IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.11.2024

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THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

C.M.A. NO. 2370 of 2018
CROSS OBJECTION NO. 81 of 2024
AND C.M.P. NO. 18057 OF 2018

C.M.A. NO. 2370 of 2018

The Branch Manager,
United India Insurance Company Ltd.,
Nicobar Islands. .. Appellant

- Vs -

1. R.Radha
2. S.Sathya
3. Minor R.Manikandan
4. Minor R.Karpagavalli

Minors represented by
the first respondent Radha

5. P.Navaneeth .. Respondents

CROSS OBJECTION NO. 81 OF 2024

1. Radha
2. Minor R.Manikandan
3. Minor R.Karpagavalli

Minors represented by
the first cross objector Radha .. Cross Objectors

- Vs -

1. The Branch Manager,
United India Insurance Company Ltd.,
Nicobar Islands.

2. Sathya

3. P.Navaneeth ... Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act to set aside the judgment and decree passed in MCOP. No.441 of 2015 dated 25.11.2016 on the file of the learned Special District Judge, Motor Accidents Claims Tribunal, Krishnagiri.

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the compensation amount awarded in the judgment and decree passed in MCOP. No.441 of 2015 dated 25.11.2016 on the file of the learned Special District Judge, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Mr.J.Chandran in CMA.No.2370 of 2018
Ms.L.Manisha
in Cross Obj. No.81 of 2024

For Respondents : Mr.J.Chandran for R1
in Cross Obj. No.81 of 2024
Ms.L.Manisha for RR1,3 & 4
in CMA.No.2370 of 2018

COMMON JUDGMENT

While the appeal has been filed by the insurance company questioning the quantum of compensation awarded by the Tribunal as excessive, the cross objection has been filed by the claimants challenging the inadequate compensation awarded by the Tribunal.

2. The deceased, aged 45 years, was doing cattle business and night tiffin shop, earning a sum of Rs.25,000/- per month, died in the accident that happened on 15.04.2015. The legal heirs of the deceased, viz., children and wife have filed claim petition claiming compensation for a sum of Rs.35,00,000/-.

3. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.16,76,000/- under various heads.

4. Questioning the liability and the quantum of compensation awarded by the Tribunal is under challenge by the Insurance company as well as by the claimants.

5. Learned counsel appearing for the insurance company submitted that though PW2 who is the eyewitness, has narrated the incident. In order to disprove the same, before the Tribunal, the insurance company marked Ex.R1 to R3 and examined RW1/RTO officer and RW2. On perusal of Ex.R1/MVI report, it is seen that the deceased has not possessed valid driving license and he did not wear helmet at the time of accident. Hence, the claimants are not entitled to get compensation. Without considering the same, the Tribunal has awarded compensation to the claimants which is unsustainable. Apart from that, on perusal of the accident register/Ex.P3, on his own, he fell down from the vehicle and sustained injuries. Contrary to accident register, the award was passed by fixing the liability on behalf of the insurance company, which is liable to be set aside.

6. Per contra, learned counsel appearing for the claimants/cross objectors contends that the deceased had a valid driving license and at the time of the accident, it was not available. The accident had happened due to the rash and negligent driving of the driver of the Scorpio car bearing Reg. No.AN 01 F 4412, which was insured with the appellant. To prove the facts of the claimants, PW2, who is the eyewitness to the accident, was examined.

There is no contra evidence produced to disprove the case of the claimants. Further, the accident had happened in the year 2015 and the deceased was doing cattle business and running night tiffin centre and earning a sum of Rs.25,000/- per month. The Tribunal has fixed the notional income at Rs.9,000/- which is very low. Further, the Tribunal ought to have been awarded compensation towards loss of estate. Therefore, this Court may interfere with the award and and enhance the compensation.

7. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the Tribunal.

