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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM:

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

C.M.A.Nos.2123 & 2124 of 2016
and
C.M.P.Nos.15335 & 15337 of 2016

CMA.No.2123 of 2016:

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai - 600 014.

... Appellant/2nd Respondent

vs

1.Raja ...1st Respondent/Claimant

2.Rajkumar
...2nd Respondents/1st Respondent

CMA.No.2124 of 2016:

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai - 600 014.

... Appellant/2nd Respondent

-vs-

1.Rajendran ...Respondents/ Claimants

2.Dhanam
3.Rajkumar
...3rd Respondents/1st Respondents

PRAYER IN CMA.No.2123 of 2016: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the Judgment and Decree dated 29th day of April, 2016, made in M.C.O.P.No.294 of 2012, on the file of Motor Accident Claims Tribunal (Principal District Court), Perambalur.



PRAYER IN CMA.No.2124 of 2016: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the Judgment and Decree dated 29th day of April, 2016, made in M.C.O.P.No.295 of 2012, on the file of Motor Accident Claims Tribunal (Principal District Court), Perambalur.

For Appellant in both CMAs : Mr.S.Manohar

For Respondents in both CMAs : Mr.R.Gokulakrishnan for R1
- No appearance (in both CMAS)
R2 - served - No Appearance(in CMA.2123)
R3-sd No Appearance in CMA.2124

Mrs.P.T.Saleem Fathima
Amicus Curie for R1 in CMA.2123
R1 & 2 in CMA.2124/16

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The challenge in these appeals is to the common award of the Motor Accident claims Tribunal, Perambalur made in MCOP.No.294 and 295 of 2012. MCOP.No.294 of 2012 was filed by one Raja seeking compensation for the injuries caused to him in the Motor Accident that occurred on 12.04.2012. MCOP.No.295 of 2012 was filed by parents of one Karthikeyan who died in the said accident.

2. According to the claimants in both the cases, the deceased Karthikeyan was driving the motor cycle bearing registration No.TN-45-T-7176 from South to North of Perambalur-Ariyalur road on the extreme left side of the road. While so, a lorry bearing registration No.TN-46-M-0606 owned by the first respondent in the original petition insured with the Appellant Insurance Company came in the opposite direction driven by its driver in a rash and negligent manner dashed against the two-wheeler. As a result of the impact both the rider as well as the pillion rider were thrown off the vehicle and the rider viz., Karthikeyan succumbed to injuries, while the pillion rider suffered grievous injuries.

3. The injured claimant sought for a compensation of Rs.5,00,000/- for the injuries caused to him. The parents of the deceased Karthikeyan sought for a compensation for Rs.20,00,000/-. The deceased Karthikeyan was a diploma holder and he was pursuing his Bachelor of Engineering at the time of the accident.



4. The Insurance Company resisted the claim contending that the accident occurred only due to the rash and negligent driving of the two-wheeler by its rider. It is stated that the two wheeler was on the wrong side of the road and the driver of the lorry could not avoid the accident despite his best efforts. A reference was also made to the motor vehicle report to show the damage to the lorry which was to the front centre portion of the grill and the bumper. The Insurance Company further contended that the quantum of compensation is excessive. It has also denied the age, educational qualification as well as the notional income as claimed in the claim petition.

5. The Tribunal disposed of both the Original Petitions by way of a common judgment dated 29.04.2016. On the question of negligence, the Tribunal found that the accident had occurred due to the negligence of the lorry driver. The Tribunal referred upon the contents of FIR, Ex.P1 and the evidence of PW2 viz., injured who was the claimant in MCOP.No.294 of 2012.

6. On the quantum, insofar as the deceased is concerned, the Tribunal took his monthly income at Rs.12,000/- and after deducting 50%, arrived at a monthly loss of dependency at Rs.6,000/-. Applying the multiplier of '18', the Tribunal calculated the loss of dependency at Rs.12,96,000/-. The Tribunal awarded Rs.1,00,000/- towards loss of love and affection, Rs.20,000/- towards funeral expenses, Rs.10,000/- towards transportation, Rs.2,000/- for damage to clothing. Thus, the total worked out to Rs.14,28,000/-.

7. Insofar as the injury case is concerned the Tribunal took the income of the deceased at Rs.6,000/-. The Tribunal assessed the disability at 44% and granted Rs.1,32,000/- at Rs.3,000/- per percentage of disability for the permanent disability. The Tribunal awarded Rs.36,000/- as compensation for the loss of income for the period of 6 months. The Tribunal awarded a sum of Rs.94,071/- towards medical expenses based on bills, Rs.30,000/- for pain and suffering, Rs.20,000/- for extra nourishment and Rs.6,200/- for transportation as per bills, Rs.2,000/- for damage to clothing. In all, the Tribunal awarded a sum of Rs.3,20,271/- as compensation to the injured claimant. Aggrieved by these awards, the Insurance Company is on appeal.

8. We have heard Mr.S.Manohar, learned counsel appearing for the Insurance Company. Since there was no representation for the claimant despite the counsel having entered appearance, we requested Mrs.P.T.Saleem Fathima, learned counsel to assist us in disposing of these appeals. We have heard Mrs.P.T.Saleem Fathima for the claimants.



