IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3456 of 2019 & Cross Obj.No.50 of 2022
and
CMP.No.20257 of 2019

CMA.No.3456 of 2019:

Branch Manager,
United India Insurance Co. Ltd.,
No.19, Neela South Street, Nagapattinam – 611 001. ...Appellant

Vs.

1. Vasuki
2. Nishadevi
3. Anusyadevi
4. Thineshkumar

(R4, *Suo motu* declared as major and his mother R1 Vasuki is discharged from guardianship of the 4th respondent, vide judgment of this Court dated 27.11.2024 made in CMA.No.3456 of 2019 & Cross Obj.No.50 of 2022.)

5. M.Sundarapandi ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the decree and judgment dated

05.02.2010 made in MCOP.No.211 of 2008 on the file of the Motor Accident Claims Tribunal, Nagapattinam.

For Appellant : Mr.M.J.Vijayaraaghavan

For Respondents : Mr.R.S.Varadharajan
for M/s.Ram & Rajan & Associates, for R1-R4
: No Appearance, for R5

<u>Cross Obj.No.50 of 2022:</u>

1. Vasuki
2. Nishadevi
3. Anusyadevi
4. Thineshkumar

(4th Appellant, *Suo motu* declared as major and his mother 1st Appellant Vasuki is discharged from guardianship of the 4th appellant, vide judgment of this Court dated 27.11.2024 made in CMA.No.3456 of 2019 & Cross Obj.No.50 of 2022.)

...Appellants

Vs.

1. Branch Manager,
United India Insurance Co. Ltd.,
No.19, Neela South Street, Nagapattinam – 611 001.
2. M.Sundarapandi ...Respondents

Cross Objection filed under Order 41 Rule 22 of CPC, against the judgment and decree dated 05.02.2010 made in MCOP.No.211 of 2008 passed by the Hon'ble District Judge, on the file of the Motor Accidents Claims Tribunal, Nagapattinam.

For Appellants : Mr.R.S.Varadarajan
for M/s.Ram and Rajan Associates

For Respondents : Mr.M.J.Vijayaraghavan, for R1

COMMON JUDGMENT

Since both appeal and the cross objection are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the liability fastened against the insurance company as well as the quantum of compensation awarded in MCOP.No.211 of 2008 dated 05.02.2010 on the file of Motor Accident Claims Tribunal (District Judge), Nagapattinam, the insurance company has filed CMA.No.3456 of 2019. Being dissatisfied with the quantum of compensation awarded in the said Original Petition, the claimants have filed Cross Objection No.50 of 2022.

3. For the sake of convenience, the parties are referred to as per their array in CMA.No.3456 of 2019.

4. It is the case of the respondents 1 to 4/claimants that, on 20.11.2006 at about 9.00 p.m., when the deceased Rengasamy was riding a bicycle in Nagore-Nagapattinam Main Road, at that time, a motor cycle bearing Regn.No.TN-51-C-9901 owned by the 5th respondent insured with the appellant-insurance company driven by its rider came in a rash and negligent manner and hit against the deceased, due to which, the said Rengasamy sustained grievous injuries and succumbed to the same Thereby, the respondents 1 to 4, who are the dependents of the deceased Rengasamy, filed a claim petition claiming a compensation of Rs.6,00,000/-. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P1 to P6 and on the side of the appellant, two witnesses viz., R.W.1 and R.W.2 were examined and the Investigation report was marked as Ex.R.1. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the rider of the appellant insured vehicle and awarded a compensation of Rs.3,80,000/- payable by the appellant-insurance company. Aggrieved by the liability fastened as well as the quantum, the appellant-insurance company has filed the civil miscellaneous appeal in CMA.No.3456 of 2019. Pending

appeal, the claimants have filed cross objection No.50 of 2022 seeking enhancement of compensation awarded by the Tribunal.

5. Learned counsel for the appellant submitted that, the tribunal had fastened the entire liability as against the appellant-insurer merely because of the fact that the FIR came to be registered as against the driver of the appellant insured vehicle. However, it is pertinent to note that, FIR is not a substantive document and whatever is spoken in the FIR need not be taken at its face value and the FIR may not and need not contain all the details and it is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and thereby, the same cannot be a basis to fasten the entire liability as against the appellant-insurer. Further, the driver of the appellant insured vehicle did not possess valid Driving license at the time of accident, which is a clear violation of policy condition and necessarily the appellant-insurer has to be exonerated. Learned counsel further submitted that, the compensation awarded under various heads are on the higher side and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

6. On the other hand, the learned counsel appearing on behalf of the respondents 1 to 4 submitted that, only after carefully appreciating and analyzing the evidence adduced by both sides and upon considering the documents produced by the parties, the Tribunal came to the conclusion that the 5th respondent's motorcycle rider had driven the motorcycle in a rash and negligent manner and caused the accident. He submitted that, such a well considered finding of the Tribunal cannot be interfered with. Learned counsel further submitted that, at the time of accident, the deceased was aged about 50 years and was working as Mason and was earning a sum of Rs.5,000/- per month, however, the tribunal had taken the monthly income of the deceased as Rs.3,556/-, which is very meagre and the compensation awarded by the tribunal under the other heads are also on the lower side, which has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

7. This Court considered the rival submissions made on either side and also perused the materials available on record.

8. The major grievance of the appellant is that the driver of the appellant insured vehicle did not possess valid driving license at the time of the accident, which is a clear violation of policy conditions, however, the tribunal had fixed the entire liability as against the appellant, which is not sustainable and failed to grant the right of recovery to the appellant although the driver was not holding a valid driving license.

