2024

C.M.A.No.2123 of 2022:

United India Insurance Company Ltd.,
No.178, Dr.Nanjappa Road,
Chidambaram Park Opposite
Coimbatore – 641 018. ... Appellant

Vs.

1.Manonmani
2.Minor.Sabarish
3.Minor.Priyadharshini
4.Rani

(Minor petitioners 2 and 3 are
represented by mother/guardian/next friend
Manonmani)

5.Dhanabakkiam ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 17.08.2021 in M.C.O.P.No.2221 of 2016 on the file of Special Motor Accident Claims Tribunal (Chief Officer) at Tiruppur.

For Appellant : Mrs.R.Sree Vidhya
For Respondents : Mr.M.Logesh
for M/s.Ma.P.Thangavel for R1 to R4
R5 – No Appearance

Cross Objection No.87 of 2024:

1.Manonmani
2.Minor.Sabarish
3.Minor.Priyadharshini

(Minor petitioners 2 and 3 are
represented by mother/guardian/next friend
Manonmani)

4.Rani ... Cross Objectors

Vs.

1.United India Insurance Company Ltd.,
No.178, Dr.Nanjappa Road,
Chidambaram Park Opposite
Coimbatore – 641 018.

2.Dhanabakkiam

{The respondent-2 remained
ex parte before the tribunal. Hence
Notice may be dispensed with for R-2
in this Cross Appeal} ... Respondents

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, against the decree and judgment dated 17.08.2021 in M.C.O.P.No.2221 of 2016 on the file of Special Motor Accident Claims Tribunal (Chief Officer) at Tiruppur, to enhance the compensation amount by allowing the cross appeal.

For Cross Objectors : Mr.M.Lokesh
For Respondents : Mrs.R.Sree Vidhya for R1

COMMON JUDGMENT

The civil miscellaneous appeal as well as the cross objection have been filed against the judgment and decree dated 17.08.2021 in M.C.O.P.No.2221 of 2016 on the file of Special Motor Accident Claims Tribunal (Chief Officer) at Tiruppur.

2.The second respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeal and the petitioners 1 to 4 before the Motor Accident Claims Tribunal are the cross objectors in the cross objection.

3.The brief facts of the case is that on 22.11.2016 at about 11.30 a.m., the deceased Anandhakumar was riding the two wheeler bearing Registration No.TN-36-M-3127. At that time, the lorry bearing Registration No.TN-39-S-2179 which came in a rash and negligent manner, dashed the two wheeler, due to which, the deceased sustained fatal injuries.

4.Thereafter, the dependants of the deceased Anandhakumar/ respondents 1 to 4 in the civil miscellaneous appeal/ cross objectors in cross objection (hereinafter referred to as 'claimants') filed claim petition before the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Thiruvarur, claiming compensation of Rs.60 Lakhs.

5.After adjudication, the Motor Accident Claims Tribunal fixed 90% negligence on the part of the driver of the vehicle insured with the Insurance Company and 10% negligence on the part of the deceased and awarded a sum of Rs.30,61,584/- and directed that the claimants are entitled to a sum of Rs.27,55,426/- as compensation and directed the United India Insurance Company (hereinafter referred to as 'Insurance Company') to pay the compensation amount with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit with costs.

6.The learned counsel appearing for the Insurance Company submitted that the deceased drove the two wheeler in a rash and negligent manner and was responsible for the accident, however, the Tribunal only fastened only 10% negligence on the part of the deceased. The learned counsel further submitted that though F.I.R. was registered as against the driver of the vehicle insured with the Insurance Company, F.I.R. is not an conclusive proof and it is only information passed on to the law enforcing agency. Hence, this Court may increase the percentage of liability fastened on the deceased.

7.The learned counsel appearing for the Insurance Company further submitted that the accident is of the year 2016 and without any income proof, a sum of Rs.12,000/- has to be fixed as notional monthly income of the deceased, however, the Tribunal fixed a sum of Rs.15,000/- as the notional monthly income of the deceased, which is not sustainable one and further submitted that the amount awarded under the other heads are also on the higher side.

