

IN THE HIGH COURT OF JUDICATE AT MADRAS

Reserved on : 06.03.2018

Delivered on : 05.06.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.3036 of 2012 and C.M.A.No.427 of 2013

and

M.P.No.1 of 2012 in C.M.A.No.3036 of 2012

and

M.P.No.1 of 2013 in C.M.A.No.427 of 2013

and

C.M.P.No.21117 of 2017 in Cros.Obj.No.SR94732 of 2017

C.M.A.No.3036 of 2012

Branch Manager,

United India Insurance Company Ltd.,

Vellore.

... Appellant/2nd Respondent

Vs.

1.Jayapal

2.Malliga

3.Baskar

4.Jayachitra

...Respondent 1 to 4/Claimants

5.K.Saravanan

6.K.Jayaganesh

7.Branch Manager,

Bajaj Allianz General Insurance Company Ltd.,

25/26, Prinice Towers,

Nungamabakkam, Chennai.

... Respondents 5 to 7/Respondent 1,3 & 4

C.M.A.No.427 of 2013 & Cross Objection S.R.94732/17

Branch Manager,

Bajaj Allianz General Insurance Company Ltd.,

25/26, Prince Towers, College Road,

Nungamabakkam, Chennai.

...Appellant in CMA No.427/13 & 1st

Respondent in Cross Objection

Sr.94732/2017/4th respondent

Vs.

1.Jayabal

2.Malliga

3.Baskar

4.Jayachitra ...Respondents 1 to 4/Claimants in CMA 427/13
& /Cross Objector in Cross Objection
Sr.No.94732/2017

5.K.Saravanan

6.Branch Manager

United India Insurance Company Ltd.,
Vellore.

7.K.Jayaganesh ... Respondents 5 to 7/Respondent 1,2 &
3 in CMA 427/13, Respondent 2 to 4
in Cross Objection Sr.No.94732/17

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 04.06.2012 made in M.C.O.P.No.148 of 2011 on the file of the Additional District and Sessions Court No.III (Motor Accidents Claims Tribunal) Vellore at Tirupattur (previously numbered as M.C.O.P.No.513 of 2009 on the file of the Sub-Court, Tirupattur).

CMP NO.21117/17:Petition filed in the circumstances stated therein the High Court will be pleased to exempt the payment of Court fee to a tune of Rs.9373 in filing the Cross Appeal Sr.No.94732/17 which is sought to be preferred against the Judgment and decree dated 04/06/2012 in MCOP No.148/11 on the file of the Additional District & Sessions Judge-III, Vellore.

Appearance_

Mr.D.Bhaskaran, for appellant in CMA.3036/2012 and
for R6 in CMA.427/2013

Mr.Srinivasan Ramalingam for appellant in CMA.427/2013
and for R7 in CMA.3036/2012

Mr.K.Sukumaran for M/s.P.Paramasivadosh, for R1 to R4 in both
CMAs & Cross Objector in Cross Objection Sr No.94732 of 2017

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Civil Miscellaneous Appeal No.3036 of 2012 has been filed by the United India Insurance Company Limited (R2 in claim petition) questioning the quantum of compensation awarded by the Motor Accidents Claimants Tribunal (Additional District and Sessions Judge), Vellore, in and by award dated 04.06.2012 made in M.C.O.P.No.148 of 2011.

2.As against the same award, Civil Miscellaneous Appeal No.427 of 2013 has been filed by the Bajaj Allianz General Insurance Company Limited (R4 in Claim Petition) questioning the finding rendered by the Tribunal in fixing 50% liability on their part to pay the compensation amount.

3.Since both the above appeals have arisen out of the same award, these appeals are disposed of by way of this common judgment.

4.For the sake of convenience, the parties will hereinafter be referred to as per rankings in the claim petition.