9. Though, it is the claim of the appellant that the driver of the appellant insured vehicle did not possess valid driving license, however, in order to substantiate its claim, no oral or documentary evidence has been produced by the appellant/insurance company. Further, when the individual eye witness, who was examined as P.W.2 on the side of the claimants clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle, in order to disprove the same, no contra evidence has been adduced by the appellant-Insurance Company. Further, it is not the case of the appellant that P.W.2 is not the eye-witness to the accident. In such circumstances, it cannot be contended by the appellant that the accident

was not occurred due to the negligence of the rider of the motorcycle. Hence, in the absence of any contra evidence and in the absence of any necessary proof being filed by the appellant either to show that the accident was not caused due to the rash and negligent driving on the part of the driver of the appellant insured vehicle or that the appellant insured vehicle's driver did not possess valid driving licence, the Tribunal, has rightly fixed the negligence on the part of the driver of the appellant insured vehicle and directed the appellant to compensate the clamiants and the said findings of the Tribunal cannot be interfered with.

10. Coming to the quantum of compensation, learned counsel for the appellant contended that the total compensation of Rs.3,80,000/- awarded by the Tribunal is on the higher side and the same needs interference. On the other hand, taking through the grounds raised in the Cross Objection, learned counsel for respondents 1 to 4 submitted that the compensation awarded by the Tribunal is on the lower side and the same requires to be enhanced.

11. Admittedly, the accident is of the year 2006 and at the time of accident, the deceased was aged about 50 years and was a Mason by profession and was earning a sum of Rs.5,000/- per month, however, the tribunal had fixed only a sum of Rs.3,556/- as notional income of the deceased, which is meagre. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.5,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the income per month is quantified at Rs.5,500/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.4,125/- per month and the deceased being aged about 50 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.4,125/- * 12 * 13 = Rs.6,43,500/-.

12. Insofar as the compensation awarded under the other heads are concerned, it appears that the Tribunal has not awarded any amount towards “loss of love and affection” to respondents 2 to 4, who are daughters and son of the deceased. Taking into consideration the fact that respondents 2 to 4 have lost their breadwinner, it would be appropriate to award a sum of Rs.30,000/- each to them. Accordingly, a sum of Rs.90,000/- is awarded towards “loss of love and affection”. Further, the Tribunal has not awarded any amount for “loss of estate”. Following the ratio laid down in the case of Pranay Sethi (supra), a sum of Rs.15,000/- is awarded towards “loss of estate”.

13. The Tribunal has awarded Rs.5,000/- each under the heads “funeral expenses” and “consortium”. As per the dictum laid down in Pranay Sethi (supra), a sum of Rs.30,000/- to be awarded for “loss of consortium” to the 1st respondent/wife and Rs.15,000/- for “funeral expenses”. Accordingly, a sum of Rs.30,000/- is awarded towards “loss of consortium” and Rs.15,000/- towards “funeral expenses”.

14. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Loss of Income	3,70,000/-	**6,43,500/-**
Loss of love and affection	-	**90,000/-**
Loss of consortium	5,000/-	**30,000/-**
Funeral Expenses	5,000/-	**15,000/-**
Loss of estate	-	**15,000/-**
Total	3,80,000/-	**7,93,500/-**

15. When the claim petition was filed in the year 2008, the third appellant was aged about 12 years. Now, the 4th respondent should be aged about 28 years and is therefore, major. Though no application has been taken out to declare him as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 4th respondent as major and discharges his mother namely Vasuki from the guardianship. The Registry shall carry out the necessary amendments.

16. In the result, the Civil Miscellaneous Appeal filed by the Appellant-insurance company in CMA.No.3456 of 2019 stands dismissed and the Cross Objection No.50 of 2022 filed by the respondents 1 to 4/claimants stands allowed in part and the compensation awarded by the Tribunal is modified by enhancing the compensation from **Rs.3,80,000/- to Rs.7,93,500/-**. The appellant/Insurance company is directed to deposit the said amount to the credit of MCOP.No.211 of 2008 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the above compensation, the 1st respondent is entitled to a sum of Rs.3,43,500/- and the respondents 2 to 4 are entitled to a sum of Rs.1,50,000/- each with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respondents 1 to 4/claimants through RTGS within a period of two (2) weeks thereafter, upon production of proof

with regard to payment of Court fee on the enhanced compensation. It is underscored that the respondents 1 to 4/claimants are not entitled to any interest for the default period, if any. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

27.11.2024

skt

NCC	: Yes/No
Index	: Yes/No
Speaking Order	: Yes/No

To:

1. The Motor Accident Claims Tribunal,
   Nagapattinam.

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

M.DHANDAPANI, J.

skt

CMA.No.3456 of 2019 & Cross Obj.No.50 of 2022
and
CMP.No.20257 of 2019

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