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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.4016 of 2019
and
C.M.P.Nos.22679 of 2019 & 14898 of 2021

New India Assurance Co. Ltd.,
No.2, B.R. Complex, Woods Road,
Chennai - 600 002.

...Appellant/1st Respondent

Vs.

1.Smt.B.Amirthalakshmi

2.Minor Ashmitha Arvind
(Rep. by her Mother and Natural Guardian
Mrs.Amirthalakshmi) ...Respondents 1 & 2/Claimants

3.R.Shamshad Biwi

4.R.Yasmin (Minor)

5.R.Abdul Rafi (Minor)

6.R.Aishwarya Banu (Minor)
(4 to 6 minors represented by their
mother and natural guardian
Mrs.Shamshad Bivi)

7. Gilaka Bi
S.Baji Sahib(deceased)
(deleted as per order dated 26.08.2013
in M.P. No. 546/2013)

8. Mrs. Kalpana Rajendran
...Respondents 3 to 8/Respondents 2 to 7



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree passed in MCOP No.4268 of 2012 on 04.05.2017 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court, Chennai).

For Appellant : Mr.J.Chandran
For Respondents : Mr.K.Chandrasekaran
(for R1 and R2)

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the award passed by the Motor Accident Claims Tribunal, III Small Causes Court, Chennai in MCOP No.4268 of 2012 dated 04.05.2017.

2.The facts of the case in nutshell:-

On 20.06.2008, at about 01.45 hours, the deceased Dr.Aravind Sivam was riding his Wagon R Car bearing Reg.No.TN-07-AA-4579 from Chennai to Chidambaram on the ECR, Vadanemili village. At that time, a Swaraj Mazda, a goods van was driven by its driver, by name, Rasheed in a rash and negligent manner and crossed on the right side of the road and dashed on the Wagon R Car. In the impact, the driver of the Wagon R Car Dr.Aravind Sivam and driver of the Swaraj Mazda died on the spot. The driver of the Swaraj Mazda van is responsible for the gruesome accident. The respondents 3 to 6 herein are the legal heirs of the owner and the appellant is the insurer of the Swaraj Mazda Van. The wife and minor daughter of the deceased Dr.Aravind Sivam laid a petition, claiming compensation of Rs.5,72,00,000/-. Though the parents of the deceased filed another claim petition in MCOP No.328 of 2010 separately claiming compensation of Rs.40,00,000/-, the Tribunal clubbed the claim petitions together for the purpose of arriving at a just conclusion and to avoid conflicting views.

3.Resisting the claim, the appellant/New India Assurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive. Further, in the counter, it has been stated that the accident had not occurred due to the rash and negligent driving of the driver of the Van and it has been occurred only due to rash and negligent driving of the driver of the Wagon R Car, namely, the deceased Dr.Aravind Sivam.



4.To substantiate the case, on the side of the claimants, P.Ws.1 to 4 were examined and Exs.P.1 to Ex.P.22 were marked. On the side of the appellant/New India Assurance Company, R.W.1 to R.W.6 were examined and Exs.R.1 to R.32 were marked.

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5.The Tribunal after considering the pleadings, oral and documentary evidence, held that the driver of the Swaraj Mazda Van is the root cause for the accident and the driver of the Wagon R Car also contributed for this accident to some extent. Hence, the Tribunal has fixed the liability at 75% on the driver of the van and 25% on the driver of the Wagon R Car and awarded compensation as follows:-

S.No	Heads	Amount (Rs)
1	Pecuniary Loss	2,24,64,000/-
2	Loss of consortium to wife	1,00,000/-
3	Loss of Love and Affection	2,00,000/-
4	Funeral expenses	25,000/-
5	Transport Expenses	10,000/-
	Total	2,27,99,000/-

6.Further, the Tribunal observed that the insurer of the Swaraj Mazada van, namely, the appellant/New India Assurance Company and the insurer of the Wagon R Car, namely, HDFC General Insurance Company Limited, are liable to pay the compensation in the ratio of 75% : 25% in the total amount. Aggrieved by the said order, the appellant/New India Assurance Company has filed the present appeal challenging the quantum and liability.

