IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.525 of 2016
& C.M.P.No.4414 of 2016
and Cross Objection No.31 of 2018

C.M.A.No.525 of 2016:-
The National Insurance Company Ltd.,
No.165, Nethaji Road
Manjakuppam
Cuddalore ...Appellant/2nd respondent in MCOP

Vs.

1.S.M.Mohamudhu Begum
2.S.M.Nourinisha
3.S.M.Barkathurnnissa
4.S.M.Sharfunissa
5.R.Hawabee ..Respondents 1 to 5 / Petitioners 1 to 5 in MCOP

6.P.Chandru ..Respondent No.6 / 1st Respondent in MCOP.

Cross Objection No.31 of 2018
1.S.M.Mohamudhu Begum
2.S.M.Nourinisha
3.S.M.Barkathurnnissa
4.S.M.Sharfunissa
5.R.Hawabee ..Cross Objectors/Respondents 1-5 in CMA

Vs

1.The National Insurance Company Ltd.,
No.165, Nethaji Road
Manjakuppam, Cuddalore

2.P.Chandru ..Respondents./Appellant in CMA and R6 in CMA

Prayer in CMA.No.525 of 2016 & Cross Objection No.31 of 2018- Appeal and Cross Objection filed against the judgment and decree dated 12.06.2015 passed in M.A.C.T.O.P.No.3033 of 2013 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

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Prayer in CMP.No.5374 of 2018:- Petition filed praying to condone the delay of 502 days in filing Cross appeal sr.No.21598 of 2018.

For appellant/Insurance company : : Ms.N.B.Surekha
for Respondents/claimants : : M/s.A.N.Viswanatha Rao for R1 to R5.

C O M M O N J U D G M E N T

Civil Miscellaneous Appeal No.525 of 2016 is filed by the appellant/Insurance company and Cross Objection No.31 of 2018 is filed by the Petitioners before the Tribunal, challenging the judgment and decree dated 12.06.2015 passed in M.A.C.T.O.P.No.3033 of 2013 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 09.09.2013 at about 10.00 p.m., while the deceased Syed Mohamed was riding his two wheeler bearing Reg.No.TN-31-BY-7519 on the extreme left side of the main road at Poondiyanakuppam, the Lorry bearing Reg.No.TN-28-AD-1224 belonging to the 1st respondent and insured with the 2nd respondent which was going ahead of the vehicle of the deceased was suddenly stopped by its driver without any indication and as a result, motorcycle driven by the deceased colluded with the first respondent's vehicle, resulting in the accident, causing fatal injuries to the deceased. The accident occurred due to the negligence of the 1st respondent vehicle driver only. The deceased was aged 49 years and by working as driver was earning Rs.15,000/- per month. The Petitioners who are the wife, children, mother of the deceased were depending on the earnings of the deceased. Thus, they sought for a sum of Rs.25,00,000/- from the respondents who are the owner and insurer of the vehicle.

3. Opposing the claim of the Petitioners, by filing counter, the 2nd respondent-Insurance company contends that the accident did not occur due to the negligence of the 1st respondent Lorry driver, but only due to rash and negligent driving of the deceased. The 1st respondent vehicle bearing Reg.No.TN-28-AD-1224 while proceeding from Cuddalore to Chidambaram in the ECR Road broke down at 8.15 p.m., and the same was parked on the extreme left side of the Road. At that time, the deceased Syed Mohamed drove his two wheeler at high speed and dashed against the back side of the parked Lorry

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resulting in his death. The accident occurred only due to the negligence of the deceased. The Police Complaint was given on the next day by the brother of the deceased with false particulars. As such, the 2nd respondent-insurer is not liable to pay compensation. The claim of the Petitioners about age, avocation and income of the deceased is denied. Thus, the 2nd respondent-insurance company sought for dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.6 to prove their claim. While the 1st respondent remained exparte, the 2nd respondent examined R.W.1 and produced Ex.R.1 document to disprove the claim of the Petitioners. The Tribunal, after analysing the evidence on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident and passed award for Rs.7,72,000/- payable by the 1st and 2nd respondents jointly and severally to the Petitioners.

5. Being aggrieved over the finding of the Tribunal, the 2nd respondent-Insurance company has come forward with the present appeal seeking to set aside the award passed by the Tribunal and to entertain the appeal. On the other hand, the Petitioners filed Cross Objection No.31 of 2018 seeking to enhance the quantum of compensation.

6. The learned counsel for the 2nd respondent-Insurance company contends that the Tribunal erred in fixing entire negligence upon the driver of the Parked Lorry bearing Reg.No.TN-28-AD-1224 owned by the 1st respondent on the basis of P.W.2 evidence. The accident having occurred at 10.00 p.m., it is not possible for P.W.2 to witness the accident clearly. Since the insured vehicle was parked on the extreme left side of the Road, the Tribunal is not correct in fixing entire negligence on the 1st respondent driver. The complaint was lodged belatedly by the brother of the deceased with false particulars. As such, the 2nd respondent sought for setting aside the award passed by the Tribunal and to allow the appeal.

7. Per contra, the learned counsel for the Petitioners/Cross Objectors contends that the accident occurred only due to negligence of the 1st respondent driver and the Tribunal has correctly appreciated the evidence available on record and fixed negligence on the 1st respondent driver and the same needs no interference. However, the learned counsel sought to enhance the quantum of award as the amount awarded by the Tribunal is very meagre.

