IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1576 of 2020
and CMP.No.11615 of 2020
and Cros.Objection.No.67 of 2021

M/s.Royal Sundaram General Insurance
Company Limited,
Sundaram Towers, No.45 & 46,
Whites Road, Chennai - 600014. ...Appellant in CMA/1st Respondent in Cros.Objection

Vs.

1.R.Kavitha

2.R.Rajendran ..1st and 2nd Respondent in CMA/ Petitioners in Cross Objection

3.T.J.Institute of Technology,
IT Highways, Karapakkam,
Chennai - 600 096. ..3rd Respondent in CMA/2nd Respondent in Cross Objection

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP.No.2820 of 2014 dated 17.12.2019, on the file of teh Motor Accident Claims Tribunal, II / Special Sub-ordinate Judge, Chennai.

For Appellant (in CMA/1st Respondent in Cros.Objection) : Ms.C.Harini

For Respondents R1 and R2 in CMA and for Petitioners in Cross Objection : Mr.R.Kalaiarasan

R3 in CMA/2nd Respondent in Cross Objection : Ex Parte before the Tribunal

Prayer in Cross Objection:

Cross Objection filed under Order XXXXI,Rule 22 of CPC against the judgment and decree dated 17.12.2019 made in MCOP.No.2820 of 2014 on the file of teh Motor Accident Claims Tribunal, II / Special Subordinate Judge, Chennai

J U D G M E N T

The Insurance Company is on appeal, questioning the award of the Tribunal made in MACTOP.No.2820 of 2014. The claimants, who are the parents of the deceased, who was a Post Graduate Engineering student aged about 24 years sought compensation for the death of their son. Contending that they have been deprived of their only son, the parents claimed Rs.36,00,000/- as compensation.

2.According to the claimants, when the deceased was driving his two wheeler bearing Registration No.TN-32-F-8440 at SRP Tools Junction on the Old Mahabalipuram road, the bus belonging to the 2nd respondent, which had stopped for pedestrians to cross, suddenly moved towards right, which resulted in the deceased losing control of the bike and colliding against the bus. As a result of the accident, the deceased suffered severe injuries and he died on the spot. Contending that the accident occurred due to the rash and negligent manner, in which the driver of the bus moved the bus towards the middle of the road, without any signal, the claimants would claim that the driver of the bus was responsible for the accident.

3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. The Insurance Company also relied upon the First Information Report lodged, which shows that the deceased was responsible for the accident. The quantum of compensation claimed was also termed as excessive, since the deceased was only a student.

4.Before the Tribunal, the 1st claimant, the mother of the deceased was examined as PW1 and one Manikandan, eye witness to the accident was examined as PW2. Exs.C1 to C13 were marked on the side of the claimants. On the side of the respondents, the Head Constable was examined as RW1 and the First Information Report was marked as Ex.R1. The Tribunal, on a consideration of the evidence on record concluded that in the absence of examination of the person, who gave the complaint, the contents of the First Information Report cannot be taken as correct. The Tribunal also relied upon the judgment of the Hon'ble Supreme Court in New India Assurance Company Ltd., Vs. Manimaran reported in 2008 (2) TN MAC 137 wherein, the Hon'ble Supreme Court had held that oral evidence of an eye witness that is tested by cross-examination, should be preferred to evidence offered by the First Information Report more so, when the complainant or the informant was not examined. Applying the above principle, the Tribunal refused to take into account the information given in the First Information Report and accepted the evidence of PW2 / Manikandan to conclude that the accident had occurred due to the rash and negligent driving of the bus also. Finding that both the deceased as well as the bus driver were responsible for the accident, the Tribunal apportioned the contributory negligence at 50% each.

5.On the quantum, the Tribunal took monthly income of the deceased at Rs.20,000/-, adopting future prospects at 40% and deducted 50% towards personal expenses and Rs.8,600/- towards income tax, it adopted a multiplier of 18 and arrived at the total loss of dependency at Rs.29,46,600/-. The Tribunal awarded a sum of Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.80,000/- for loss of consortium. Thus, the total compensation awarded by the Tribunal worked out to Rs.30,56,600/-. Since the Tribunal had held that the deceased had contributed to the accident and the contributory negligence on his part was fixed at 50%, the Tribunal directed the Insurance Company to pay a sum of Rs.15,28,300/-. Aggrieved, the Insurance Company has come up with this appeal.

6.Heard Ms.C.Harini, learned counsel appearing for the Insurance Company and Mr.R.Kalaiarasan, learned counsel appearing for the claimants / respondents 1 and 2.

