IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. Nos.268 and 269 of 2016 and
C.M.P. Nos.2190 and 2192 of 2016

C.M.A. No.268 of 2016

HDFC Ergo General Insurance
Company Limited,
Old No.528, New No.519,
Anna Salai, Teynampet,
Chennai - 600 018. .. Appellant / 2nd respondent

versus

1.Renuga
2.Anupriya
3.Pramila (Minor)
4.Praveen Kumar (Minor)
5.Vinayagamoorthy (Minor)
(Respondents 3 to 5 minors
represented by Mother and
next friend 1st respondent)
6.Kallappan .. respondents 1 to 6 / Claimants
All are residing at
New No.33/15, Lakshmipuram,
Vadapalani, Chennai - 600 026.

7.H.Naina Mohamed ..7th respondent/ 1st respondent

C.M.A. No.269 of 2016

HDFC Ergo General Insurance
Company Limited,
Old No.528, New No.519,
Anna Salai, Teynampet,
Chennai - 600 018. .. appellant / 2nd respondent

versus

1.Renuga .. 1st respondent / Claimant

2.H.Naina Mohamed .. 2nd respondent / 1st respondent

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Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 27.04.2015 made in M.C.O.P.Nos.931 and 950 of 2013 on the file of the Motor Accident Claims Tribunal [VI Court of Small Causes], Chennai.

For Appellant : Mr.R.Mohan Babu
[in both C.M.As.] for M/s.M.B.Gopalan Associates

For Respondent Nos.1 to 6 : Mr.F.Terry Chellaraja
[in C.M.A.No.268 of 2016] for Mr.V.Velu
For 1st respondent
[in C.M.A.No.269 of 2016]

COMMON JUDGMENT

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

Aggrieved over the common award passed by the Motor Accidents Claims Tribunal [VI Court of Small Causes], Chennai in M.C.O.P.Nos.931 and 950 of 2013, the Insurance Company, who is the second respondent in the above said M.C.O.Ps. have preferred these Appeals to set aside the award passed by the Claims Tribunal as erroneous.

2. The case of the claimants in both the appeals is as follows:

2.1. On 19.09.2012 at about 22.00 hours, while the deceased [Gunasekaran] was riding his bicycle along with his wife [Renuga] from Venangupattu to Thotancherry Village Road, Opposite to Karumbakkam Tea Stall, Kancheepuram District, an Auto bearing Registration No.TN-32-Q-6481 driven by its driver, owned by the first respondent and insured with the second respondent [in M.C.O.P.Nos.931 and 950 of 2013] came in a rash and negligent manner in the same direction and hit behind the bicycle, due to which, the deceased sustained multiple fatal injuries and died in the hospital on the same day. The pillion rider, who is the petitioner in M.C.O.P.No.950 of 2013 sustained grievous injuries, for which, the appellant and the owner of the offending vehicle are jointly and severally liable to pay compensation.

2.2. Subsequent to the accident, being the dependants of the deceased [Gunasekaran], his wife, daughters, sons and father [respondents 1 to 6 in C.M.A.No.298 of 2016] have filed the Claim Petition under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Accidents Claims Tribunal Rules, claiming

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compensation of Rs.30,00,000/- for the death of Gunasekaran. Further, the wife of the deceased, namely, Renuga [1st respondent in C.M.A.No.269 of 2016] has filed the Claim Petition under the same Act, in which, she is claiming compensation of Rs.1,00,000/- for the injuries sustained by her in the accident. The above said petitions were taken on file as M.C.O.P.Nos.931 and 950 of 2013 respectively and after elaborate enquiry, the Claims Tribunal came to the conclusion that the alleged accident had happened due to the rash and negligent act of the auto driver, where vehicle was insured with the appellant and awarded compensation of Rs.17,96,000/- [in M.C.O.P.No.931 of 2013] with interest at the rate of 7.5% per annum as total compensation to the legal heirs of the deceased [Gunasekaran] and also awarded Rs.1,92,000/- with interest at the rate of 7.5% per annum as compensation to the petitioner in M.C.O.P.No.950 of 2013. Further, directed the appellant / Insurance Company to pay the award amount to the claimants with permission to recover the same from the owner of the offending vehicle, against which, the present Appeals have been preferred by the Insurance Company.