8. The facts of the case are not in dispute. When the deceased, aged about 45 years, was riding his two wheeler bearing Reg. No.TN 24 W 2953, at the time, the driver of the car bearing Reg. No.AN 01 F 4412 driven by its driver in a rash and negligent manner, due to which, the deceased died. The claimants, who are the dependent of the deceased, filed a claim petition claiming compensation. The Tribunal has awarded compensation to the

claimants payable by the Insurance company and thereafter, recover from the owner of the car. Challenging the said award, both the claimants and insurance company have come up before this Court.

9. The primary contention raised by the learned counsel appearing for the Insurance company is that the entire negligence is on the part of the deceased. As per the Accident Register, the deceased himself fell down from his vehicle and sustained injuries and died. He would therefore contend that the Tribunal erred in fastening the liability on the Insurance Company.

10. Before the Tribunal, on the side of the claimants, PW2/ independent witness, was examined. He clearly stated that due to rash and negligent driving of the driver of the car, the deceased person thrown away from the two wheeler and sustained fatal injuries and died in the hospital. In order to disprove the same, there is no witness examined before the Tribunal. Therefore, negligence fastened on the part of the driver of the car is perfectly in order and liability fixed on the insurance company is also sustainable.

11. The Tribunal has elaborately assessed the issue and rightly awarded compensation in favour of the claimants, which cannot be interfered with in respect of negligent aspect. Insofar as the quantum is concerned, the Tribunal has fixed the notional income at Rs.9,000/- which is very meagre. Admittedly, the accident has happened in the year 2015. As per the decision of *Syed Sadiq* case, the notional income is fixed at Rs.12,000/- per month. The age of the deceased was 45 years and therefore, 25% is added towards future prospects and "14" multiplier has to be adopted. If so, the loss of income /dependency would be:

Monthly Income	:	Rs. 12,000/-
Add: Future Prospects 25% of Rs.12,000/-	:	Rs. 3,000/-

		Rs. 15,000/-
Annual Income (15,000 * 12)	:	Rs. 1,80,000/-
Less : Personal expenses Rs.1,80,000/- *1/4	:	Rs. 45,000/-

		Rs. 1,35,000/-
Multiplier	:	x 14

Loss of income/dependency	**:**	**Rs.18,90,000/-**
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12. Further, the Tribunal has not awarded compensation in respect of loss of estate. As per the decision of *Pranay sethi* case passed by the Hon'ble Apex Court, this Court is inclined to award a sum of Rs.15,000/-

towards loss of estate. The Tribunal has awarded Rs.1,50,000/- towards loss of consortium and the same is set aside which is unwarranted and fixed a sum of Rs.40,000/- each for the Dependants towards loss of love and affection and as per decision of *Pranay sethi*, a sum of Rs.25,000/- towards funeral expenses awarded by the Tribunal is modified as Rs.15,000/-. The other heads awarded in favour of the claimants by the Tribunal is just and reasonable and therefore, this court is not inclined to interfere with the said heads. Accordingly, the order passed by the Tribunal stands modified as follows:

Sl.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of dependency	12,96,000	**18,90,000**
2	Transportation	5,000	5,000
3	Funeral Exp.	25,000	**15,000**
4	Loss of Consortium	1,50,000	**...........**
5	Loss of love and affection	2,00,000	**1,60,000** **(4 persons X 20,000/-)**
6	Loss of estate	.....	**15,000**
	Total	**16,76,000**	**20,85,000**

13. In view of the above discussion and modification, CMA.No.2370 of 2018 is dismissed and the cross objection No.81 of 2024 is allowed. The liability fixed by the Tribunal is confirmed. The insurance company is directed to deposit the entire enhanced award amount, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment and thereafter, recover the amount from the owner of the car. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The first respondent in CMA.no.2370 of 2018/wife of the deceased is entitled to get the award amount Rs.5,85,000/- and the respondents 2 to 4/ son and daughters of the deceased are each entitled for a sum of Rs.5,00,000/- with proportionate interest and costs. The claimants are not entitled any interest for the default period. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2024

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M.DHANDAPANI, J.

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Index : Yes / No

Internet : Yes / No

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To

The Special District Judge,

Motor Accidents Claims Tribunal, Krishnagiri.

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