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8. The 1st petitioner who is the wife of the deceased deposed as P.W.1 and stated about the accident. However, as P.W.1 is not an eyewitness to the accident, the same has no substantive value. The Petitioners examined P.W.2-Abdul Kadar who witnessed the accident to prove their contention. According to P.W.2 while he was walking on the left side of Poondiyankuppam Road, he saw a Two-wheeler bearing Reg.No.TN-31-BY-7519 going ahead of him and as the Lorry bearing Reg.No.TN-28-AD-1224 which was going ahead of the two wheeler suddenly stopped without any indication, the accident occurred.

9. Per contra, the 2nd respondent-Insurance company contended that the said Lorry due to mechanical problem was stopped by the driver on the left side of the Road at 8.15 p.m., itself and the rider of the two wheeler without noticing the same, came at high speed, dashed against the rear side of the stationary Lorry resulting in the accident.

10. Admittedly, the accident took place at 10.00 p.m., in the night. There is no evidence on record to show that there was sufficient light at the occurrence spot. In such circumstances, whether P.W.2 could have witnessed the accident is to be considered. Further Ex.P.1-FIR is registered against the driver of the Lorry only. It is clear from Ex.P.2 -MVI Report that there is no mechanical defect in the vehicle involved in the accident. As such, it is clear that the accident occurred involving two vehicles in the night hours around 10.00 p.m. Taking into consideration the contents of Ex.P.1-FIR and also the Investigation Report in Ex.R.1 filed by the 2nd respondent, to the effect that FIR is stated to be closed as "mistake of fact", it would be appropriate to apportion the negligence on the drivers of both the vehicles. As such, on the basis of Ex.R.1-Investigation Report and the fact that Ex.P.1-FIR was closed as "mistake of fact" and the vehicle driven by the deceased dashed on the rear side of the 1st respondent Lorry bearing Reg.No.TN-28-AD-1224, it will be appropriate to apportion negligence at the rate of 75 : 25 for the 1st respondent Lorry driver and the deceased respectively.

11. The Petitioners claim is that the deceased Syed Mohamed was earning Rs.15,000/- per month. The Petitioners produced copy of the driving licence of the deceased as Ex.P.5 and Post Mortem Report of the deceased as Ex.P.4. The date of birth of the deceased is mentioned as 12.03.1964 in Ex.P.5 Licence copy. Hence, the age of the deceased was fixed as 49 years on the occurrence date. Even though the deceased was stated to be earning Rs.15,000/- per month, there is no proof for the same. Considering the fact that the deceased possessed Ex.P.5-Driving Licence and was employed as driver, it will be appropriate to

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fix the notional monthly income at Rs.6500/-. As the deceased was aged 49 years, 25% of the income has to be added towards Future Prospects. By applying multiplier 13, and deducting 1/4th of the income towards personal expenses of the deceased as correctly done by the Tribunal, loss of dependency is computed as follows:-

Monthly salary = Rs.6,500/-

Future Prospects 25% (1625)

Deduction: 1/4th towards personal expenses, 6500 - 1625 = Rs.8125/-

Rs.8125 x 12 x 13 - 12,67,500/-

1/4th deduction - Rs.3,16,875/-

12,67,500 - 3,16,875 = Rs.9,50,625/-.

Thus, a sum of Rs.9,50,625/- is awarded under the head "Loss of Dependency to the family of the deceased Syed Mohamed. Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	7,02,000/-	9,50,625/-
2.	Loss of consortium	10,000/-	40,000/-
3.	Loss of love and affection to Petitioners 2 to 5	40,000/-	---
4.	Transport expenses	10,000/-	---
5.	Funeral expenses	10,000/-	15,000/-
6.	Loss of estate	---	15,000/-
	Total	7,72,000/-	10,20,625/-

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12. In the result,

(i) Civil Miscellaneous Appeal No.525 of 2016 filed by Insurance company is dismissed. Cross Objection No.31 of 2018 is Allowed;

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(ii) Keeping in view the apportionment of negligence is fixed by this Court at the rate of 75% : 25% for the 1st respondent Lorry driver and the deceased respectively, even though the award amount is enhanced from Rs.7,72,000/- to Rs.10,20,625/-, the Petitioners/Cross Objectors are entitled to Rs.7,65,469/- viz., 75% of the compensation amount.

(iii) The award amount will carry interest at the rate of 6% from the date of petition till the date of realisation;

(iv) This Court, by order dated 15.03.2016 in C.M.P.No.4414 of 2016 in CMA.No.525 of 2016 directed the Appellant/Insurance company to deposit the entire award amount along with proportionate interest. Therefore, the appellant in CMA.No.525 of 2016/Insurance company is now directed to deposit the modified award amount of Rs.7,65,469/- [Rupees Seven lakhs sixty five thousand four hundred and sixty nine only] together with accrued interest and cost less the amount already deposited.

v) The Petitioners 1 to 5 in MCOP.No.3033 of 2013/Cross Objectors 1 to 5 are entitled to withdraw the award amount along with accrued interest in the following apportionment:-
1st Petitioner - 40%
Petitioners 2 to 5 - 15% each

The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) The Cross Objectors are directed to pay the required court fee for the enhanced award amount, if necessary. No costs. Consequently connected CMP is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

nvsri

To

The Principal District Court,
Motor Accidents Claims Tribunal,
Cuddalore.

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The Section Officer,
V.R.Section, High Court, Madras.[2 copies]

+1cc to M/S.A.N.Viswanatha Rao, Advocate Sr.29928
+1cc to M/S.N.B.Surekha, Advocate Sr.29861

C.M.A.No.525 of 2016
and
Cross Obj. No.31 of 2018

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