5.The respondents 1 to 4 herein are the claimants before the Tribunal and they are parents, brother and sister of the deceased Arun. It is the case of the claimants that on 28.08.2009 at about 12.45 pm, the said Arun was travelling as a pillion rider in a two-wheeler viz., Bajaj Pulsar bearing Reg.No.TN-23-BY-194 being driven by the 3rd respondent-Jayaganesh, on Tirupattur-Jolarpettai Main Road, and while the said two-wheeler was nearing Pakkirimadakkam Post Police, an Auto bearing Reg.No.TN-23-AY-7882 belonged to the 1st respondent and insured with the 2nd respondent-United India Insurance Company came in a rash and negligent manner from the opposite direction and dashed against the two-wheeler and thus, caused the accident. In the accident, the said Arun, who was travelling as pillion rider, sustained grievous head injuries. Immediately, he was taken to Government Hospital at Tirupattur, but inspite of the treatment, he died. Hence, the claimants have filed the claim petition as against the owner and insurer of the Auto as well as the owner and insurer of the two-wheeler, claiming a sum of Rs.50 lakhs as compensation.

6.The case of the claimants was resisted by the United Insurance Company (2nd respondent in claim petition), insurer of

the Auto, stating that the accident had occurred only due to the rash and negligent act of the rider of the two-wheeler bearing Reg.No.TN-23-BY-194 and as such, they are not liable to pay the compensation.

7.Whereas the Bajaj Allianz General Insurance Company (4th respondent in claim petition), insurer of the two-wheeler, has filed a counter stating that the First Information Report was registered only as against the driver of the Auto bearing Reg.No. TN-23-AY-7882 insured with the United India Insurance Company and after completion of investigation, chargesheet was also filed only as against the driver of the Auto. Therefore, absolutely there is no violation on the part of the rider of the two-wheeler bearing Reg.No.TN-23-BY-194; as such, they are not liable to pay the compensation amount.

8.Before the Tribunal, in order to prove their case, on the side of the claimants, the 1st claimant/father examined himself as P.W.1, besides examining one Mohan as P.W.2 and marked 21 documents as Ex.P.1 to Ex.P.21. On the side of the respondents/Insurance Companies, three witnesses were examined as R.W.1 to R.W.3 and ten documents were marked as Ex.R.1 to Ex.R.2.

9.The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident was the result of the negligent act of the rider of the two-wheeler as well as the driver of the auto and thus, the Tribunal fixed liability at 50% each on the rider of the two-wheeler and driver of the Auto. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a sum of Rs.30,72,000/- as compensation. The break up details of the compensation amount awarded by the Tribunal are as follows_

Loss of love and affection	=Rs. 60,000/-
Transportation and Funeral Expenses	=Rs. 20,000/-
Loss of income	=Rs. 25,92,000/-
Educational loan	=Rs. 4,00,000/-

Total	=Rs. 30,72,000/-
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Aggrieved over the same, the present appeals have been filed by the Insurance Companies as stated supra. That apart, the claimants have also proposed to file cross-objection in Cros.Obj.No.SR94732 of 2017 and the claimants have filed C.M.P.No.21117 of 2017 seeking to exempt the payment of court fee to the tune of Rs.9,373/- in filing the Cross Objection.

10.As regards the negligence aspect, the learned counsel appearing for the United India Insurance Company (Appellant in C.M.A.No.3036 of 2012) submitted that the accident was the result of the rash and negligent act of the rider of the two-wheeler; hence, the United India Insurance Company, who is the insurer of the Auto, is not liable to pay the compensation.

11.On the other hand, the learned counsel for Bajaj Allianz General Insurance Company submitted that the First Information Report was registered only as against the driver of the auto, which was insured with the United India Insurance Company, and that after completion of investigation, the chargesheet was filed only as against the driver of the Auto. The evidence on record particularly, Final Report-Ex.R.1, sketch-Ex.P.8 and Report of the Motor Inspector-Ex.R.9 would show that the accident is the result of the rash and negligent act of the driver of the Auto bearing Reg.No. TN-23-AY-7882. Therefore, according to the learned counsel for the Bajaj Allianz General Insurance Company, the 50% liability fixed by the Tribunal on the part of them being the Insurer of the two-wheeler bearing Reg.No.TN-23-BY-194, has to be set aside.

12.The learned counsel for the claimants submitted that the deceased Arun was travelling in the two-wheeler only as a pillion rider. Hence, the respondents are liable to pay the compensation to the claimants.