3. Since both the Claim Petitions are arising out of the same accident, the Claims Tribunal passed a common judgment, thereby, we also decided to pass a common judgment in C.M.A.Nos.268 and 269 of 2016.

4. Today, we heard the arguments advanced by Mr.R.Mohan Babu, learned counsel appearing for the appellant and Mr.F.Terry Chellaraja, learned counsel appearing for the respondents / claimants.

5. In order to dispose of both the Appeals [C.M.A.Nos.268 and 269 of 2016], the following issues are raised:

i. Whether the findings arrived at by the Claims Tribunal in M.C.O.P.Nos.931 and 950 of 2013 with regard to the rash and negligent act of the offending vehicle is correct or not ?

ii. Whether the liability fixed against the insurer by the Claims Tribunal is correct or not ?

iii. Whether the quantum of compensation arrived at by the Claims Tribunal in M.C.O.P.No.931 of 2013 is found correct or not ?

iv. Whether the quantum of compensation arrived at by the Claims Tribunal in

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M.C.O.P.No.950 of 2013 is found correct or not ?

i. Whether the findings arrived at by the Claims Tribunal in M.C.O.P.Nos.931 and 950 of 2013 with regard to the rash and negligent act of the offending vehicle is correct or not ?

[a]. In the Claims Tribunal, in order to prove the rash and negligent act of the auto driver, the first petitioner [Renuga] in M.C.O.P.Nos.931 and 950 of 2013 was examined as P.W.1, who is the wife of the deceased. Further, she had accompanied her husband at the time of accident. In her evidence before the Claims Tribunal, she clearly narrated the manner in which the auto came in a rash and negligent manner. In order to corroborate the said evidence, the copy of the First Information Report registered in respect of this accident was exhibited as Ex.P.1. Further, in order to dispute the said evidence, one Siva Kollapan was examined as R.W.1 on the side of the appellant but during the time of deposing evidence he did not dispute the rash and negligent act of the auto driver. Further the contents of the First Information Report which was the earliest document corroborated the evidence of P.W.1. So, after examining the evidences put forth by the claimants and other documents exhibited on their side, the Claims Tribunal concluded that the alleged accident had happened only due to the rash and negligent act of the auto driver. In the light of the evidence given by P.W.1 and other materials produced by the claimants, we are also agreeing with the view taken by the Claims Tribunal.

ii. Whether the liability fixed against the insurer by the Claims Tribunal is correct or not ?

[a]. In the Claims Tribunal, it was ordered by the Presiding Officer that the compensation fixed in favour of the claimants should be paid by the appellant and permitted to recover the same from the owner of the vehicle. In this regard, in order to dispute the liability on the side of the appellant, one Siva Kolappan was examined as R.W.1. Further, the copy of the notice by which the owner of the vehicle was directed to produce the licence was marked as Ex.R.4 and the copy of the Insurance Policy was marked as Ex.R.3. Those documents establish that the offending vehicle was having the valid Insurance Policy at the time of accident. However, due to the non-production of the licence issued in favour of the auto driver, we cannot hold that the appellant / Insurance Company is having the liability to pay the compensation amount, but the insurance laws are based on the law of contract. So considering the view of our Honourable Apex Court in

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NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH AND OTHERS reported in 2004 (1) TNMAC (SC) 104 : 2004 ACJ 1, it is necessary to direct the Insurance Company to pay the award amount to the claimants with the permission to recover the same from the owner of the vehicle.

iii. Whether the quantum of compensation arrived at by the Claims Tribunal in M.C.O.P.No.931 of 2013 [C.M.A.No.268 of 2016] is found correct or not ?

