

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.86 of 2015

and

M.P.No.1 of 2015

The Manager-Claims,
Bajaj Allianz General Insurance Company Limited,
No.31, T.B.R.Tower, 1st Cross, New Mission Road,
Adjacent to Jain College and Bangalore Stock Exchange,
Bangalore 560 002.Appellant

Vs

1.Sathyanarayanan
2.Nirmala
3.S.Idhaya Chandran
4.The Branch Manager,
The Oriental Insurance Company Limited,
No.17-A, Krishnagiri Road,
SKS Complex, Ranipet.
5.Ramesh
6.Usha Rani ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2014 made in M.C.O.P.No.2 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Hosur.

For Appellant	: Mr.G.Vasudevan
For Respondents	: Mr.K.Prasanna
	For Mr.Mukund R.Pandian
	for R1 and R2
	Mr.S.Arunkumar for R4
	Mr.V.Raghavachari for R5 and R6
	R3 - Not ready in notice

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondents.

2. The appeal is filed by the Insurance Company/fifth respondent in the claim petition alleging that there is contributory negligence on the driver of the car as well as lorry driver in the said accident. However, the Tribunal has fixed the entire negligence on the part of the car driver and responsibility to indemnify the claimants by the insurer of the Santro car. Besides responsibility, the quantum awarded by the Tribunal is also under challenge in this claim petition.

3. From the evidence, this Court finds that on 03.05.2009, at about 07.30 a.m., when the family members of the deceased Pranav Kumar aged about 13 years were proceeding from Trichy to Hosur in a Hyundai Santro Car bearing Registration No. KA30-M-8008 owned by one Raghavendra and driven by him hit the lorry bearing Registration No.TN23-AD-3444 insured under the Oriental Insurance Company. The Santro car has dashed against the lorry from behind, in which, the minor boy Pranav Kumar aged 13 died. The owner cum driver also died in the said accident. Alleging that the accident occurred due to the negligence of both the lorry driver as well as the car driver, the claim petition was filed seeking Rs.10,00,000/- as compensation for the death of 13 years old boy.

4.The Insurance Company which insures Santro Car filed counter stating that the driver of the Santro car was not holding any valid driving license. The driver of the Santro car was driving his vehicle cautiously but only the lorry driver in a rash and negligent manner, suddenly swerved the vehicle and came to the middle of the road without noticing the car coming behind and caused the accident. Since the accident took place due to the negligence of the lorry driver, only the lorry owner and its insurer are liable to pay compensation, if any and not the insurer of the Santro car. In alternate, if the Court finds that there is a contributory negligence, higher responsibility has to be fixed on the lorry owner. The claim of Rs.10,00,000/- for the fatal death of 13 years old boy studying 8th standard is also on the higher side.

5.The Tribunal, after considering the rival submissions and the evidence let in by the claimant as well as the Insurance Company, has held that the accident occurred due to the negligence of the Santro car driver one Mr.Raghavendra. FIR Ex.P1 was registered against him for driving rash and negligently and hitting the rear of the ongoing lorry. The Motor Vehicle Inspector's report marked as Ex.P2 indicates that it was the Santro car, which was the offending vehicle.

6. On considering the other submissions regarding the loss of income, the Tribunal has fixed Rs.10,800/- per month as

notional income for the 13 years old boy. After deducting 50% for his personal expenditure, applied multiplier '14' and computed the loss of income. Besides, Rs.10,000 for transport expenses and Rs.10,000/- for funeral expenses was awarded. In total, a sum of Rs.9,27,200/- was awarded to the claimants, who are the parents of the deceased boy.

7. The compensation was directed to be paid by the fifth respondent/ Insurer of the Santro Car with 7.5% interest from the date of petition till the date of realisation.

8. In this appeal, as stated earlier, the learned counsel for the appellant submitted that without contribution of the lorry, the accident could not have occurred. Therefore, the total exoneration of the lorry owner and its insurer is incorrect. The Santro car, which was following the lorry forced to dash against the lorry since the lorry swerved suddenly without noticing the car coming behind. Therefore, the lorry owner insurer should be mulcted with proportionate responsibility and liability.

