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C.M.A(MD)Nos.163 and 1692 of 2010
and 404 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 05.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos.163 and 1692 of 2010 and 404 of 2013
and
M.P(MD)Nos.1 and 1 of 2010

C.M.A(MD)No.163 of 2010

The New India Assurance Company Ltd.,
Nagercoil Branch. .. Appellant/Respondent No.3

vs.

1.Smt.Girija Kumari
2.P.G.Pradheesh ... 1st & 2nd Respondent/Petitioners
(Minor respondent is declared as major
vide order dated 05.03.2021)

3.Ratheesh ... 3rd respondent/1st Respondent
4.Venkatesan ... 4th Respondent/2nd Respondent

5.Bajaj allianz Insurance Co-Ltd.,
M.G.Road,
Pazhavangadi,
Thiruvnanthapuram,
Kerala State.5th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award dated 07.10.2009 and made in MCOP No.142 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai.

For Appellant : Mr.K.Murugesan
For Respondents : Mr.T.Arul (for R1 & R2)
Mr.S.Srinivasa Raghavan (for R5)

C.M.A(MD)No.1692 of 2010

Bajaj Allianz General Insurance Co., Ltd.,
M.G.Road, Pazhavan Gadi,
Thiruvananthapuram,
Kerala State. .. Appellant/4th Respondent



vs.

1.Smt.Girija Kumari
2.P.G.Pradheesh ... 1st and 2nd Respondent/Petitioners
(Minor respondent is declared as major
vide order dated 05.03.2021)

3.Ratheesh ... 3rd Respondent/1st Respondent
4.Venkatesan

5.New India Assurance Co., Ltd.,
Nagercoil Branch. ... Respondents 4 & 5/Respondents 2 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the fair and decretal order dated 07.10.2009 and made in MCOP No.142 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.T.Arul (for R1 and R2)
Mr.K.Murugesan (for R5)

C.M.A(MD)No.404 of 2013

1.Smt.Grija Kumari
2.P.G.Pradheesh .. Appellant/Claimants
(Appellant 2 minor declared as major
vide order dated 05.03.2021)

vs.

1.Ratheesh
2.Venkatesan

3.New India Assurance Co., Ltd.,
Nagercoil Branch.

4.Bajaj Allianz Insurance Co. Ltd.,
M.G.Road, Pazhavangadi,
Thiruvananthapuram,
Kerala State. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the award dated 07.10.2009 made in MCOP No.142 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Judge, Kuzhithurai.



For Appellant : Mr.T.Arul
For Respondents : Mr.K.Murugesan (for R3)
Mr.S.Srinivasa Raghavan (for R4)

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COMMON JUDGMENT

These appeals arise out of the award passed by the Motor Accident Claim Tribunal, Kuzhithurai in MCOP No.142 of 2006 dated 07.10.2009.

2.The claim petition was filed by the wife and minor son of the deceased Padmanabhan Nair, who died in a motor vehicle accident on 02.05.2006. It is their case that the deceased Padmanabhan Nair was a Ex-service Man and he was returning from Karingal in a two wheeler Bajaj CT 100 bearing registration No.TNV 1114. At that time, the first respondent, the rider of the Bajaj Pulsar vehicle bearing registration No.TN-67-E-4867, in which, the second respondent was a pillion rider, came in carelessness manner and dashed against the Bajaj CT 100. In the accident, the said Padmanabhan Nair sustained injuries and he was immediately taken to Colochel Hospital, where he died. The Insurer of the Bajaj Pulsar was the third respondent and the fourth respondent was insurer of Bajaj CT 100.

3.The respondents 1 to 3 in the claim petition contended that at the time of accident, the deceased consumed liquor and he was driving motorcycle in a rash and negligent manner. The accident occurred only because of the deceased and he was not having valid driving license. So, no liability can be fastened on them. The insurer of Bajaj CT 100, in which, the deceased travelled, has filed a counter in support of the case of the claimant.

4.During trial, in order to prove the case of the claimants, two witnesses were examined and 16 documents were marked. The Insurance Company examined R.W.1 and produced 3 documents.

5.P.W.2 was examined as eyewitness to the incident. According to him, the accident happened due to the negligence of the driver of the Bajaj Pulsar. However, he did not lodge complaint after the accident and a case was registered against the deceased. Ex.P.2- Rough Sketch prepared by the police shows that the accident happened on the right side of the road. The defence taken by the insurance company that the deceased was drunk at the time of accident was disbelieved since the liquor found in the stomach of the deceased was not proved as Alcohol.

6.On appreciation of evidence, the Trial Court came to the conclusion that if the rider of the offending vehicle was careful, this accident could have been averted and held both the riders are equally responsible for the accident. The Tribunal found that the claimants are entitled to Rs.3,95,000/- and directed both the



insurance companies to pay the amount to the claimants.