[a]. In the Claims Tribunal after elaborate enquiry, Rs.15,21,000/- was awarded towards Loss of Dependency and Rs.25,000/- for Funeral Expenses. Further, Rs.1,50,000/- towards Loss of Love and Affection and Mental Agony and finally Rs.1,00,000/- for the Loss of Consortium to the wife. In this regard, the learned counsel appearing for the appellant made a submission before this Court that the amount awarded under the conventional heads by the Tribunal are against the constitutional Bench's judgment of the Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700. Further, he disputes the monthly income of the deceased determined by the Claims Tribunal as an excessive one.

[b]. On considering the said argument with the facts of this case, in the Claims Tribunal in order to prove the income of the deceased, the first claimant who is the wife of the deceased and accompanied him at the time of accident was examined as P.W.1. She stated in her evidence that the deceased was working as a Generator Operator in Tempack Allogic Ltd. and earned Rs.10,000/- per month. In order to corroborate the said evidence given by P.W.1, one Manigandan was examined as P.W.2. In this regard, the evidence given by P.W.2 is not supported by the Salary Certificate and other written documents. In the said circumstances, the monthly income of the deceased has to be determined based on the present scenario. On going through the entire cross-examination of P.W.1 and P.W.2, the appellant has not disputed the employment of the deceased. Alternatively the Insurance Company itself admitted that the deceased was working as Generator Operator. Now-a-days, in a city like Chennai it is very easy to earn Rs.10,000/- per month through the job of Generator Operator. The Claims Tribunal also fixed the same income as monthly income of the deceased. So, we are agreeing with the view taken by the Claims Tribunal and accordingly, fix Rs.10,000/- as monthly income of the deceased.

[c]. Secondly, coming to the point of "Future Prospects", it is necessary to follow the judgment of the

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Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has clearly held that if the person is self-employed and under the age of 50 years, 25% of the established monthly income is to be taken into account for calculating the Future Prospects. In the case in our hand, the particulars of company in which the deceased was working is not clearly established by the claimants. As already discussed, the company in which the deceased was working is unorganised sector and it is probable to hold that the deceased is self-employed. So, adding 25% of the monthly income is the correct percentage for calculating the Future Prospects, since as per the Postmortem Certificate, the age of the deceased was 50 years at the time of accident. Therefore, total monthly income along with Future Prospects of the deceased comes to,

Total Monthly Income :: Rs.10,000/- (+) 25% (Rs.10,000/-)
:: Rs.10,000/- (+) Rs.2,500/-
:: Rs.12,500/-

[d]. With regard to the deduction, it is settled law that if the family of the deceased consists of 6 members, 1/4th of the annual income has to be deducted towards Personal and Living Expenses of the deceased. In this case, the size of the family is 6. So, necessarily we have to deduct 1/4th of the annual income towards Personal and Living Expenses of the deceased. After deducting 1/4th towards Personal and living Expenses, the monthly income of the deceased comes to Rs.9,375/- [Rs.12,500 - 1/4th (12,500)].

[e]. Coming to the choice of multiplier, it is settled law as per the case of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121 that if the person is of the age of 50 years at the time of death, the appropriate multiplier for calculating the Loss of Dependency is 13. Therefore, we decide that the appropriate multiplier for calculating the total pecuniary loss in this appeal is 13. So, the Loss of Dependency is calculated as follows:

Loss of Dependency :: Rs.9,375 x 12 x 13
:: Rs.14,62,500/-

[f]. Further, as per the judgment of our Honourable Apex Court in Pranay Sethi's case [cited supra], addition of Rs.30,000/- would be required to be made on account of conventional heads of Loss of Estate [Rs.15,000/-] and Funeral Expenses [Rs.15,000/-] and Rs.40,000/- should be fixed for the Loss of Consortium to

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the wife. In this case, the claimants 2 to 5 are the children of the deceased, 6th claimant is the father of the deceased. The claimants 2 to 5, who have lost their father in their early age and 6th claimant has lost his son in the elderly age. So, awarding compensation towards Loss of Love and Affection is nothing but akin to the Loss of Consortium to the wife, thereby, we decide to award Rs.1,50,000/- under the head of Loss of Love and Affection to the claimants 2 to 6. Accordingly, the claimants / respondents 1 to 6 are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	14,62,500.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Consortium	40,000.00
Loss of Love and affection	1,50,000.00
Total	16,82,500.00

Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.16,82,500/-.

iv. Whether the quantum of compensation arrived at by the Claims Tribunal in M.C.O.P.No.950 of 2013 [C.M.A.No.269 of 2016] is found correct or not ?

