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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.03.2022

Pronounced on : 29.04.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.M.A.No.2011 of 2017

and

C.M.A No.3081 of 2017

and

C.M.P.No.10823 of 2017

In C.M.A.No.2011 of 2017:-

United India Insurance Co. Ltd.,
48, Arcot Road, Saligramam,
Chennai - 93.

...Appellant/2nd Respondent

Vs.

1.Saranya
2.Venkatesan
3.P.Sankaran

...Respondents/Claimants 1 ^ 2, 1st Respondent

In C.M.A.No.3081 of 2017:-

1.Saranya
2.Venkatesan

..Appellants/Claimants

Vs.

1.P.Sankaran

2.United India Insurance Co. Ltd.,
48, Arcot Road, Saligramam,
Chennai - 93.

...Respondents/Respondents

Prayer in CMA.No.2011 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 22.12.2016 in MCOP No.278 of 2015 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Poonamallee.



Prayer in CMA.No.3081 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award against the order and decree dated 22.12.2016 in MCOP No.278 of 2015 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Poonamallee.

In CMA.No.2011 of 2017:

For Appellant ..Mr.S.Arunkumar
For Respondents 1 & 2 ..Mr.Terry Chella Raja

In CMA No.3081 of 2017:

For Appellants .. Mr.Terry Chella Raja
For Respondent No.2 .. Mr.S.Arunkumar

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals arise from the judgment and decree dated 22.12.2016 in MCOP No.278 of 2015 on the file of the Motor Accident Claims Tribunal / II Additional District Court, Thiruvallur, Poonamallee. The 2nd respondent / Insurance Company in MCOP No.278 of 2015 had filed CMA.No.2011 of 2017. The claimants in MCOP No.278 of 2015 have filed CMA No.3081 of 2017.

MCOP No.278 of 2015:-

2.The Claim Petition has been filed by the son and daughter of deceased S.Usharani who was travelling as a pillion rider in a Kinetic Honda motorcycle bearing Regn. No.TN-07-B-9911 on 21.11.2014 at around 10.15 a.m. At that particular time when the motorcycle was at Ambattur Soorapedu Shanmugapuram near Iyappan Koil, it was alleged that the driver of the motorcycle drove the vehicle in a rash and negligent manner and another motorcycle bearing Regn.No.TN-20-AX-3003 dashed against the Kinetic Honda motorcycle owing to which Usharani fell down and sustained severe head injuries. She was admitted to Apollo Hospital, but unfortunately died. Claiming that the accident occurred owing to the rash and negligent manner in which the driver of the Kinetic Honda motorcycle bearing Regn.No.TN-07-B-9911 was driven, the Claim Petition was filed seeking compensation of Rs.15,00,000/-. The 1st respondent was the owner of the motorcycle and also incidentally the husband of Usharani and father of the claimants. The 2nd respondent was the insurer of the motorcycle.



3.A counter was filed on behalf of the 2nd respondent disputing the manner in which the accident was stated to have occurred. It was stated that the deceased was actually walking as a pedestrian in the said road when a cyclist hit her and since the deceased was a chronic type one sugar patient for 12 years, she suffered giddiness and fell down on the road and sustained the injuries. She was sent to S.V.Hospital Ambattur and later shifted to Apollo Hospital. After that she was in Government Rajiv Gandhi Hospital, Chennai, where she died of sub dural Haemorrhage in left cerebral ventricular Haemorrhage by linear fracture of 7 cm in the center of posterior cranial fossa due to head injuries. But not due to this accident. It was stated that both the motorcycles mentioned in the Claim Petition were not involved in the accident. The Poonamallee Traffic Investigation Police Station had filed a First Information Report against the driver of the two wheeler bearing Regn.No.TN-20-AX-3003. It was stated that the 1st respondent did not have proper driving license and the vehicle was also not insured. It was stated that the claim petition should be dismissed

4.An additional counter was filed claiming that the driver of the Kinetic Honda motorcycle bearing Regn.No.TN-07-B-9911 / 1st respondent was driving the vehicle at moderate speed, when another two wheeler bearing Regn.No.TN-20-AX-3003 driven in a rash and negligent manner had dashed against the two wheeler of the 1st respondent. It was stated that in the Claim Petition the driver or the owner of the offending vehicle was not impleaded as a party. It was also stated that the 1st respondent was also responsible for the accident. It was stated that the driver of the motorcycle bearing Regn.No.TN-20-AX-3003 had been charged under Sections 279, 337, 304-A IPC and 134(a)(b) read with Section 187 of Motor Vehicle Act, 1988. It was stated that the said driver was solely responsible for the accident. It was stated that the Claim Petition should be dismissed.

