IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.1375 of 2024
and
C.M.P.Nos.12220 & 14552 of 2024
and
Cross Objection No.39 of 2024

C.M.A.No.1375 of 2024:

The Oriental Insurance Company Ltd.,
Third Party Claims Hub,
256/115, Prakasam Road,
"Oriental House", Broadway, Chennai. .. Appellant

Vs.

1.Chithra

2.Ram Prakash

3.Praveena

4.Prathap

Murugesan (died)

5.Valli

6.Dozeep

7.Kasthuri .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.03.2022 made in M.C.O.P.No.291 of 2016 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge) at Kallakurichi.

For Appellant : Ms.R.Sree Vidhya

For RR 1 to 5 : Mr.Amar Dineshbhai Pandiya

Cross Objection No.39 of 2024:

1.Chithra

2.Ram Prakash

3.Praveena

4.Prathap

Murugesan (died)

5.Valli .. Cross Objectors

Vs.

1.The Oriental Insurance Company Limited,
Third Party Claims Hub,
256/115, Prakasam Road,
"Oriental House", Broadway, Chennai.

2.Dozeep

3.Kasthuri .. Respondents

Prayer: Cross Objection filed under Order XLI Rule 22 of CPC, praying to allow the Cross Objection filed by the Cross Objectors and dismiss the appeal preferred by the Insurance Company in C.M.A.NO.1375 of 2024 against M.C.O.P.No.291 of 2016 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge) at Kallakurichi.

For Cross Objectors	:	Mr.Amar Dineshbhai Pandiya
For R1	:	Ms.R.Sree Vidhya

JUDGMENT

The Insurance Company has filed the present appeal aggrieved by the award passed by the Motor Accident Claims Tribunal, (III Additional District Judge) at Kallakurichi, in M.C.O.P.No.291 of 2016 dated 08.03.2022.

2.The Cross Objection has been filed by the claimants against the same award seeking for enhancement of compensation.

3.The claimants are the wife, sons, daughter and mother of the deceased Mani. The case of the claimants is that the deceased Mani was traveling in a two wheeler from Kallakurichi bus stop towards Chinnaselam at Salem Main Road on 20.06.2015 and at about 09.30 PM, when he was near Kanakku pillai street, the offending vehicle which is an auto was driven in a rash and negligent manner and it hit the two wheeler, as a result of which, the deceased sustained grievous injuries and he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

5.The Tribunal having reached the above finding, proceeded to fix the total compensation at Rs.10,32,500/- under various heads as follows:

Age of the deceased at the time of accident	48 years
Multiplier with reference to the age of the deceased, as per Sarla Verma's case	13
Annual salary of the deceased (After deduction of Income Tax) (Rs.6,000 X 12)	Rs.72,000.00
Future prospects of the deceased (25% of the net annual salary income) (Rs.72,000/- X 25/100)	Rs.18,000.00
Net income of the deceased (Rs.72,000 + 18,000)	Rs.90,000.00
1/4 deduction towards personal and living expenses of the deceased (Rs.90,000 – Rs.22,500)	Rs.67,500.00
Loss of dependency (Rs.67,500 X 13)	Rs.8,77,500.00
Loss of Consortium	Rs.40,000.00
Funeral expenses	Rs.25,000.00
Loss of love and affection to the Petitioners	Rs.75,000.00
Loss of Estate	Rs.15,000.00
Total	**Rs.10,32,500.00**

6.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

7.The Insurance Company has filed the present appeal on the ground that the Tribunal ought to have ordered pay and recovery, since the driver of the offending vehicle did not possess a valid driving license and the same amounts to violation of the policy condition.

8.The Insurance Company has also filed C.M.P.No.14552 of 2024 under Order XLI Rule 27 of CPC to produce additional evidence.

9.Heard the learned counsel for the Insurance Company and the learned counsel for the claimants.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.This Court has also carefully gone through the award passed by the Tribunal.

12.This Court has to first deal with the petition filed in C.M.P.No.14552 of 2024 filed by the Insurance Company for bringing in three additional documents. The additional documents that are sought to be relied upon as additional evidence in the present appeal are the report of the Motor Vehicle Inspector dated 29.06.2015, Insurance Policy and the judgment and decree passed in M.C.O.P.No.460 of 2018 by the same Tribunal which decided the present case.

13.The same accident resulted in the demise of one Mani, who was the pillion rider in the two wheeler and the injuries sustained by one Kasthuri. The said Kasthuri filed M.C.O.P.No.460 of 2018 seeking for payment of compensation for the injuries sustained by her. The legal representatives of the deceased Mani filed independent claim petition seeking for compensation in M.C.O.P.No.291 of 2016. Unfortunately, both the cases were tried independently. In view of the same, while deciding M.C.O.P.No.460 of 2018, the Tribunal gave a categoric finding that the driver of the offending vehicle did not possess a valid driving license. Consequently, the Tribunal ordered for pay and recovery. However, while deciding M.C.O.P.No.291 of 2016, the Tribunal did not even go into this issue. As a result, while ordering for payment of compensation in this case, the Insurance Company was directed to pay the compensation without giving them the right to recover the compensation amount from the owner of the offending vehicle.