7.The learned counsel appearing for the appellant/New India Assurance Company would contend that the compensation awarded towards death of 31 year Dr.Aravind Sivam is highly excessive, exorbitant and unsustainable in law. The Tribunal went wrong in fastening 75% negligence against the appellant's insured vehicle Swaraj Mazda van instead of fastening the entire negligence and liability against the driver of the car driven by Dr.Aravind Sivam. He would contend that the Tribunal ought to have disbelieved the pleading that the deceased Dr.Aravind Sivam earned Rs.22,00,000/- per annum from medical practice, real estate and transport business to fix the income of Rs.5,000/- per day. Hence, the learned counsel seeks to set aside the said award.

8.Per contra, the learned counsel appearing for the respondents/claimants would submit that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned



and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9. This Court carefully considered the rival submissions and perused the materials available on record.

10. As against the award passed by the Tribunal, the insurer of the car has not preferred any appeal. Similarly, the claimants also did not come forward with any cross objection seeking enhancement of compensation. This appeal is filed by the insurer of the Swaraj Mazda van, questioning the liability to pay compensation and the quantum of compensation.

11. Though the learned counsel appearing for the appellant/Insurance Company argued in respect of liability, a perusal of the records shows that the Tribunal after considering the Rough Sketch (Ex.P.15) held that the front right wheel of the Swaraj Mazda Van got burst, which is the main root cause for this accident and hence, the Tribunal fixed the contributory negligence as 75% : 25%. We are of the view that the same is just, proper and reasonable and the same does not require any interference by this Court.

12. In respect of quantum, in the instant case, before the Tribunal, the appellant/New India Assurance Company filed Exs.R.1 to R.3 and Ex.R.30 Income Tax Returns of the deceased, but the Tribunal, without considering the same, has fixed the daily income of the deceased as Rs.5,000/-. Further, the Tribunal held that the deceased has earned three types of incomes i.e., out of his medical profession, Real-Estate Business and Transport Business, but there is no proof filed. Further, the Tribunal added 50% of the annual income towards future prospectus, which is contrary to the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC). The Tribunal, without considering the Income Tax Returns of the deceased (Exs.R.1 to R.3 & R.30) fixed the monthly notional income as Rs.1,30,000/-. Hence, this Court fixes the monthly notional income as Rs.90,000/-. As per the decision of Pranay Sethi (supra), the claimants are entitled to 40% addition as future prospects. Hence, after adding 40% of the income, the monthly income works out at Rs.1,26,000/- (90000+36000 (40%) = 126000). After deducting 10% towards income tax and 1/3rd towards personal and living expenses, contribution to the family will be Rs.75,600/- (126000-12600=113400-37800) per month. By applying multiplier '16', this Court hereby awards Rs.1,45,15,200/- (75600 x 12 x 16) towards loss of dependency.



In addition, as per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to Rs.40,000/- each towards filial and parental consortium, which comes to Rs.1,20,000/-, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Hence, the amount of Rs.1,00,000/- awarded under the head of loss of consortium, Rs.2,00,000/- towards loss of love and affection and Rs.10,000/- towards transportation are set aside. The amount of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. Rs.15,000/- is awarded for loss of estate. The rate of interest fixed by the Tribunal is confirmed. The negligence fixed by the Tribunal as 75% : 25% is also confirmed. Hence, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Rs.
Loss of dependency	1,45,15,200/-
Loss of consortium 40000 x 3	1,20,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	1,46,65,200/-
Rounded Off	1,46,65,000/-

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed and the award amount of Rs.2,27,99,000/- is reduced to Rs.1,46,65,000/-. Out of the amount, the wife of the deceased is entitled to Rs.50,00,000/- (Rupees Fifty Lakh only); the daughter of the deceased is entitled to Rs.70,00,000/- (Rupees Seventy Lakhs only) and the mother of the deceased is entitled to Rs.26,65,000/- with proportionate interest and cost. The appellant/New India Assurance Company Ltd., and the HDFC General Insurance Company are directed to deposit the modified award amount in the ratio of 75% : 25% 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.

14. On such deposit, the major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor attains majority and the mother of the minor claimant who is the guardian of the



minor claimant, is permitted to withdraw interest once in six months directly from the Bank. No costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar (CCC)

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Sub-Assistant Registrar

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To

1.The III Judge
Small Causes Court
Motor Accident Claims Tribunal,
Chennai.

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

+1 CC to Mr.K.Chandrasekaran, Advocate sr 67711

+1 CC to Mr.J.Chandran, Advocate sr 68049.

C.M.A.No.4016 of 2019
and
C.M.P.Nos.22679 of 2019 & 14898 of 2021

SV (CO)
SP (22/04/2022)