5.On the basis of the pleadings, the II Additional District Judge Poonamallee / the Motor Accident Claims Tribunal, had framed the following points for consideration:-

"1.Whether the accident occurred due to the rash and negligent manner in which the motorcycle bearing Regn.No.TN-07-B-9911 was driven by the 1st respondent?

2.Who is to pay the compensation?



3.What is the quantum of compensation to be granted?"

6.During trial, the 1st claimant Saranya was examined as PW-1 and an eye witness, Munusamy was examined as PW-2. The claimant also marked Exs.P1 to P11. Ex.P1 was the copy of the First Information Report. Ex.P3 was a copy of the Insurance Policy. Ex.P4 was an Alteration Report for the First Information Report. Ex.P6 was the Postmortem Certificate. Ex.P11 was the Medical bills. On the side of the respondents one witness J.Kamaraj was examined as RW-1 and Ex.R1, First Information Report was marked.

7.The Tribunal then proceeded to determine the points framed for consideration.

8.The 1st point was with respect to the nature of the accident and whether it was due to the rash and negligent manner in which the motorcycle bearing Reg.No.TN-07-B-9911 was driven. The Tribunal found as a fact that under Ex.P1 and under Ex.P4, the police had filed a complaint against the driver of the vehicle bearing Regn.No.TN-20-AX-3003. It was found that the deceased was travelling as a pillion rider in a motorcycle bearing Regn.No.TN-07-B-9911 driven by the 1st respondent. At that time, another motorcycle bearing Regn.No.TN-20-AX-3003 had come in a rash and negligent manner and had dashed against the motorcycle in which the deceased was traveling as pillion rider. The Tribunal also observed that the driver/owner of the motorcycle bearing Regn.No.TN-20-AX-3003 had not been impleaded as a respondent in the Claim Petition. It was therefore found that towards the compensation granted 20% of contributory negligence can be attributed to the 1st respondent and held that with respect to the balance 80%, the 2nd respondent / Insurance Company would be liable to pay the compensation determined.

9.This apportionment of contributory negligence at 20% to the 1st respondent and 80% to be borne by the 2nd respondent in MCOP had been seriously assailed by the learned counsel for the appellants.

10.It is the contention of the learned counsel for the appellant in CMA.No.2011 of 2017, Insurance Company, that the documents particularly Ex.P4, alteration report reflects that the accident occurred primarily owing to the rash and negligent manner in which the driver of the motorcycle bearing Regn.No.TN-20-AX-3003 had driven his motorcycle.



11.The learned counsel for the appellants in CMA.No.3081 of 2017, on the other hand urged that the apportionment of 20% to the 1st respondent was not proper and that the 2nd respondent / Insurance Company should have been mulcted with the entire compensation payable.

12.I have carefully given my careful consideration to the aforementioned aspects.

13.Even though in the counter filed in the first instance, the appellant in CMA.No.2011 of 2017 / Insurance Company had taken a stand that the deceased was walking as pedestrian and a cycle had dashed against her and that she had thereafter fallen to the ground and sustained head injuries and that she was originally taken to S.V.Hospital and later shifted to Apollo Hospital, such stand had not been reiterated with emphasis subsequently. The main focus of the learned counsel for the appellant in CMA.No.2011 of 2017 / Insurance Company was that the apportionment of 20% to the driver of the motorcycle cycle bearing Regn.No.TN-07-B-9911 was not proper and that the Insurance Company should not have been mulcted with the bearing of 80% of the compensation. Exs.P1 and P4 were pointed out and it was stated that they very clearly stated that the driver of the motorcycle bearing Regn.No.TN-20-AX-3003 was responsible for the accident. It was therefore stated that the primary cause for the accident was the manner in which that particular motorcycle was driven. The owner or driver of that vehicle had not made as a party to the proceedings. When two motorcycles collide, the fault could be either on both of the drivers. I would therefore grant the apportionment holding that that the appellant in CMA.No.2011 of 2017, would be mulcted with bearing the compensation to an extent of 40% and that the balance 60% will have to be suffered by the claimants.

14.With respect to the 2nd issue, as to who has to bear the compensation, I hold that the 2nd respondent / Insurance Company in CMA.No.3081 of 2017, would be liable to bear only 40% of the compensation to be granted.