14.The Tribunal while deciding M.C.O.P.No.460 of 2018 specifically relied upon the report of the Motor Vehicle Inspector and also considered the Insurance Policy. Those are the two documents which are sought to be brought in as additional evidence in this appeal along with the judgment and decree passed in M.C.O.P.No.460 of 2018.

15.The above three documents are very much necessary for this Court to properly adjudicate and pronounce a judgment in the present appeal. Hence, C.M.P.No.14552 of 2024 is allowed and the additional documents are marked as Exs.R7 to R9 in the following manner:

Ex.R7	-	Motor Vehicle Inspector report
Ex.R8	-	Insurance Policy
Ex.R9	-	Order and Decree

16.The main ground that was urged by the learned counsel for the Insurance Company is that the Tribunal ought to have applied the pay and recovery principle in this case also, since, it was done in the connected case in M.C.O.P.No.460 of 2018. There is a lot of force in the submission made by the learned counsel for the Insurance Company. In view of the same, this Court is inclined to order for pay and recovery in this case.

17.The cross objection has been filed by the claimants seeking for enhancement of compensation. The learned counsel for the claimants submitted that the Insurance Company has not questioned the compensation granted in this case and the only ground that was raised was that the Tribunal ought to have applied the pay and recovery principle. Therefore, it was contended that the claimants cannot seek for enhancement of compensation in this case.

18.The Hon'ble Supreme Court in the case of ***Dheeraj Singh and others Vs. Greater Noida Industrial Development Authority and others*** reported in ***(2023) 4 MLJ 265 (SC)***, categorically held that a cross objection has all the trappings of a regular appeal and it must be considered independently and it must be adjudicated upon. It will be also useful to refer the judgment of the Hon'ble Supreme Court in ***Hardevinder Singh Vs. Paramjit Singh and others*** reported in ***2013 (1) CTC 409***, wherein it was categorically held that even if the main appeal is withdrawn, the cross objection has to be adjudicated independently on its own merits. This judgment was subsequently reiterated by a Three Member Bench of the Hon'ble Supreme Court in the case of ***Urmila Devi & Others Vs. Branch Manager, National Insurance Company Ltd. & Anr***. reported in 2020 (3) LW 456.

19.In the light of the above settled law, even though the Insurance Company has not questioned the quantum of compensation, that will not in any way prevent the claimants to seek for enhancement of compensation by way of filing a cross objection. This Court therefore holds that the claimants are entitled to seek for enhancement of compensation by way of filing a cross objection.

20.The main ground that was urged by the learned counsel for the claimants is that the deceased was carrying on with the avocation as a Mason and was earning a sum of Rs.20,000/- per month and whereas, the Tribunal has fixed only a sum of Rs.6,000/- as notional monthly income. There was no evidence regarding the avocation of the deceased and the monthly income earned by him. However, the sum of Rs.6,000/- that was fixed by the Tribunal is clearly on the lower side. Considering the facts and circumstances of the case and the fact that the accident had taken place during the year 2015 and the number of claimants, this Court is inclined to fix a sum of Rs.11,000/- as notional income of the deceased per month. 25% can be added towards future prospects. In view of the same, the compensation under the head of loss of income / dependency is calculated as follows:

Monthly income fixed	:	Rs.11,000/-
Future prospects to be added	:	25%
Notional Income arrived at	:	Rs.11,000/- + 25% Rs.13,750/-
After deducting 1/4th for personal expenses	:	Rs.10,312.50 (rounded off to Rs.10,313/-)
Multiplier to be adopted	:	13
Loss of Dependency Rs.10,313/- X 12 X 13	:	Rs.16,08,828/-

21.The next issue is with regard to the compensation granted under the head of loss of love and affection. The Tribunal has granted a sum of Rs.40,000/- under the head of loss of consortium and a sum of

Rs.75,000/- under the head of loss of love and affection. Both these heads can be consolidated and a total sum of Rs.2,00,000/- (Rs.40,000/- X 5) can be fixed under the head of loss of love and affection.

22.The Tribunal has fixed a sum of Rs.25,000/- under the head of funeral expenses and the same is reduced to Rs.15,000/-. The compensation that has been fixed under the other heads are reasonable. In the light of the above discussion, the compensation awarded by the Tribunal is modified as follows:

1.Loss of Dependency	-	Rs.16,08,828/-
2.Loss of Consortium	-	Rs.40,000/-
3.Funeral expenses	-	Rs.15,000/-
4.Loss of love and affection	-	Rs.1,60,000/-
5.Loss of Estate	-	Rs.15,000/-
Total		Rs.18,38,828/-

23.The compensation awarded by the Tribunal at Rs.10,32,500/- is hereby enhanced to Rs.18,38,828/-. The Insurance Company is directed to deposit the enhanced compensation together with interest at the rate of

7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. On deposit of the compensation amount along with interest to the claimants, the Insurance Company will be entitled to recover the same from the owner of the offending vehicle. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

24.In the result, C.M.A.No.1375 of 2024 is allowed and Cross Objection No.39 of 2024 also stands allowed. C.M.P.No.14552 of 2024 is ordered as prayed for. Consequently, C.M.P.No.12220 of 2024 is closed. No costs.

12.07.2024

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

N.ANAND VENKATESH, J.

krk

To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
III Additional District Court,
Kallakurichi.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

C.M.A.No.1375 of 2024
amd
Cros.Obj.No.39 of 2024

12.07.2024