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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.935 of 2020 &
C.M.A.No.3391 of 2021 & C.M.P.No.19559 of 2021
(Heard through VC)

C.M.A.No.935 of 2020

1.K.Punithavalli

2.L.Rayar

3.R.Kanniammal

4.Minor.K.Sakthiguru
Minor represented by mother, 1st appellant,
All are residing at
Indra Nagar, Thunichiramedu Village,
Veeracholagan Post,
Chidambaram Taluk. ...Appellants/Petitioners

Vs.

1.V.Kasinathan

2.National Insurance Company Limited,
D.T.K.Complex,
55, Melatheru,
Chidambaram. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in M.C.O.P.No.29 of 2018, on the file of MACT II Additional District and Sessions Judge, Chidambaram, dated 02.07.2019.

For Appellants : Mr.S.Udayakumar

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For Respondents : Mr.D.Bhaskaran for R2

C.M.A.No.3391 of 2021

National Insurance Company Limited,
D.T.K.Complex,
55, Mela Street,
Chidambaram. ...Appellant/2nd Respondent

Vs.

1.K.Punithavalli
2.L.Rayar
3.R.Kanniammal
4.K.Sakthiguru
S/o.Late R.Kalaimani,
(Minor represented by guardian
Mother Punithavalli)
All are residing at
Indra Nagar, Thunichiramedu Village,
C.Veeracholagan Post,
Chidambaram Taluk. ..Respondents 1 to 4/Petitioners 1 to 4

5.V.Kasinathan ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in M.C.O.P.No.29 of 2018, on the file of MACT II Additional District and Sessions Judge, Chidambaram, dated 02.07.2019.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.Udayakumar for R1 to R4

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

Judgment of the Court was delivered by V.SIVAGNANAM. J.

Being not satisfied with the award passed by the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Chidambaram, the claimants have come up with the appeal in C.M.A.No.935 of 2020, seeking enhancement of compensation. Challenging the award passed by the Tribunal, the Insurance Company preferred the appeal in C.M.A.No.3391 of 2021. Since both the appeals arise out of the award passed by the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Chidambaram, in M.C.O.P.No.29 of 2018, they are heard together and disposed of by this Common Judgment.

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2. The brief facts of case of the claimants before the Tribunal are as follows:-

This is a case of fatal accident. The claimants are the wife and children of the deceased Kalaimani. On 25.11.2017, the deceased Kalaimani was proceeding in a two wheeler bearing registration No.TN-91-B-1390 on T.Neduncheri-Chidambaram Main Road. At that time, the rider of the motorcycle bearing registration No.TN-61-5916, came in a high speed and dashed against him. Due to the accident, the deceased sustained fatal injuries and died on the way to Hospital. It is alleged that the accident had taken place due to the rash and negligent rider of the vehicle bearing registration No.TN-61-5916, the legal heirs of the deceased have filed a claim petition, claiming compensation of Rs.1,40,00,000/-.

3. In the counter, the Insurance Company denied and disputed the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

4. The claim petition was tried by the Tribunal and to substantiate the case, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P16 were marked. On the side of the Insurance Company, R.W.1 to R.W.3 were examined and Exs.R1 to R9 were marked.

5. The Tribunal, upon consideration of all the oral and documentary evidence held that the rider of the offending motorcycle bearing registration No.TN-61-5916 was responsible for the accident and also found that there is violation of policy condition. Therefore, while awarding compensation of a sum of Rs.23,72,600/- together with interest at 7.% p.a to the claimants, the Tribunal directed the insurance company to satisfy the award amount at the first instance and thereafter recover the same from the owner of the motorcycle bearing registration No. TN-61-5916. As afore-stated, both the claimants as well as the Insurance Company have filed these appeals.

6. The learned counsel for the insurance company Mr.D.Bhaskaran submitted that the Tribunal failed to note that this is a case of head on collision, but instead of fixing the contributory negligence on the part of the deceased, fixed the entire negligence upon the rider of the offending vehicle bearing registration No. TN-61-5916. It is further contended that at the time of accident, the deceased and two pillion riders were under the influence of alcohol and therefore, the

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Tribunal ought to have easily presume that imbalance caused the accident. It is next argued that the amount awarded by the Tribunal is excessive.

7. Per contra, the learned counsel for the claimants Mr.S.Udayakumar would contend that the deceased was the only earning member of the family and the entire family is depending upon the income of the deceased. As per Ex.P12 salary slip, the deceased was earning a sum of Rs.21,854/- per month, but the Tribunal without appreciating the same, fixed the income of the deceased at Rs.9,000/- per month. Hence, the learned counsel seeks for enhancement of compensation.

8. We have heard the rival submissions on either side and perused the materials available on record.

9. In the instant case, it is not in dispute that the deceased Kalaimani met with an accident on 25.11.2017 and succumbed to the injuries. It is equally not disputed that the claimants are the legal heirs of the deceased. According to the claimants, when the deceased Kalaimani was proceeding in a motorcycle bearing registration No.TN-91-B-390 on 25.11.2017, the rider of the offending vehicle bearing registration No. TN-61-5916, came in a high speed and dashed against the deceased.

10. It is the case of the Insurance Company that in the two wheeler, which was ridden by the deceased, three persons were travelled, that too under the influence of liquor, therefore, they are also responsible for the accident. P.W.3 is the eyewitness to the incident and he has spoken about the manner of the accident in his evidence. The Insurance Company relies on Exs.R8 and R9 in support of their case. A perusal of Ex.R8 and R9 Accident Registers, would show that the pillion riders were under the influence of alcohol. The evidence adduced on the side of the Insurance Company would prove that deceased has also contributed to some extent for the accident. It is an admitted fact that at the time of accident, three persons travelled in a two wheeler. Therefore, we fix the contributory negligence on the part of the rider of the offending vehicle bearing registration No.TN-61-5916 and the rider of the two wheeler bearing registration No.TN-91-B-1390 /deceased at the ratio of 80 : 20.

11. Though very many contentions have been advanced by the learned counsel for the claimants and by the learned counsel for the Insurance Company in support of their case, on perusal of the records, we find that the Tribunal, on proper

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appreciation of evidence, has fixed the notional income and adopting correct multiplier awarded a just and reasonable compensation under the head of loss of dependency and other heads.

12. Since the negligence is fixed 20% on the part of deceased, the claimants are entitled to a sum of Rs.18,98,080/- and the same is rounded off to Rs.19,00,000/- (80% of Rs.23,72,600/-). In the result, the claimants are entitled for a sum of Rs.19,00,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

13. In fine, the Appeal in C.M.A.No.935 of 2020 filed by the claimants is dismissed and the appeal in C.M.A.No.3391 of 2021 filed by the Insurance Company is partly allowed. The Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw their share of the modified award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any. The share of the minor claimant shall be deposited in any one of the nationalized banks in a fixed deposit till he attains majority. The interest accruing on the minors deposit is permitted to be withdrawn by the mother of the minor claimant, viz., Punithavalli, once in three months. The order of pay and recovery passed by the Tribunal is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

r n s
To

1. The Motor Accident Claims Tribunal
   II Additional District and Sessions Judge,
   Chidambaram.

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The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.D.Bhaskaran, Advocate sr 67254
+1 CC to Mr.S.Udayakumar, Advocate sr 67420.

C.M.A. No.935 of 2020 &
C.M.A.No.3391 of 2021 & C.M.P.No.19559 of 2021

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SP(13/04/2022)

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