IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. Nos.1249 & 409 of 2018
and
C.M.P.Nos.10164 & 3671 of 2018

C.M.A.No.1249 of 2018

National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai-600 002.
... Appellant/4th Respondent

-vs-

1.Anju Agarwal
2.N.Sneah Agarwal - (Minor)
3.A.Anchal Agarwal -(Minor)
4.N.Harsh Kumar -(Minor)
(Minor respondents 2 to 4 are respondent by their mother and next friend the 1st respondent herein)

5.Misri Devi - Respondent 1 to 5/Claimants
6.Varalakshmi
7.Shriram General Insurance Co.Ltd.,
No.68, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai-600 017.
8.Prashant Kondia ... Respondents 6 to 8/Respondents 1 to 3

C.M.A.No.409 of 2018

Shriram General Insurance Co.Ltd.,
No.68, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai-600 017.
... Appellant/2nd Respondent

-vs-

1.Anju Agarwal
2.N.Sneah Agarwal - (Minor)

3.A.Anchal Agarwal - (Minor)
4.N.Harsh Kumar - (Minor)
(Minor respondents 2 to 4 are respondent by their mother and next friend the 1st respondent herein)

5.Misri Devi - Respondent 1 to 5/Claimants-Petitioner
6.Varalakshmi
7.Prashant Kondia
8.National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai-600 002. ... Respondents 6 to 8/Respondents 1,3 and 4

PRAYER IN C.M.A.No.1249 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.03.2017 made in M.C.O.P.No.1405 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

PRAYER IN C.M.A.No.409 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.03.2017 made in M.C.O.P.No.1405 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran in C.M.A.No.1249/18
Mr.S.Dhakshna Moorthy in C.M.A.No.409/18

For Respondents : Mr.G.Balaji Prasad and
Mr.G.Govindan Prasad
for R1 to R5 in both the Appeals

Mr.S.Dhakshna Moorthy for R7 in C.M.A.No.1249/18
Mr.D.Bhaskaran for R8 in C.M.A.No.409/18

COMMON JUDGMENT
[Judgment of the Court made by R.SUBRAMANIAN,J.]

These two appeals are filed by two Insurance companies challenging the award of the Motor Acciden Claims Tribunal, Chennai (VI Court of Small Causes, Chennai) made in M.C.O.P.No.1405 of 2011 dated 20.03.2017. The said claim petition was filed by the wife, children and mother of R.Narendra Kumar, aged about 35 years, who died in the motor accident that occured on 21.07.2010 around midnight.

2. According to the claimants, the deceased was travelling as an occupant in a Maruthi Car, bearing registration No.TN-07-AR-9879. While the car was driven at a moderate speed by its driver, the driver of the lorry bearing registration No.AP-03-X-2854, had parked the lorry in the middle of the road during night without any warning signal, which resulted in the driver of the car, dashing against a stationary lorry causing grievous injuries to the occupants of the car and the deceased died on the way to hospital.

3. Contending that the accident happened due to the negligent manner in which the lorry was parked on a bye-pass road which is only about 22 metres of width. The claimants sought for a compensation of Rs.1,20,00,000/- for the death of the said R.Narendra Kumar. The owners of the car, lorry and the respective Insurance companies were arrayed as Respondents 1 to 4 in the claim petition. While the owner of the lorry was shown as first respondent, the Insurer of the lorry was arrayed as second respondent. The owner of the car was arrayed as third respondent and its insurer was shown as fourth respondent. Both the owners of the car as well as the lorry viz., respondents 1 and 3 remained exparte before the Tribunal.

4. The second respondent viz., the insurer of the lorry had contended that the accident occurred only due to the rash and negligent driving of the car by its driver. The educational qualification and the income of the deceased were also denied. It was also avered that the driver of the car did not possess valid license. While admitting that there was a valid insurance policy with the lorry, the second respondent/Insurance company would submit that it cannot be held liable because the vehicle insured with it was not the tort-feaser.

5.The fourth respondent/Insurance Company filed a counter contending that itself and the insured viz., the owner of the car are not necessary parties to the claim petition inasmuch as the accident occurred only due to the negligent manner which the lorry was parked in the middle of the road, that too at night, without any warning signal. Therefore, sought for dismissal of the claim petition, as against the owner of the car and itself. It was also claimed that the driver of the car was unable to avoid the collission, despite his best efforts.