7.Challenging the said finding, the insurance company to pay compensation, the insurance companies have filed CMA(MD)Nos.163 of 2010 and 1692 of 2010 and the claimants have come up with CMA(MD) No.404 of 2013 for enhancement compensation.

8.Mr.K.Murugesan, learned counsel appearing for the appellant in CMA(MD)No.163 of 2010 would urge that the Tribunal erred in fixing 50% of negligence on the riders of both two-wheelers. According to the learned counsel, a criminal case was registered against the deceased and it was closed as 'mistake of fact'. Ex.P.3-postmortem certificate shows that there is block liquor at about 100 ml in the stomach of the deceased even though the factors having been taken note by the Tribunal, but it erred in fixing the liability on the insurance company.

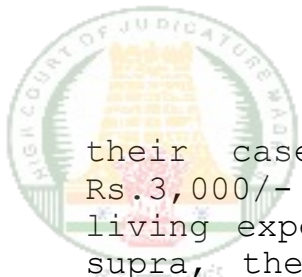
9.Mr.S.Srinivasa Raghavan, learned counsel for the appellant in CMA(MD)No.1692 of 2010 would contend that the owner of the insured vehicle died in the accident and hence, the claimants are not entitled to seek compensation from the insured. It is further submitted that the deceased is not third party and hence, the insurance company cannot be made liable to pay compensation.

10.The learned counsel for the claimants submitted that the award amount is very meager and there was no proper calculation of the income of the deceased. The monthly income fixed by the Tribunal at Rs.3,000/- is meager.

11.Heard the learned counsel for the parties and perused the materials available on record.

12.In the matter on hand, it is not in dispute that the claimants are the legal heirs of the deceased Padmanabhan Nair. It is also not disputed that the deceased was an Ex-service man and he died at the age of 40 years. P.W.2 deposes that the opposite vehicle was driven in a rash and negligent manner and it hit against the two wheeler in which, the deceased was riding. In the cross examination, P.W.2 admitted that the accident occurred on the wrong side of the road. There is no explanation for the deceased to go to the wrong side of the road. As rightly held by the Tribunal, the Insurance Company failed to prove that the deceased was drunk at the time of accident. However, when it found that the deceased was on the wrong side and the rider of the opposite vehicle was also carelessness and negligent, the Tribunal, in my view, has rightly fixed negligence equally on the riders of both the vehicles.

13.Insofar as the quantum is concerned, the claimants stated that after retirement from Army, the deceased was earning Rs.25,000/- per month, but no material was produced to substantiate



their case. So, the Tribunal has fixed notional income at Rs.3,000/- per month, after deducting $1/3^{\text{rd}}$ for his personal and living expenses, contribution was taken as Rs.24,000/-. As stated supra, the deceased died at the age of 40 years and hence, the claimants would be entitled for future prospects also. So, in my view, it would be appropriate to fix income at Rs.6000/- per month, from which, $1/3$ is to be deducted for his personal expenses and contribution to the family comes to Rs.4000/- and by applying multiplier '15' the loss of income is arrived at Rs.7,20,000/- ($4000 \times 12 \times 15$). As per the decision of **National Insurance Co., Ltd., vs. Pranay Sethi** reported in (2017)16 SCC 680, the claimants are entitled for Rs.70,000/- for conventional damages. Thus, the claimants would be entitled to Rs.7,90,000/-. Though it is contended by the learned counsel for the appellant in CMA(MD)No.1692 of 2010 that the insurance company is not liable to pay compensation, but during the cross examination, he has fairly admitted that they are liable to pay Rs.1,00,000/- as personal coverage. Therefore, the appellant in CMA(MD)No.1692 of 2010/Bajaj Allianz General Insurance Co., Ltd., is directed to pay Rs.1,00,000/- and the appellant in CMA(MD)No.163 of 2010/New India Assurance Company Ltd, is directed to pay Rs.3,95,000/- being their fifty percent share.

14.Further, it is seen from the records that on the date of filing of the claim petition on 28.11.2006, the second claimant was 10 years old and now he has attained the age of majority. Hence, the second claimant is declared as major.

15.In view of the above, both the appellants/Insurance companies are directed to deposit their share 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 claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs.

16.In the result, CMA(MD)No.404 of 2013 is allowed, CMA(MD)No.1692 of 2010 is partly allowed and CMA(MD)No.163 of 2010 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Motor Accident Claims Tribunal,
Sub Court, Kuzhithurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+3 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-9420,9421& 9423[F]
dated 08/03/2021)

+1 CC to Mr.T.ARUL, Advocate SR.No. 9247

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.163 and 1692 of 2010 and 404 of 2013
and
M.P(MD)Nos.1 and 1 of 2010
05.03.2021

NS (CO)

TR(19.05.2021) 6P 8C