9. Further, the learned counsel for the appellant submitted that the fixation of notional income of Rs.10,800/- for a 13 years old boy is highly excessive and beyond any comprehension. In most of the cases decided by the Hon'ble Supreme Court, when the victim are kids below 18 years, the multiplier method not applied only consolidated compensation maximum of Rs.5,00,000/- awarded. The application of multiplier as well as the fixation of notional income as high as Rs.10,800/- without any basis, has to be scaled down.

10.Learned counsel appearing for the Oriental Insurance Company/the insurer of the lorry submitted that it is a well laid principle that "the person, who follow must be careful." This principle has been reiterated by the Hon'ble Supreme Court in Nishan Singh vs Oriental Insurance Co. Ltd. reported in (2018) 1 TANMAC 745 (SC). The learned counsel referring F.I.R Ex.P1 and the final report Ex.R9 along with investigation report Ex.R10 submit that after investigation the motor accident has been found to be caused by the driver of the Santro Car. F.I.R was registered and the final report after the investigation was against him. The observation mahazar and rough sketch, which are marked as Ex.R6 and R7, does not support the case of the appellant that there was contributory negligence on the part of the lorry driver.

11.Regarding quantum, the learned counsel for the fourth respondent Mr.S.Arunkumar cited the recent judgment of the Supreme Court rendered in Rajendra Singh & Others vs National Insurance Co. Ltd., reported in 2020 CDJ SC 585 and submitted

that this judgment gives a insight how compensation should be assessed in case of minors.

12. The learned counsel for the claimants submitted that the fixation of liability upon the appellant and the quantum are based on the evidence. It is a case not a case to pay consolidate compensation. Application of multiplier by the Tribunal cannot be faulted, just because the deceased was a non-earning minor.

13. On giving anxious consideration to the rival submissions, this Court, as far as the liability is concerned, confirms the order of the Tribunal. Since the evidence is strongly against the driver of the Santro car, who has ramped into the lorry going ahead of him. The sketch and the final report clearly indicates that the accident has occurred due to the reckless and rash driving of the Santro car. In the said accident along with Pranav Kumar, who is the son of the claimants, the driver of Santro car also died. Therefore, the liability upon the appellant herein to pay the claimants, being the insurer of Santro car is upheld.

14. Regarding the quantum of compensation, application of multiplier by fixing the notional income of 13 years old boy or payment of consolidate compensation either way the compensation must be a just and fair compensation for the claimants, who have lost their son in the road accident. The future of the VIII standard student is not a predictable factor and it is appropriate to take note of the social background and standard of living, the dependency of the claimants upon 13 years old boy for his love and affection and his care on the parents in future during their old age. While considering these aspects, this Court finds that the fixation of notional income of Rs.10,800/- and applying the multiplier '14' are totally without reasoning and foundation material. In the year 2009, in some of the cases where minors below 15 years died the parents were awarded a consolidated sum and in this case also, it is appropriate to award a consolidate sum.

15. Accordingly, a sum of Rs.6,50,000/- with interest at 7.5% per annum from the date of petition till the date of realisation shall be fair and reasonable. The said amount with interest at 7.5% per annum from the date of petition till the date of realisation shall be paid by the appellant herein.

16.Learned counsel for the appellant states that already Rs.5,00,000/- has been deposited. If so, the balance shall be paid within a period of eight weeks from the date of receipt of a copy of this order. The claimants are permitted to withdraw the amount on appropriate application and the same shall be apportioned between them equally.

17. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Sub Court,
Hosur.

Copy to

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

+lcc to Mr.G.Vasudevan, Advocate Sr.41759
+lcc to Mukund R.Pandiyan, Advocate Sr.41441
+lcc to Mr.S.Arunkumar, Advocate Sr.41679
+lcc to Mr.V.Raghavachari, Advocate Sr.41908

CMA No.86 of 2015

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