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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4813 of 2019

and

C.M.P.No.27661 of 2019

National Insurance Company Limited,
Chennai DO-IV,
Its Manager Office situated at
2nd Floor, 169, Anna Salai,
Chennai - 600 002.
Within the Jurisdiction of
City Civil Court, Chennai.

.. Appellant

Vs.

1.Kamatchi
2.Ayyasamy
3.Rajeswari
4.Latha
5.Balasundari
6.R.Vijaya

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.10.2018 made in M.C.O.P.No.215 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.S.Vadivel

For RR 1 to 5 : Mr.T.Gobinath

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 11.10.2018 made in M.C.O.P.No.215 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai.



3.The appellant is the 2nd respondent in M.C.O.P.No.215 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Elangovan, who died in the accident that took place on 06.10.2012.

4.According to respondents 1 to 5, on 06.10.2012 at about 16.30 hours, while the deceased Elangovan was driving the Bajaj Pulsar motorcycle bearing Registration No.UP 32 DF 3374 from South to North from his Village to Cuddalore near Ramamoorthy cane shop at Thaikkal Village, the driver of the car bearing Registration No.TN 02 AC 1616, owned by 6th respondent, who was driving the car from the opposite direction, drove the same in a rash and negligent manner and dashed against the motorcycle driven by the said Elangovan and caused the accident. In the accident, the said Elangovan fell down from the motorcycle and sustained grievous injuries. Immediately after the accident, he was given first aid treatment at Chidambaram Raja Muthaiya Medical College Hospital and thereafter shifted to Military Hospital, Tambaram, Chennai. In spite of treatment, the said Elangovan succumbed to injuries on 12.10.2012. Therefore, the respondents 1 to 5 filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of the said Elangovan against the 6th respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

5.The 6th respondent-owner of the car remained exparte before the Tribunal.

6.The appellant-Insurance Company-insurer of the car filed counter statement and denied all the averments made by the respondents 1 to 5. The appellant denied the manner of accident as alleged by the respondents 1 to 5. According to the appellant, the car owned by 6th respondent was not insured with the appellant and also the driver of the car was not possessing valid driving license at the time of accident and has not satisfied the requirements of the Rule 3 of the Central Motor Vehicle Rules 1989. The 6th respondent-owner of the car breached the policy conditions by permitting the driver to drive the car without valid driving license. The 6th respondent has to furnish the particulars of policy, date, time and place of accident, particulars of injured, name of driver, driving license, whereas the 6th respondent has not complied with the statutory demand. The deceased was not possessing valid driving license and also the motorcycle driven by the deceased was not having valid Insurance. Further, the deceased Elangovan only drove the motorcycle in a rash and negligent manner, fell down on the road and invited the accident. To help the deceased being Military



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man, the Police registered a case against the driver of the car on wrong information. The F.I.R. was lodged after delay of one day and also the car was inspected by the Motor Vehicle Inspector only after 9 days from the accident. The respondents 1 to 5 have to implead the owner and insurer of the motorcycle driven by the deceased at the time of accident. The respondents 1 to 5 have to prove the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 5 is highly excessive and prayed for dismissal of the claim petition.

7.The appellant-Insurance Company filed additional counter statement and further contended that the respondents 3 to 5, who are the married sisters of the deceased are not entitled to get any compensation as they are living separately. The deceased was a bachelor at the time of accident and hence, the respondents 3 to 5 are not entitled to get any compensation and prayed for dismissal of the claim petition as against the appellant-Insurance Company.

8.Before the Tribunal, the 2nd respondent examined himself as P.W.1 and 14 documents were marked as Exs.P1 to P14. The appellant-Insurance Company examined 4 witnesses as R.W.1 to R.W.4 and no document was marked. The Final report was marked as Ex.W1.

9.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the car owned by 6th respondent and directed the appellant to pay a sum of Rs.39,85,426/- as compensation to the respondents 1 to 5.

10.To set aside the award dated 11.10.2018 made in M.C.O.P.No.215 of 2013, the appellant has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the accident occurred only due to rash and negligent driving by the deceased Elangovan, who drove the motorcycle in a rash and negligent manner and caused the accident. At the time of accident, the deceased was not possessing driving license. The respondents 1 to 5 did not produce the Registration Certificate of the motorcycle in which the deceased traveled and driving license of the deceased. The appellant proved that accident has occurred only due to negligence on the part of the deceased. The appellant examined the driver of the car as R.W.3, who deposed that deceased while over taking three vehicles, came and dashed on the car and caused the accident. The Tribunal ought to have fixed entire negligence on the part of the deceased. P.W.1 is not eyewitness. The Tribunal erroneously



relied on the evidence of P.W.1 and fixed entire negligence on the part of the driver of the car. The Tribunal ought to have considered the evidence of R.W.4/Sub-Inspector of Police in proper perspective and dismissed the claim petition. In any event, the monthly income fixed by the Tribunal and amounts granted for loss of love and affection and funeral expenses are excessive and prayed for setting aside the award passed by the Tribunal.

