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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.1416 of 2021 and CMP.No.7360 of 2021
and
Cross Obj.No.2 of 2022

In C.M.A. No.1416 of 2021

United India Insurance Company Ltd., Karaikal,
Rep. by Branch Manager,
Having his office at No.50, Jeevanandam Street,
Karaikal Town and District Munsifi ...Appellant

Vs.

1. Dhanalakshmi
2. Srinivasan
3. Minor Balaraman
[Minor rep. by his guardian, next friend
and mother/1st claimant Dhanalakshmi]
4. Victor Wilson
5. IFFCO TOKIO General Ins. Co. Ltd., Pondicherry,

Rep. by its Branch Manager,
Having his office at No.58-A, II Floor,
Anjaneya Tower Pavazha Nagar,
Pondicherry Town and District Munsifi. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicle Act, 1988 against the award dated 06.06.2020
made in MCOP.No.1 of 2017 on the file of the Motor Accidents
Claims Tribunal (District Court) at Karaikal.

For Appellant : Mr.D.Baskaran
For Respondents

for R1 to 3 : Mr.K.Varadha Kamaraj

for R5 : Mr.Arunkumar



In Cross Obj.No.2 of 2022

1. Dhanalakshmi
 2. Srinivasan
 3. Minor Balaraman
- [Minor rep. by his guardian, next friend
and mother/1st claimant Dhanalakshmi]

...Cross Objectors

vs.

1. United India Insurance Company Ltd., Karaikal,
Rep. by Branch Manager,
Having his office at No.50, Jeevanandam Street,
Karaikal Town and District Munsifi
2. Victor Wilson
3. IFFCO TOKIO General Ins. Co. Ltd., Pondicherry,

Rep. by its Branch Manager,
Having his office at No.58-A, II Floor,
Anjaneya Tower Pavazha Nagar,
Pondicherry Town and District Munsifi.

...Respondents

Prayer: Cross Objection filed under Order XLI, Rule 22 of the Code of Civil Procedure, against the award dated 06.06.2020 made in MCOP.No.1 of 2017 on the file of the Motor Accidents Claims Tribunal (District Court) at Karaikal.

For Petitioner : Mr.K.Varadha Kamaraj
For Respondents

for R1 : Mr.D.Baskaran

for R3 : Mr.S.Arunkumar

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

[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

CMA.No.1416 of 2021 has been filed by the Insurance Company challenging the judgment and award passed by the Motor Accidents Claims Tribunal (District Court) at Karaikal. Challenging the very same judgment and award, Cros.Obj.No.2 of 2022 has been filed by the claimants.

2. The facts in nutshell are:-

One Vengatraman, S/o. Srinivasan, met with an accident on 10.07.2016 and died on the spot. The parents and the brother of



the deceased filed claim petition seeking compensation of Rs.47,50,000/- on the ground that when the deceased was riding his motorcycle bearing Registration No.TN-51-AB-8627 on the Nagore Main Road, near SLM Marriage Hall, Ammalchathiram, on his left side of the road, an ongoing TVS motorcycle bearing Registration No.TN-51/S-0578 suddenly applied brake and stopped the vehicle without giving any signal, hence the deceased hit against the offending vehicle and sustained fatal injuries.

3. The claimants have further stated that the deceased died at the age of 22 years and he was working as a Safety Officer in Randstad India Limited and he was paid Rs.29,350/- per month. Since the accident had occurred due to the negligence of the driver of the offending vehicle, both the owner and the insurer of the said vehicle, are liable to pay compensation.

4. In the counter statement filed by the Insurance company, the entire allegations made by the claimants were denied as false.

5. After analysing the entire evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the offending vehicle was solely responsible for the accident and awarded a compensation of Rs.33,37,608/- along with interest at the rate of 7.5% per annum. Challenging the said findings, both the claimants and Insurance Company are before this Court.