13.So far as the quantum of compensation is concerned, it is the submission of the learned counsel for the United India Insurance Company (Appellant in C.M.A.No.3036 of 2012) that the Tribunal has fixed a sum of Rs.18,000/- as monthly income of the deceased; but, no tangible evidence was produced on the side of the claimants to show that the deceased was earning a sum of Rs.18,000/- per month. In fact, the deceased Arun had just completed his studies viz., Aircraft Maintenance Engineer at Hindustan Aviation Academy and he joined as a trainee (Aircraft Technician). As such, at the time of accident, the deceased was only a trainee and he was receiving only a sum of Rs.9,000/- as stipend. When that being the position, the Tribunal ought not to have fixed a higher sum of Rs.18,000/- as monthly income of the deceased. Further, the learned counsel for the United India Insurance Company submitted that it is also not sure that on completion of training, he would have been given job. When the deceased was not making any regular income, the Tribunal ought not to have fixed the sum of Rs.18,000/- as monthly income of the deceased, which resulted in awarding exorbitant sum of Rs.25,92,000/- under the head of loss of income. Further, the Tribunal has deducted only 1/3rd amount, instead of 50% amount, from the income towards personal expenses. Since the deceased

being a bachelor, the Tribunal ought to have deducted 50% amount from the income towards personal expenses. Thus, the learned counsel prayed that by fixing a sum of Rs.9,000/- as monthly income of the deceased and by deducting 50% amount towards personal expenses, the compensation amount awarded by the Tribunal has to be recalculated to arrive at a just and proper compensation.

14. On the other hand, the learned counsel for the claimants submitted that the deceased Arun had completed his studies viz., Aircraft Maintenance Engineer at Hindustan Aviation Academy and he joined as a trainee (Aircraft Technician) at Jet Airways and he was drawing monthly salary of Rs.9,000/-. Had he been alive, he would have got his due promotion and retired at least as Chief Aviation Engineer at the age of 58 years with a salary of more than Rs.90,000/- per month. Considering all these aspects, according to the learned counsel for the claimants, the sum of Rs.18,000/- fixed by the Tribunal is on the lower side. Further, the Tribunal has not added any amount towards future prospects. With regard to the submission of the learned counsel for the Insurance Company that 50% amount has to be deducted from the income towards personal expenses, it is replied by the learned counsel for the claimants that it is not necessary to deduct 50% amount in all cases. In this regard, the learned counsel for the claimants has also relied upon the decisions of the Hon'ble Supreme Court reported in 2008(4) SCC 257 (Bilkish Vs. United India Insurance Co. Ltd., and (2004) 2 SCC 473 (Fakeerappa Vs. Karnataka Cement Pipe Factory) wherein only 1/3rd amount was deducted towards personal expenses, in the case of the death of a bachelor. Hence, according to the learned counsel for the claimants, there is no need to deduct 50% amount towards personal expenses. Thus, the learned counsel for the claimants prayed that by fixing a higher sum as monthly income of the deceased and adding some amount towards future prospects, the compensation amount could be enhanced.

15. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

16. With regard to the rash and negligence aspect, it is the case of the Bajaj Allianz General Insurance Company (appellant in CMA.No.427/2013) that the accident is the result of the rash and negligent driving of the driver of the auto, which is insured with the United India Insurance Company. Further, the First Information Report was registered only as against the driver of the auto and that after completion of investigation, the chargesheet was filed only as against the driver of the Auto, which would show that the accident is the result of the rash and negligent act of the driver of the Auto bearing Reg.No. TN-23-AY-7882. Therefore, according to the learned counsel for

the Bajaj Allianz General Insurance Company, the 50% liability fixed by the Tribunal on the part of them, who are the Insurer of the Two-wheeler bearing Reg.No.TN-23-BY-194, has to be set aside.