6.The Motor Accident Claims Tribunal, which tried the above original petition on the basis of the evidence of record, concluded that the negligence on the part of drivers of both the vehicles had contributed to the accident. The Tribunal also found that the negligence attributed to the lorry would be 70% and to the car would be 30%. On the above finding, the Tribunal concluded that the second respondent/Insurance company, being the insurer of the lorry would be liable to pay 70% of the compensation and the fourth respondent/Insurance company, insurer of the car will be liable to pay 30% of the compensation.

7. On the quantum, the Tribunal, taking into account, the income tax returns filed for the year 2010-2011, fixed the monthly income of the deceased at Rs.54,504/-, adding 50% towards future prospects, deducting 1/4th towards personal expenses, the Tribunal arrived at the annual loss of dependency at Rs.7,35,804/-. The Tribunal also deducted income tax of Rs.76,204/-. Adopting a multiplier of '15', as the deceased was aged about 35 years at the time of the accident, the Tribunal arrived at a total pecuniary loss at Rs.98,94,000/-. The Tribunal also awarded Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- each to the children namely minor claimants 2 to 5 towards loss of love and affection, Rs.50,000/- towards funeral expenses and Rs.20,000/- towards transportation. The Tribunal awarded a sum of Rs.1,04,64,000/- as the total compensation. Aggrieved, the insurer of the lorry have filed C.M.A.No.409 of 2018 and the insurer of the car has come forward with the C.M.A.No.1249 of 2018.

8. We have heard Mr.S.Dhakshna Moorthy, learned Counsel for the appellant in C.M.A.No.409 of 2018 and 7th respondent in C.M.A.No.1249 of 2018, Mr.D.Baskaran, learned Counsel for the appellant in C.M.A.No.1249 of 2018 and 8th respondent in C.M.A.No.409 of 2018, Mr.Balaji Prasad, learned Counsel for the Respondents 1 to 5 in both the appeals. The Respondents 6 and 8 though served have not chosen to appear either in person or through counsel.

9. Mr.D.Bhaskaran, learned counsel for the appellant in C.M.A.No.1249 of 2018 would strenuously contend that the Tribunal was not right in concluding that the driver of the car also contributed to the accident. Relying upon the evidence of PW2, wherein, the witness had deposed that the driver of the car could not prevent the collision, despite his best efforts and the manner in which the lorry was parked on the middle of the road without any warning signal, Mr.D.Bhaskaran would contend that the Tribunal must have fastened the entire liability on the insurer of the lorry.

10. Per contra, Mr.S.Dhakshna Moorthy, learned Counsel for the appellant in C.M.A.No.409 of 2018, would contend that if the driver of the car have been careful, he would have avoided the accident. No doubt, the learned counsel would submit that even though the FIR squarely blames the lorry driver as a cause of the accident, the same cannot be taken as a conclusive proof. The fact that the driver of the car had seen the lorry parked,

could not stop the vehicle or sewer the vehicle to right, in order to avoid the collision, would show that the car was being driven at a very high speed.

11. Both the Counsels appearing for the appellants in the appeals would contend that the Tribunal was not right in taking future prospects at 50%. They would rely upon the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27, which prescribes the future prospects at 40% for a self employed person who is aged about 35 years. Therefore, according to them, the Tribunal was not justified in taking the future prospects at 50%.

12. Mr.Balaji Prasad, learned Counsel appearing for the claimants would contend that, though the Tribunal had taken future prospects at 50%, the Tribunal had taken the monthly income only at Rs.54,504/-, based on the returns for the year 2010-2011 and for the year 2011-2012, the income was a little more than that. Therefore, the allocation of 50% for future prospects need not to be interfered with.

13. We have considered the rival submissions. The following points arises for determination in these appeals :

1. Whether the Tribunal was right in apportioning the compensation at 70:30?
2. Whether the Tribunal was right in taking the future prospects at 50% ?

Point No.1:-

14. The accident had occurred at midnight. According to the FIR, it was the driver of the lorry who had parked the vehicle in the middle of the road without any warning signal. It is also seen that the width of the road is about 22 metres and it is a two lane Bye-pass road. Parking of a vehicle in a narrow Bye-pass road during night time without any warning signal is definitely an act of negligence on the part of the driver. At the same time, we cannot also ignore the fact that the driver of the car must have also been careful, as rightly contended by Mr.S.Dhakshna Moorthy, learned Counsel appearing for the appellant in C.M.A.No.409 of 2018. If only the driver of the car have been careful, he would have avoided the accident. At any rate, the major cause of the accident is the act of the driver of the lorry in parking the vehicle in the middle of the road without any warning signal. Therefore, the Tribunal was justified in apportioning the contributing negligence at 70:30, between lorry and car respectively. We do not see any valid reasons to interfere with the said finding of the Tribunal.