9. Mr.S.Manohar, learned counsel appearing for the Insurance Company would contend that there was no negligence on the part of the lorry driver. Drawing our attention to the rough sketch marked as Ex.R2, Mr.S.Manohar would contend that the accident had taken place on the extreme West side of the North to South road. Admittedly, the two-wheeler was proceeding from North to South. The correct side of the road for the two-wheeler was on the East side of the road, the very fact that the two-wheeler was on the West side of the road when the accident occurred shows that the two-wheeler rider was negligent and he alone is the cause of the accident. He would also invite our attention to the evidence of the driver of the lorry who was examined as RW1.

10. Per contra, Mrs.P.T.Saleem Fathima, learned counsel appearing for the claimants would contend that the FIR has been lodged against the driver of the lorry, she would also point out that PW2 who was the pillion rider, deposed about the manner in which the accident had occurred and there is no reason to disbelieve his evidence.

11. We have considered the rival submissions. No doubt true, the rough sketch shows the place of occurrence on the West side of the road which is actually wrong side for the two-wheeler because it was proceeding from North to South. But the evidence of the driver of the lorry as RW1 would show that the accident had not occurred in the place shown as scene of occurrence in the plan. RW1 even in his chief examination has stated that the two-wheeler attempted to overtake the bus and came and dashed against the lorry. Therefore, the accident could not have occurred at the place marked as scene of occurrence in Ex.R2, rough sketch.

12. The evidence of RW1 coupled with evidence of PW2 would show that both the vehicles have contributed to the accident. From the Motor Vehicle Report marked as Ex.R3, it is seen that the damage to the lorry was in the front centre portion of the grill and the bumper. All these factors taken together would impel us to conclude that both the vehicles contributed equally to the accident. We therefore conclude that both the two-wheeler rider as well as the lorry driver are equally responsible for the accident. Therefore, the negligence is apportioned at 50% each.

13. Insofar as the injury case is concerned, Mr.S.Manohar, would fairly concede that being a case of composite negligence, the injured has got right to sue any one of the Insurance Companies. He does not also dispute the quantum of compensation fixed by the Tribunal. Therefore, the award of compensation at Rs.3,20,271/- for the injuries caused to Raja is confirmed.



Despite the negligence on the part of the two-wheeler rider the appellant Insurance Company would be liable to answer the entire claim. Of course, it will be open to the appellant Insurance Company to take proceedings for recovery based on the finding that the lorry was responsible only to an extent of 50% for the accident from the insurer of the two-wheeler. It is stated that the Insurance Company had deposited 50% of the compensation awarded. The Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of the copy of the judgment and on such deposit the claimant will be entitled to withdraw the same. The appeal in CMA.No.2124 of 2016 is dismissed. No costs.

14. As regards the quantum in CMA.No.2123 of 2016, which is against MCOP.No.295 of 2012, the Tribunal has taken the monthly income of the deceased at Rs.12,000/-. It is seen that he was a diploma in Engineering and was also pursuing his Bachelor of Engineering degree at the time of the accident. The accident occurred in 2012, considering the same we are of the opinion that the fixation of monthly income at Rs.12,000/- is too low. We are therefore of the view that the notional monthly income should be taken atleast at Rs.15,000/-. 40% is to be added towards future prospects. On such addition the monthly income for the purposes of fixation of loss of dependency would be Rs.21,000/-. The deceased being a bachelor 50% is to be deducted towards personal expenses. Therefore, the monthly loss of dependency would be Rs.10,500/-. The multiplier, considering the age of the deceased would be '18', thus worked the compensation under the head of loss of dependency would be Rs.22,68,000/- (10,500 x 12 x 18). The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection, the same is reduced to Rs.80,000/-, in view of the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331. The award of Rs.20,000/- towards funeral expenses and Rs.10,000/- towards transportation are confirmed. The Tribunal has not awarded any amount towards loss of estate, hence, we award a sum of Rs.15,000/- towards loss of estate. The Tribunal awarded Rs.2,000/- towards damage to clothing and the same is enhanced to Rs.5,000/-. The total award works out to Rs.23,98,000/- and the same is rounded off to Rs.24,00,000/-. Since we have held that the deceased was also responsible for the accident to an extent of 50%. The liability of the Insurance Company would be only to an extent of Rs.12,00,000/-.

15. In fine, the appeal in CMA.No.2123 of 2016 is partly allowed and the award is modified to Rs.12,00,000/- with 7.5% interest per annum and proportionate costs. The award amount is apportioned among the claimants as follows:-

- i) The 1st claimant, father is entitled to Rs.5,00,000/-



with proportionate interest,

ii) The 2nd claimant, mother is entitled to Rs.7,00,000/- with proportionate interest and entire costs.

It is stated that the Insurance Company had deposited 50% of the compensation awarded. The Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of the judgment and on such deposit the claimants will be entitled to withdraw the same. No costs. Consequently, the connected Miscellaneous Petitions are closed.

16. We place on record our appreciation for the assistance rendered by Mrs.P.T.Saleem Fathima. We quantify the counsel fees for the respondents in both the appeals at Rs.15,000/- and the same shall be paid by the appellant, Insurance Company to Mrs.P.T.Saleem Fathima directly.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Vehicle Accident Claims Tribunal,
Principal District Judge,
Perambalur.

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

3.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai - 600 014.

+2cc to Mr.S.Manohar, Advocate, S.R.No.65176 & 65177

C.M.A. No.2123 & 2124 of 2016

KJI (CO)
GSP (22/11/2018)