



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.Nos.1489 and 2831 of 2017
and
CMP No.16182 of 2017

1.Vijaya
2.Arulnathan
3.Archana

...Appellants in C.M.A.No.1489 of 2017/
Claimants

Vs

1.Karunanithi

2.The Divisional Manager,
United India Insurance Company Limited,
No.88, Big Street,
Thiruvannamalai

...Respondents in C.M.A.No.1489 of 2017/
Defendants

The Divisional Manager,
United India Insurance Co Ltd
No.88, Big Streetm
Cuddalore

... Appellant in C.M.A.No.2831 of 2017/
2nd Respondent

vs

1.Vijaya
2.Arulnathan
3.Archana

... 1 to 3 Respondents/Claimants

4.Karunanidhi

... 4th Respondent(in C.M.A.No.2831 of 2017)/
1st Defendant

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2016 made in M.C.O.P.No.113 of 2016 on the file of the learned Special District Judge, Motor Accident Claims Tribunal (Motor Accident Claims Special District Court), Villupuram.



WEB COPY

For Appellants in
CMA No.1489/2017

and Respondents 1 to 3 : Mr.D.Ravichander
in CMA No.2831/2017

For 2nd Respondent in
CMA No.1489/2017
and Appellant in
CMA No.2831/2017 :Mr.S.Arun Kumar

R1 NA in CMA.1489/2017
R4 NA in CMA.2831/2017

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

These two appeals arises from the judgment of the Tribunal awarding a sum of Rs.22,81,640/- as compensation for the death of Venkatarajan in the road accident.

2.The Insurance Company being aggrieved by the quantum of compensation and apportionment of contributory negligence has challenged the award as excessive whereas the claimants, who are the legal representatives of the deceased Venkatarajan, have preferred appeal for enhancement of compensation.

3. The facts of the case in short is that on 01.09.2015, at about 5 p.m., while the deceased Venkatarajan riding his Bajaj Pulsor two wheeler bearing Registration No.TN32 AD 6201 from Tiruvannamalai to Villupuram, a lorry bearing Registration No.TN 25 AA 0221 proceeding from Villupuram towards Tiruvannamalai, dashed against the two wheeler and caused instant death of Venkatarajan. Alleging that the accident had occurred only due to the rash and negligent driving of the lorry driver, claim petition for a sum of Rs.50,00,000/- was filed by the legal representatives of the deceased Venkatarajan against the owner of the lorry and its insurer.

4.According to the claimants, the deceased was earning Rs.25,000/- per month as Constable in Tamilnadu Special Police, X Batalian. At the time of his death, he was 23 years old. His parents and unmarried sister were his dependents.

5. The Insurance Company filed counter stating that the accident occurred purely due to the negligence of the deceased. Since he was in police force, F.I.R. was falsely registered against the lorry driver whereas the sketch of the scene of accident and other evidence would clearly show that there is a contributory negligence on the part of the deceased two wheeler. Further, the compensation claimed is exorbitant and excessive.



The deceased died as a Bachelor and the claimants are not his dependents.

6. Before the Tribunal, on behalf of the claimants, two witnesses were examined and 21 exhibits were marked.

7. The trial court after considering the evidence particularly, the F.I.R. and witnesses who spoke about the accident, held that the major contribution for the accident is the negligence of the lorry driver. The evidence indicate that the accident occurred due to head on collision in which the deceased has sustained head injury and died. Whether the deceased was wearing helmet at the time of accident or not is not proved. However, the injury sustained by him would show that the deceased sustained head injury because he was not wearing the helmet. Therefore, the Tribunal has attributed 20% negligence on the part of the deceased and 80% negligence on the part of the lorry driver.

8. Based on the Salary Certificate, Ex.P19, which indicates that the monthly salary of the deceased was Rs.17,150/- and his age was 23 years at the time of accident, adopting the multiplier "18", adding 50% for future prospects, the Tribunal has awarded a total sum of Rs.22,81,640/- after deducting 50% for personal expenditure and 20% for his contribution.

9. In CMA No.1489 of 2017, while the claimants contend that the award amount is less and there should not be any deduction of contributory negligence. Whereas the Insurance Company in C.M.A. No.2831 of 2017 contends that it is an accident due to head on collision, the sketch prepared by the police also indicates that the recklessness of the two wheeler rider had caused the accident in the middle of the road. The contribution should be apportioned equally and not at 80:20 ratio. Also, the learned counsel for the Insurance Company submitted that 50% addition towards future prospects is also excessive and it should have been only 40%.

10. This Court, after considering the evidence and considering the judgment of the Constitution Bench of the Supreme Court in Pranay Sethi's case holds that being a salaried person employed in the State Police, addition of 50% towards future prospects is appropriate and need not be altered, since the deceased died while he was 23 years old.

11. As far as the contributory negligence is concerned, the trial court has taken into consideration two aspects. First, non wearing of helmet by the deceased. Secondly, accident being head on collision as per the sketch, the accident might not have occurred without the contribution of the two wheeler. The logic



and reasoning given by the Tribunal is quite appreciable and there can be second opinion about that. Being a Police, had he worn the helmet and adhered to the traffic Rule properly, the accident injury could have been averted or mitigated and his life would have been saved. The Post Mortem Report indicates that the serious head injury has caused the

fatal death. Taking note of these facts, this Court finds that the award of the Tribunal has to be confirmed and accordingly, the same is confirmed.

12. In the result, both the appeals, one filed by the Insurance Company and another appeal filed by the claimants are dismissed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

The Special District Judge,
Motor Accident Claims Tribunal
(Motor Accident Claims Special District Court),
Villupuram.

Copy To

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

+1cc to Mr.D.Ravichander, Advocate, S.R.No.18901
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.18370

CMA Nos.1489 and 2831 of 2017

SSI(CO)
GN(16/11/2021)