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C.M.A.No.2363 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2363 of 2021

and

C.M.P.No.13309 of 2021

The Branch Manager,
Reliance General Ins. Co. Ltd.,
I Floor, Kruthka Arcade, N.R.Circle,
Holenarasipura Road,
Hassan – 573 201,
Karnataka.

.. Appellant

Vs.

1.N.Geetha

2.N.Saranya

3.N.Vimal Prasad

4.K.R.Suresha

5.G.S.Harish

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.06.2020, made in M.C.O.P.No.137 of 2018, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore.

For Appellant : Ms.C.Bhuvanasundari



J U D G M E N T

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(Judgment of the Court was delivered by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the judgment and decree dated 22.06.2020, made in M.C.O.P.No.137 of 2018, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore.

2.The appellant is the 3rd respondent in M.C.O.P.No.137 of 2018, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore. The respondents 1 to 3 / claimants filed the said claim petition, claiming a sum of Rs.60,00,000/- as compensation for the death of one G.Nagarajan, who died in the accident that took place on 04.10.2017.

3.According to the respondents 1 to 3, on 04.10.2017 at about 18.00 hours, while the deceased G.Nagarajan was riding the TVS XL bearing Registration No.KA 13 R 9725 on the KVRDB Circle Hanumanthpura – Hassan road near Venkateswara Motor Service Station, the driver of the Hyundai Santro Car bearing Registration No.KA 01 MB 2014, drove the same in a rash and negligent manner from the opposite



direction and dashed against the motorcycle driven by the said G.Nagarajan and caused the accident. In the accident, the said G.Nagarajan sustained fatal injuries and died. Hence, the respondents 1 to 3 filed the claim petition claiming compensation against the respondents 4, 5 and appellant, who are the driver, owner and insurer of the Hyundai Car respectively.

4.The respondents 4 & 5 – driver and owner of the Hyundai Car respectively remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3. According to appellant, if there is any violation of terms and conditions of insurance policy and vehicular records, the appellant is not liable to pay any compensation. The appellant denied the manner of accident as alleged by the respondents 1 to 3. The accident has occurred on 04.10.2017 and the case was registered against the 4th respondent only on the next day. Mere registering complaint against the 4th respondent does not mean that he was responsible for the accident. The 4th respondent – driver of the Hyundai Car was not possessing valid driving license to drive the car and



the Hyundai Car belonging to 5th respondent was not insured with the appellant on the date of accident. Hence, the appellant is not liable to indemnify the liability of the 5th respondent. The respondents 1 to 3 have to prove that the said G.Nagarajan died only due to the injuries sustained by him in the accident. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 3 is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Ashok Kumar, Assistant Manager of M/s.Page Industries Ltd., was examined as P.W.2 and 18 documents were marked as Exs.P1 to P18. The appellant has not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence let in by 1st respondent, held that the accident occurred due to rash and negligent driving by 4th respondent – driver of the Hyundai Car belonging to 5th respondent and directed the respondents 4, 5 and appellant to jointly and severally pay a sum of Rs.28,06,096/- as compensation to the respondents 1 to 3.



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8.To set aside the said award dated 22.06.2020, made in M.C.O.P.No.137 of 2018, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought to have fixed contributory negligence on the part of the deceased. The Tribunal ought to have called for the charge sheet, Motor Vehicle Inspector's report, rough sketch for fixing the negligence. The monthly income of the deceased was more than the taxable limit and the respondents 1 to 3 did not file the Income Tax returns of the deceased. At the time of accident, the deceased was aged 51 years and he would have retired at the age of 58 years. Hence, the Tribunal ought to have adopted split multiplier and awarded compensation. The delay of nearly two and half years caused by the respondents 1 to 3 for producing the documents to prove the income of the deceased is only for the purpose of getting interest for that period. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.



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10. Heard the learned counsel appearing for the appellant – Insurance Company and perused the entire materials on record.

11. From the materials on record, it is seen that it is the case of the respondents 1 to 3 that on 04.10.2017 while the deceased G.Nagarajan was riding the TVS XL motorcycle on the KVRDB Circle Hanumanthpura – Hassan road near Venkateswara Motor Service Station, the driver of the Hyundai Santro Car, drove the same in a rash and negligent manner, dashed against the motorcycle driven by the said G.Nagarajan and caused the accident. Due to the injuries sustained in the accident, the said G.Nagarajan died. To substantiate their case, the 1st respondent examined herself as P.W.1. On the other hand, it is the case of the appellant that the accident has occurred only due to rash and negligent driving by the deceased. To prove the same, the appellant did not examine the driver of the Hyundai Car, who is the best witness to depose about the manner of accident or any eyewitness to prove their case. The Tribunal considering the evidence of 1st respondent as P.W.1 and non-examination of the driver of the Hyundai Car or any eyewitness on behalf of the appellant, held that the accident has occurred due to rash



and negligent driving by the driver of the Hyundai Car belonging to 5th respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, it is the case of the respondents 1 to 3 that at the time of accident, the deceased was aged 51 years, working as Garments Factory Employee at M/s.Jockey Page Industries Ltd., Bangalore and was earning a sum of Rs.36,000/- per month as salary and Rs.40,000/- towards travelling expenses. To prove their case, the respondents 1 to 3 examined one Ashok Kumar as P.W.2, who was working as Assistant Manager of M/s.Page Industries Ltd., and marked Ex.P7 / Job offer letter issued by Page Industries and Ex.P18 / salary slip of the deceased. As per Ex.P18, the deceased was getting gross salary at Rs.33,796/- per month. The Tribunal considering Ex.P18, fixed a sum of Rs.33,796/- as monthly income of the deceased. The deceased was aged 51 years at the time of accident and was in a permanent job. The Tribunal considering the same has rightly granted 15% enhancement towards future prospects and applied multiplier '14'. The contention of the learned counsel appearing for the appellant that the deceased was having 7 years of service and the Tribunal ought to have



adopted split multiplier and awarded compensation towards loss of dependency is not acceptable. The Hon'ble Apex Court in the judgment reported in **(2022) 5 SCC 107 [R.Valli and others Vs. Tamil Nadu State Transport Corporation Ltd.]**, following the judgment reported in **2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, held that method of determination of compensation by applying two multipliers is erroneous and contrary to the judgments of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC)** and **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**. The Hon'ble Apex Court in the said judgment held that multiplier applicable is based on the age of the deceased. Hence, the compensation awarded by the Tribunal by applying multiplier '14' is proper. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased and awarded a sum of Rs.27,36,096/- towards loss of dependency after deducting income tax and the same is not excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.28,06,096/- as compensation to the respondents 1 to 3, which is not excessive and hence, the same is hereby confirmed.



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13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.28,06,096/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant as well as the respondents 4 & 5 are jointly and severally directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.137 of 2018, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)

02.11.2022

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V.M.VELUMANI, J.

and

SUNDER MOHAN, J.

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To

1.The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

2.The Section Officer,
VR Section,
High Court,
Madras.

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