17. But, from a perusal of the materials available on records, We find that on the side of the claimants, one Mohan who is an eye-witness to the accident has been examined as P.W.2. He had categorically stated in his evidence that on 28.08.2009 at about 12.45 pm, while he was standing at Pakkiridakka Post Office, the two-wheeler bearing Reg.No.TN-23-BY-194, in which the deceased Arun was travelling as a pillion rider, was driven by the 3rd respondent-Jayaganesh in a rash and negligent manner and at the same time, the Auto bearing Reg.No.TN-23-AY-7882 belonged to the 1st respondent and insured with the 2nd respondent-United India Insurance Company came from opposite direction in rash and negligent manner and both the vehicles dashed against each other. In the cross-examination of P.W.2, no favourable reply was brought out in support of the case of the insurance companies. Therefore, the Tribunal has rightly relied upon the evidence of P.W.2 and has come to the conclusion that there is equal contributory negligence on the rider of the two-wheeler as well as the driver of the auto. Thus, the Tribunal has fixed 50% negligence each on the rider of the two-wheeler as well as on the driver of the auto. Absolutely, We do not find any infirmity in the said finding rendered by the Tribunal. Though the FIR and the charge-sheet were filed as against the driver of the auto, it is well settled legal principle that the proceedings in criminal case cannot have any bearing over the proceedings pending before the Motor Accidents Claims Tribunal. The Tribunal can come to an independent conclusion based on the available evidence before it. In the instant case, on the basis of the evidence of P.W.2, the Tribunal has come to the conclusion that the accident is the result of the negligent acts of the rider of the two-wheeler as well as the driver of the auto. Therefore, We are not inclined to interfere with the said findings rendered by the Tribunal.

18. With regard to the quantum of compensation, it is case of the claimants that the deceased Arun had studied Aircraft Maintenance Engineer degree at Hindustan Aviation Academy and he joined as a trainee (Aircraft Technician) at Jet Airways and he was drawing monthly salary of Rs.9,000/-. Had he been alive, he would have got his due promotion and retired at least as Chief Aviation Engineer at the age of 58 years with a salary of more than Rs.90,000/- per month. Considering all these aspects, according to the learned counsel for the claimants, the sum of Rs.18,000/- fixed by the Tribunal is on the lower side.

19. But, in our considered opinion, in the absence of any documentary evidence to show that the deceased was earning a sum of Rs.18,000/- per month at the time of accident, the Tribunal ought not to have fixed the same based on mere oral evidence adduced on the side of the claimants, as contended by the learned counsel appearing for the United India Insurance Company. However, considering the qualification of the deceased, who was an Aircraft Maintenance Engineer degree holder, We are of the opinion that a sum of Rs.12,500/- could be taken as monthly income of the deceased considering the present day cost of living. If the sum of Rs.12,500/- is taken as monthly income, 40% amount has to be added towards future prospects. If so added, the total comes to Rs.17,500/- (12,500 + 5,000). As per the decision rendered by a larger bench of the Hon'ble Supreme Court reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], 50% amount of income has to be deducted toward personal expenses in the case of the deceased being a bachelor. Hence, in the instant case, the deceased Arun being a bachelor, 50% amount has to be deducted from the income towards personal expenses. If so deducted, the monthly contribution to the family comes to Rs.8,750/-. As the deceased Arun was aged 22 years at the time of accident, the correct multiplier that has to be applied in this case is 18. If the multiplier 18 is applied, the total amount works out to Rs.18,90,000/- (8,750 x 12 x 18), which could be awarded as a just and proper compensation under the head of loss of income. Hence, the sum of Rs.25,92,000/- awarded by the Tribunal under the head of loss of income is hereby modified and reduced to Rs.18,90,000/-.

20. It is seen that the the Tribunal has awarded only a meagre sum of of Rs.20,000/- for transportation & funeral expenses. Hence, a sum of Rs.15,000/- each under the heads of Transportation and funeral expenses is hereby awarded. Further, the Tribunal has not awarded any amount towards loss of estate. Hence, another sum of Rs.15,000/- is hereby awarded for loss of estate. Further, the Tribunal has awarded only a sum of Rs.60,000/- for loss of love and affection. Considering the facts that the parents have lost their only son at the young age, the compensation of Rs.60,000/- awarded by the Tribunal is hereby enhanced Rs.1,00,000/-. The sum of Rs.4,00,000/- awarded by the Tribunal under the head of educational loan obtained by the deceased is hereby set aside since the same is not legally sustainable. Consequently, the total compensation amount of Rs.30.72,000/- awarded by the Tribunal is hereby

modified and reduced to Rs.20,35,000/- . The break up details of the modified compensation amount are as follows:-