12.Per contra, the learned counsel appearing for the respondents 1 to 5 contended that the accident has occurred only due to rash and negligent driving by the driver of the car owned by 6th respondent and F.I.R. was registered against the driver of the car. The respondents 1 to 5 examined the 2nd respondent as P.W.1 and marked F.I.R. and proved the negligence on the part of the driver of the car owned by 6th respondent. On the other hand, it is the case of the appellant that the accident occurred only due to rash and negligent driving by the deceased who came and dashed on the car after overtaking three vehicles. The Tribunal ought to have fixed entire negligence on the part of the deceased. To substantiate their case, they examined the driver of the car as R.W.3. The deceased was working as Sepoy in AMC Regiment in Indian Army and was earning a sum of Rs.28,922/- per month at the time of accident. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

14.It is the case of the respondents 1 to 5 that while the deceased Elangovan was driving the Bajaj Pulsar motorcycle bearing Registration No.UP 32 DF 3374 from South to North from his Village to Cuddalore near Ramamoorthy cane shop at Thaikkal Village, the driver of the car bearing Registration No.TN 02 AC 1616, owned by 6th respondent, who was driving the car from the opposite direction, drove the same in a rash and negligent manner and dashed against the motorcycle driven by the said Elangovan and caused the accident. In support of their case, the 2nd respondent was examined as P.W.1 and marked F.I.R., which was registered against the driver of the car as Ex.P1. On the other hand, it is the case of the appellant that accident occurred only due to rash and negligent driving by the deceased, who came and dashed on the car after overtaking three vehicles and invited the accident. The Tribunal ought to have fixed entire negligence on the part of the deceased. To substantiate their case, the appellant examined the driver of the car as R.W.3. From the materials on record, it is seen that the F.I.R. was registered against the driver of the car owned by 6th respondent.



The driver of the car was examined as R.W.3, who deposed that the deceased only drove the motorcycle in a rash and negligent manner and dashed on the car. In his evidence, he has admitted that after the accident, he was taken to Police Station. The Tribunal took note of the fact that R.W.3-driver of the car did not give any complaint against the deceased or gave objection to the F.I.R., which was registered against him. Considering the above materials, the Tribunal did not accept the evidence of R.W.3 and rejected his evidence as an after thought. The Tribunal considering the materials, held that accident has occurred only due to rash and negligent driving by the driver of the car owned by 6th respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the respondents 1 to 5 contended that at the time of accident, the deceased was aged 28 years, working as Sepoy in AMC Regiment in Indian Army and was earning a sum of Rs.28,922/- per month. To prove the same, the respondents 1 to 5 filed the Salary slip of the deceased as Ex.P7. The Tribunal without considering the same, fixed a sum of Rs.36,063/- per month as notional income of the deceased after granting 50% enhancement towards future prospects. As per Ex.P4/postmortem certificate, the deceased was aged 27 years at the time of accident. The Tribunal has rightly granted 50% enhancement towards future prospects as the deceased was a permanent job holder. The Tribunal has rightly deduced 50% towards personal expenses of the deceased as the deceased was a bachelor at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], rightly applied multiplier '17' and awarded a sum of Rs.36,78,426/- as compensation towards loss of dependency. The Tribunal in addition to awarding compensation towards loss of dependency, has awarded a sum of Rs.2,00,000/- towards loss of love and affection to respondents 1 & 2 and Rs.75,000/- towards loss of love and affection to respondents 3 to 5 and the same are excessive. The respondents 1 & 2, being the parents of the deceased are entitled to only a sum of Rs.40,000/- each towards loss of love and affection and the respondents 3 to 5 are not entitled to any amount towards loss of love and affection. Hence, the sum of Rs.75,000/- awarded by the Tribunal towards loss of love and affection to respondents 3 to 5 is liable to be set aside and it is hereby set aside. Further, the excessive amount of Rs.20,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The respondents 1 to 5 are entitled to a sum of Rs.15,000/- towards loss of estate. The further contention of the learned counsel appearing for the appellant that the respondents 3 to 5, who are the married sisters of the deceased are not entitled to any



compensation is concerned, it is now well settled that even married sisters are dependants of the deceased and they are also entitled to get compensation for the death of their brother. Hence, the said contention of the learned counsel appearing for the appellant that the respondents 3 to 5 are not entitled to get any compensation for the death of their brother is not acceptable. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	36,78,426/-	36,78,426/-	Confirmed
2.	Loss of love and affection to respondents 1 & 2	2,00,000/-	80,000/-	Reduced
3.	Loss of love and affection to respondents 3 to 5	75,000/-	-	Set aside
4.	Funeral expenses	20,000/-	15,000/-	Reduced
5.	Damages to clothes	2,000/-	2,000/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.39,85,426/-	Rs.38,00,426/-	Reduced by Rs.1,85,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.39,85,426/- is hereby reduced to Rs.38,00,426/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.215 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount now determined by this



Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.215 of 2013, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(ADMN-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.18146

C.M.A.No.4813 of 2019

RGN(CO)
CB(09/11/2021)