[a]. The claimant [Renuga] was aged 40 years at the time of accident. She was doing tailoring work. Admittedly, the claimant sustained grievous injuries. As per the evidence of P.W.3 [Dr.Thiyagarajan], the claimant was having 35% disability, the Claims Tribunal fixed the disability as 30% and awarded Rs.3,000/- per percentage. In this regard, the claimant has not let in evidence to show the injuries sustained in the accident is a barrier to continue the tailoring work. So, we decide to fix Rs.2,000/- x 30 [60,000/-] as a compensation for the disability.

[b]. Secondly, the Claims Tribunal awarded Rs.27,000/- towards Loss of Income for three months. But in the award passed by the Claims Tribunal, it has concluded that the claimant is not in a position to do tailoring work. Further, on going through Ex.P.6 [Discharge Summary], it is seen that she was treated by the Doctor at Government Hospital. So, the award under the heads of "Medical Expenses" and "Loss of Income" for three months is unnecessary. Moreover, after awarding particular amount under the head of Disability, awarding further amount under the head of Loss of Income is not necessary. Further, the

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Claims Tribunal awarded Rs.5,000/- each under the head of Transportation, Extra Nourishment, Attendant Charges and Damage to Clothes. The said award is unaltered. Finally, the Claims Tribunal awarded Rs.25,000/- under the head of Loss of Amenities and Rs.25,000/- towards Pain and Sufferings. With regard to the Loss of Amenities, no evidence is put forth by the claimant. So, awarding Rs.25,000/- under the above head is not reasonable and the same is set aside. However, Rs.25,000/- awarded under the head of Pain and Suffering is reasonable. Accordingly, we come to the conclusion that the following amounts would constitute just compensation to compensate the injuries sustained by the claimant in the road accident.

Head	Amount (Rs.)
Disability of 30% at the rate of Rs.2000/- per percentage	60,000.00
Transportation	5,000.00
Extra Nourishment	5,000.00
Attender Charges	5,000.00
Damage to Clothes	5,000.00
Pain and Suffering	25,000.00
Total	1,05,000.00

Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.1,05,000/-.

6. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Accordingly, the award of the Tribunal in M.C.O.P.No.931 of 2013 (i.e.,) Rs.17,96,000/- is reduced to Rs.16,82,500/- and M.C.O.P.No.950 of 2013 (i.e.,) Rs.1,92,000/- is reduced to Rs.1,05,000/-. The award amount is payable by the insurer. The Insurance Company is permitted to recover the compensation amount from the owner of the offending vehicle.

7. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court before the Tribunal, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made in M.C.O.P.No.931 of 2013, the Tribunal is directed to transfer the respective shares of respondents 1, 2 and 6 to their Bank Accounts as per the ratio fixed by the Tribunal through RTGS/NEFT within a period of one week. The share in respect of the respondents 3 to 5, who are minors, shall be deposited in any one of the Nationalised Banks, in interest

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bearing Fixed Deposit, till they attain majority. The first respondent being the mother of respondents 3 to 5 is permitted to withdraw the quarterly interest from the said deposit. As far as the award amount of the first respondent / claimant in M.C.O.P.No.950 of 2013 is concerned, the Tribunal is directed to transfer the said amount to the Bank Account of the first respondent / claimant through RTGS/NEFT within a period of one week.

8. In the result, these Civil Miscellaneous Appeals are partly allowed. Consequently connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS v)

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Sub Assistant Registrar

srisri
To

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

+2cc to M/s.M.B.Gopalan Associates , Advocate SR.No. 32633,32634

+2cc to Mr.V.Velu , Advocate SR.No. 32483,32485

C.M.A. Nos.268 & 269 OF 2016

ASK(24/10/2018)

सत्यमेव जयते
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