Loss of love and affection	=Rs. 1,00,000/-
Transportation	=Rs. 15,000/-
Funeral Expenses	=Rs. 15,000/-
Loss of estate	=Rs. 15,000/-
Loss of income	=Rs.18,90,000/-
Total	=Rs.20,35,000/-

21.In fine, the Civil Miscellaneous Appeal No.3036 of 2012 filed by the United India Insurance Company is partly allowed and the total compensation amount of Rs.30.72,000/- awarded by the Tribunal is hereby modified and reduced to Rs.20,35,000/-. Both the Insurance Companies (appellants herein) are directed to deposit the entire compensation amount, in equal share, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the same as apportioned by the Tribunal, by making necessary application before the Tribunal. Civil Miscellaneous Appeal No.427 of 2013 is dismissed and connected M.P.No.1 of 2012 and M.P.No.1 of 2013 are closed. C.M.P.No.21117 of 2017 filed by the claimants is also dismissed and consequently, the Cross Objection is rejected. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

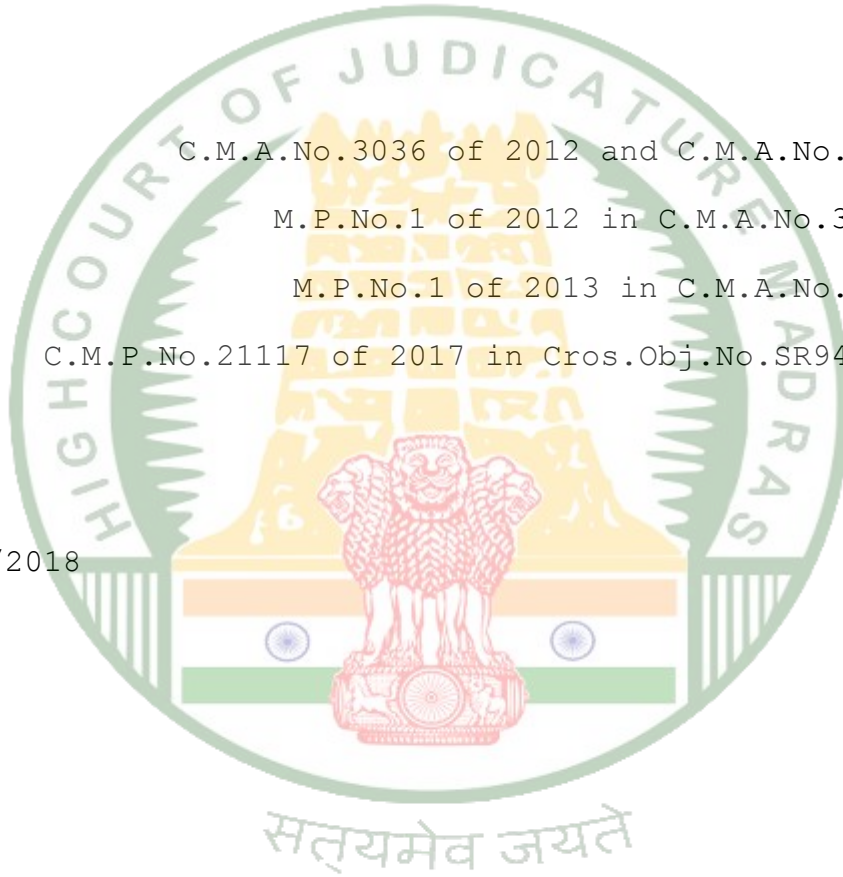
SSV

To,

The Motor Accident Claims Tribunal
(Additional District and Sessions Judge-III)
Vellore.

+1cc to Mr.D.Bhaskaran, Advocate Sr.35423

+2cc to Mr.Srinivasan Ramalingam, Advocate SR.34870 & 34871



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