7.Ms.C.Harini, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in rejecting the evidence offered by the First Information Report and the final report filed by the police. She would submit that those documents, which had emanated immediately after the accident and the First Information Report has been given by the by-stander, should have been given more weightage than the oral evidence of an eye witness. The learned counsel would further contend that the Tribunal was not justified in taking the monthly income at Rs.20,000/-. The deceased was only pursuing his post graduation and he was not an earning member therefore, according to the learned counsel, fixation of Rs.20,000/- as monthly income, addition of 40% towards future prospects had resulted in compensation being boosted up.

8.Contending contra, Mr.R.Kalaiarasan, learned counsel appearing for the respondents / claimants 1 and 2 would submit that the Tribunal was justified in rejecting the First Information Report.He would point out that the First Information Report has been lodged by an employee of the Institution, which owned the bus that was involved in the accident. Therefore, according to the learned counsel, the contents of the First Information Report cannot be taken on its face value. The learned counsel would also add that in the judgment in National Insurance Company Ltd., Vs. Chamundeswari and others reported in 2021 (2) TN MAC 449 (SC), the Hon'ble Supreme Court has held that more weightage should be given to the evidence of the eye witness, who is examined before the Court and subject to cross-examination than the contents of the First Information Report, which is not supported by oral evidence. The learned counsel would also submit that the Tribunal has relied upon atleast three decisions of this Court to come to the conclusion that the monthly income can be fixed at Rs.20,000/- per month. He would also submit that the deceased was an Engineering Graduate and considering the fact that the accident had taken place in the yer 2014, the Tribunal was justified in fixing the monthly income at Rs.20,000/-. I have considered the rival submissions.

9.No doubt, the First Information Report blames the rider of the two wheeler / deceased entirely for the accident. The charge sheet was also filed against the deceased. As rightly pointed out by the claimants / respondents, the First Information Report was lodged by the employee of the owner of the bus that was involved in the accident. The said employee was not examined before the Tribunal. There is no evidence in respect of the said First Information Report. On the other hand, the witness namely, CW2, Manikandan, who was examined as eye witness was subjected to cross-examination by the counsel for the Insurance company and the Tribunal has found that his evidence is trust worthy and the same could be believed. I am, therefore, unable to fault the Tribunal for having rejected the First Information Report and taken the evidence of PW2 as the basis for deciding the question of negligence. Therefore, I do not see any reason to interfere with the conclusion of the Tribunal in fixing the contributory negligence at 50% on the driver of the bus as well the deceased.

10.On the quantum, the Tribunal had taken Rs.20,000/- as monthly income. Ms.C.Harini, learned counsel appearing for the Insurance Company would vehemently contend that the monthly income of Rs.20,000/- is on the higher side, considering the fact that the accident had occurred in the year 2014. Admittedly, the claimant was an Engineering Graduate, he was pursuing Post Graduate Engineering course at the time of the accident and he was only aged 24 years. His parents have been deprived of their only son because of the accident. May be, he had contributed to the accident but considering the pain of the parents and the fact that the deceased was aged about 24 years old at the time of the accident, I do not think that the Tribunal could be faulted for taking the monthly income at Rs.20,000/- per month. There was every chance of the deceased earning more than that also. Therefore, considering the uncertainities involved, I do not think that the fixation of Rs.20,000/- as monthly income could be said to be on the higher side. The Tribunal has taken 40% for future prospects, it has deducted 50% towards personal expenses and made a further deduction of Rs.8,600/- towards income tax, which is not the normal practice. The Tribunal has also directed 50% of total compensation towards the contributory negligence, which has resulted in the claimants being awarded only a sum of Rs.15,28,300/-.

11.No doubt, we can fault the reasonings of the Tribunal while it awarded a compensation of each and every head but if we look at the over all compensation, I do not think it could be termed as high or excessive. Hence, I do not see any reason to interfere with the award of the Tribunal. This civil miscellaneous appeal therefore, dismissed. No costs. The respondents / claimants have also filed a cross-objection claiming that the compensation is low and faulting the Tribunal for fixing the contributory negligence at 50%. Since I have held that the award is reasonable, the Cross-objection stands dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Motor Accident Claims Tribunal,
II- Special Sub-ordinate Court, Chennai.

Copy to:
The Section Officer,
VR Section,High Court,Madras
+1 cc to Ms.C.Harini, Advocate Sr.NO. 63608

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SMI(CO)

A.SK(28.01.2022)