6. Mr.D.Bhaskaran, learned counsel for the appellant/Insurance Company would vehemently contend that the First Information Report came to be registered on the basis of the complaint of PW2, in which, he had stated that the deceased was the tort-feasor, but when he was examined before the Court, he had given totally contradictory statement. However, the Tribunal relying upon the evidence of PW2 has held that the driver of the offending vehicle was responsible for the accident. Since the deceased himself was the tort-feasor, his legal heirs are not entitled for any compensation.

7. Per contra, the learned counsel appearing for the claimants Mr.K.Varadha Kamaraj would submit that in the FIR, PW2 had stated that the rider of the offending vehicle suddenly applied brake without giving any signal. Even though FIR was registered against the deceased, the Tribunal on proper appreciation of evidence of PW2 has rightly fixed negligence on the driver of the offending vehicle, hence, no interference is required in the above judgment. It is also stated that the award passed by the Tribunal is reasonable and prayed for dismissal of the appeal.



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8. Heard Mr.D.Baskaran, learned counsel appearing of United India Insurance Company Ltd., Karaikal, Mr.Arunkumar, learned counsel appearing for IFFCO TOKIO General Insurance Co. Ltd., and Mr.K.Varadha Kamaraj, learned counsel for the claimants and perused the materials available on record.

9. In the case on hand, even in the claim petition, it has been specifically stated that the deceased, at the time of accident at 10.20 am on 10.07.2016 was riding the motorcycle from South to North direction, but the first respondent, who drove the vehicle in front of the deceased vehicle had suddenly applied brake without giving any signal or brake light. PW2 had spoken about the manner of accident in his evidence. Perusal of the evidence would reveal that not only the rider of the offending vehicle, but the deceased also had equally contributed his negligence in the accident. Hence, the finding of the Tribunal that the rider of the offending vehicle is solely responsible for the accident is set aside, instead we fix negligence on both of them in the ratio of 50:50.

10. Insofar as the quantum is concerned, the claimants proved that the deceased was working as a Safety Officer in Randstad India Limited by producing Ex.P16 I.D. Card, Ex.P19 salary slips, Ex.P20 appointment letter and Ex.,P21 authorisation letter, which reveals his gross salary was Rs.19,583/-. Hence, this Court fixes Rs.19,583/- as monthly income of the deceased and if 50% of the same is added towards future prospects, his income would be Rs.29,375/- [19,583 + 9,792]. Then, the annual income of the deceased is Rs.3,52,500/-. Since it is a taxable income, Rs.15,250/- is deducted towards income tax, then, the actual income of the deceased would be Rs.3,37,250/-. Considering the age of the deceased, if proper multiplier 18 is applied, the amount would be Rs.60,70,500/-. Since the deceased was a bachelor, 50% is deducted towards personal expenses, then the Loss of Income is Rs.30,35,250/-.

11. In addition to that, considering the facts of the case, this Court awards Rs.1,20,000/- towards Parental and Filial Consortium to the claimants; Rs.15,000/- towards Funeral Expenses; and Rs.15,000/- towards Loss of Estate. Thus, the total amount comes to Rs.31,85,250/-. Since 50% negligence is fixed on the side of the deceased, the claimants are entitled to Rs.15,92,625/- [31,85,250 - 15,92,625], which is rounded off to Rs.16,00,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.



S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Income	31,72,608	30,35,250
2.	Loss of Love and Affection	1,50,000	-
3.	Funeral Expenses	15,000	15,000
4.	Loss of Estate	-	15,000
5.	Filial Consortium	-	1,20,000
	Total	33,37,608	31,85,250
	Less: 50% towards contributory negligence	-	15,92,625 [31,85,250 - 15,92,625] rounded off to 16,00,000

13. With the above directions, the appeal filed by the Insurance Company is partly allowed and the cross objection



filed by the Claimants is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

pvs

To

1. The District Court,
Motor Accidents Claims Tribunal,
Karaikal.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.18246

+1cc to Mr.D.Baskaran, Advocate SR.No.18060

+2ccs to Mr.K.Varadha Kamaraj, Advocate SR.No.18040

C.M.A. No.1416 of 2021
and
Cross Obj.No.2 of 2022

SSV(CO)
GMY(27/04/2022)