Point No.2:-

15. On the quantum, the income tax returns for the years 2008-2009 to 2011-2012 have been produced. A look at the returned income shows a steady increase in the income year by year. The accident had occurred on 21.07.2010. The income returns for the year 2010-2011, that is for the year ending 31.03.2010, has been filed on 23.09.2010. Though, Mr.D.Bhaskaran would contend that the returns itself have been filed after the death of the said R.Narendra Kumar, we find from the returns that he has paid advance tax even during his life time. Therefore, we did not see any reason to disbelieve the contents of the returns.

16. We, therefore, construe that the findings of the Tribunal that the monthly income should be safely arrived at Rs.54,504/- as per Ex.P.17, Income Tax returns for the year 2010-11, the Tribunal has applied 50% towards future prospects, relying upon the Judgment of Honourable Supreme Court in Munna Lal Jain and another Vs. Vipin Kumar Sharma and others reported in 2015 (1) TN MAC 814 (SC). However, the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27, had held that in respect of self employed persons, the future prospects should be taken at 40% of the age group of 35 to 40. Therefore, we are of the considered opinion that the Tribunal was not correct in adding 50% towards future prospects. Therefore, the award of the Tribunal has to be re-worked, taking the future prospects at 40% and not 50%. The deceased has left behind atleast 5 dependents, 3 of whom are minors. The Tribunal has deducted 1/4th towards his personal expenses. We see no reason to interfere with the said deduction. The multiplier suggested by the Hon'ble Supreme Court in Sarala Varma & Other Vs. Delhi Transport Coporation & another reported in 2009(2) TNMAC 1 would be '15'.

18. The Pecuniary loss is calculated as follows:

Monthly Income	= Rs.54,504/-
Annual Income	= Rs.6,54,048/-
Add 40% towards future prospects	= Rs.2,61,619/-
	= Rs.9,15,667/-
Less 1/4th towards personal expenses	= $915667 \times \frac{1}{4}$
	= Rs.2,28,916.75/-
	= Rs.6,86,750.25/-

Less Income Tax Rs.76,204/-   = Rs.   76,204.00/-

= Rs.6,10,546.20/- x 15
= Rs.91,58,193.75/-

Rounded of to Rs.91,58,200/-.

19. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of Consortium. In view of the larger Bench decision of the Hon'ble Supreme Court in Pranay Sethi's Case referred to supra, the sum is reduced to Rs.40,000/-. Similarly , the compensation for loss of love and affection for the other petitioners is reduced to Rs.40,000/- equivalent to Rs.1,60,000/-. The award of Rs.50,000/- and the award of Rs.20,000/- towards Funeral expenses and transport expenses are sustained.

For the foregoing reasons, the award of the Tribunal is modified as follows:

S.No.	Heads	Amount
1.	Pecuniary Loss	Rs.91,58,200/-
2.	Loss of consortium	Rs.40,000/-
3.	Loss of Love and affection	Rs.1,60,000/-
4.	Funeral expenses	Rs.50,000/-
5.	Transport expenses	Rs.20,000/-
	TOTAL	Rs.94,28,200/-

CMA 1249/18 is allowed in past and CMA 409/2018 is dismissed

20. In the result, the modified award will carry interest at the rate of 7.5% per annum and proportionate costs. The first respondent is the wife of the deceased, the Respondents 2,3 and 4 are the minor children and the fifth respondent is the mother of the deceased. The wife and the minor children of the deceased will be entitled to Rs.22,00,000/- each with proportionate interests. The mother viz., the fifth respondent would be entitled to Rs.6,28,200/- with proportionate interests. The insurance company is directed to deposit the award amount with in a period of 6 weeks form the date of receipt of the copy of this judgment.

21. The Tribunal is directed to deposit the share of the minors in interest earning Fixed Deposit till they attain majority. The 1st respondent, the wife of the deceased will be entitled to withdraw quarterly interest accruing on the Fixed Deposit for the maintenance of the minor children. In the Circumstances, there will be no order as to costs in these

appeals. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

ay/dsa

To

The Motor Accident Claims Tribunal,
VI Court of Small Causes,Chennai.

+2cc to Mr.G.Balajiprasad, Advocate SR.No.57364

+1cc to Mr.S.Dakshnamoorthy, Advocate SR.No.57084

CMA No.1249 & 409 of 2018

GMY(05/10/2018)