15.The order of the Tribunal is interfered with to that particular extent.

16.The Tribunal then proceeded, to determine the compensation. The Tribunal found as a fact that though it was the claim of the PW-1 that the deceased was doing cloth business and was earning Rs.12,000/- per month, no documents to



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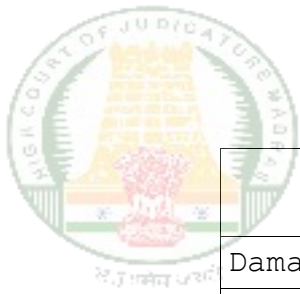
substantiate the same had been produced. It was held by the Tribunal that it could be determined that the deceased earned Rs.350/- for a period of 25 days and therefore, the monthly income was determined at Rs.8,750/- (Rs.350 x 25 days). I would affirm that particular finding.

17.The Tribunal then deducted 1/3 towards personal expenses and held that she would have contributed only 2/3 towards family expense. This would indicate that the actual contribution would be Rs.8,750 - Rs.2,916 = Rs.5,834/- per month.

18.It is to be noted that the Tribunal had not granted any amount towards future prospects. I would grant 40% toward future prospects. If future prospects of 40% are included, then it would mean Rs.5,834 x 40/100= Rs.2,334/-. Now, the monthly income would therefore to be Rs.8,168/- (Rs.5,834 + Rs.2,334/-). The annual income would then be Rs.98,016/- (Rs.8,168 x 12). The deceased was aged 42 years at the time of the death and this would indicate that a multiplier of 15 will have to be adopted. If the annual income is taken at Rs.98,016/-, then after taking into consideration the multiplier, the total loss of income owing to the death of Usharani would be Rs.14,70,240/- (Rs.98,016/- x 15).

19.The Tribunal had granted, a sum of Rs.50,000/- towards funeral expense and transport expenses. However, I would grant a sum of Rs.15,000/- towards funeral expense and Rs.5,000/- towards transport expense. The Tribunal had granted a sum of Rs.1,00,000/- to each of the claimants towards loss of love and affection. This has to be interfered with and a sum of Rs.40,000/- alone can be granted to each one of the two claimants, towards loss of love and affection which would mean a total amount Rs.80,000/-. The Tribunal had granted a sum of Rs.2,000/- for damage to clothes, I would grant a sum of Rs.1,000/- towards damages to clothes. The Tribunal had granted a sum of Rs.67,000/- towards medical bills, which I would retain. The total compensation now granted would as follows:-

Heads	Tribunal's Award Amount	Amount now Enhanced & Reduced
Loss of Income	Rs.10,50,000/-	Rs.14,70,240/-
Transport Charge	Rs.50,000/-	Rs.5,000/-
Funeral Expense		Rs.15,000/-
Loss of Love and Affection	Rs.2,00,000/-	Rs.80,000/-



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Heads	Tribunal's Award Amount	Amount now Enhanced & Reduced
Damage to clothes	Rs.2,000/-	Rs.1,000/-
Medical Expense	Rs.67,000/-	Rs.67,000/-
Total	Rs.13,69,000/-	Rs.16,38,240/-

20.This has to be apportioned in the ratio 40% and 60%. The 2nd respondent / appellant in CMA No.2011 of 2017 can bear only 40% of the sum namely, Rs.6,55,296/-. The balance 60% of the sum namely, Rs.9,82,944/- will have to be suffered by the claimants, since they had not impleaded the driver of the other motorcycle bearing Regn.No.TN-20-AX-3003.

21.The 2nd respondent / appellant in CMA No.2011 of 2017 is directed to deposit the modified award amount to the credit of MCOP No.278 of 2015 on the file of the Motor Accident Claims Tribunal / II Additional District Court, Poonamallee, along with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, both the claimants are permitted to withdraw the award amount, along with accrued interest in equal proportions.

22.If the appellant / 2nd respondent / Insurance Company in CMA No.2011 of 2017 had already deposited an excess amount, they are permitted to withdraw the difference amount by filing necessary application before the Tribunal. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation amount.

23.In the result,

- i).CMA No.2011 of 2017 is allowed.
- ii).CMA No.3801 of 2017 is dismissed.
- iii).No order as to costs.

iv).Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



To

The Motor Accident Claims Tribunal /
II Additional District Judge, Poonamallee.

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Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Arunkumar, Advocate sr 30486.

C.M.A Nos.2011 & 3081 of 2017

NMI (CO)
SP(30/05/2022)