8.Per contra, the learned counsel appearing for the Cross Objectors submitted that in order to prove the case the claimants examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to Ex.P.12, however, the Insurance Company neither examined any witness nor marked any exhibit and further submitted that the claimants marked documents for payment of income tax by the deceased before the Tribunal, however, the Tribunal fixed the notional monthly income of the deceased as Rs.15,000/- which is very meagre and further submitted that the Tribunal did not award any amount for loss of love and affection and further submitted that the compensation awarded is very very meagre and hence the claimants are entitled for enhancement in compensation.

9.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross Objectors and perused the materials available on record.

10.The accident is not disputed. In order to prove the case, the claimants have examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to Ex.P.12 before the Tribunal, however, the Insurance Company has not examined any witness including the driver of the lorry who is the eye witness and has not marked any exhibit. Admittedly, F.I.R. was registered as against the driver of the vehicle insured with the Insurance Company. In the absence of the evidence of any independent eye witness, the Tribunal fastening 10% negligence on the part of the deceased is not sustainable one. Hence, this Court fix the entire negligence i.e., 100% negligence on the part of the driver of the vehicle insured with the Insurance Company. The Insurance

Company is liable to pay the entire compensation to the claimants.

11.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.28,35,000/- for loss of income, Rs.1,56,584/- for medical bills, Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium, Rs.15,000/- for funeral expenses and arrived at a total compensation of Rs.30,61,584/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

12.The accident took place during the year 2016. At the relevant point of time without any income proof a sum of Rs.12,000/- ought to have been fixed as the notional monthly income of the deceased, however, the Tribunal has fixed a sum of Rs.15,000/- as the notional monthly income of the deceased, which is not sustainable one. Hence, this Court fix a sum of Rs.12,000/- as the notional income of the deceased per month. At the time of death, the deceased was aged 40 years and hence the Tribunal ought to have awarded 25% future prospects, however, the Tribunal has awarded 40% future prospects, which is not sustainable one. Hence, this Court awards 25% of the notional monthly income for future prospects. Accordingly, the amount awarded for loss of income works out to Rs.20,25,000/- [Rs.12,000/- X 25% = Rs.3,000/-; Rs.12,000/- + Rs.3,000/- = Rs.15,000/-; Rs.15,000 X 1/4 = Rs.3,750/-; Rs.15,000/- - Rs.3,750/- = Rs.11,250/-; Rs.11,250/- X 12 X 15 = Rs.20,25,000/-].

13.This Court is of the opinion that some amount has to be awarded for loss of love and affection. Accordingly, this Court awards a sum of Rs.1,20,000/- for loss of love and affection. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.

14.Accordingly, the compensation amount is re-assessed as follows:

S.No.	***Description***	***Amount Awarded by the Tribunal***	***Amount Awarded by this Court***
1.	Loss of income	Rs.28,35,000/-	Rs.20,25,000/-
2.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3.	Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
4.	Loss of love and affection	---	Rs. 1,20,000/-
5.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-
6.	Medical bills	Rs. 1,56,584/-	Rs. 1,56,584/-
	Total	Rs.30,61,584/-	Rs.23,71,584/-

15.The claimants are entitled to total compensation of

Rs.23,71,584/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

16.The civil miscellaneous appeal is partly allowed and the cross objection stands disposed of. The decree and judgment dated 17.08.2021 passed in M.C.O.P.No.2221 of 2016 by the Special Motor Accident Claims Tribunal (Chief Officer) at Tiruppur, is modified to the above extent. No costs. Consequently, the connected miscellaneous petition is closed.

17.The Insurance Company is directed to deposit the modified award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. The Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

18.On such deposit being made, the respondents 1 and 4 in the civil miscellaneous petition/ cross objectors 1 and 4 in the cross objection are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The respondents 2 and 3 in the civil miscellaneous petition/ cross objectors 2 and 3 in the cross objection are permitted to withdraw their shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to their majority. If the respondents 2 and 3 in the civil miscellaneous petition/ cross objectors 2 and 3 in the cross objection are still minors, their shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minors shall be paid to the first respondent in the civil miscellaneous petition/ first cross objector in the cross objection/ mother every quarter to be utilized for the welfare of the said minors.

26.11.2024

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Special Motor Accident Claims Tribunal (Chief Officer)
at Tiruppur.

M.DHANDAPANI,J.
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