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C.M.A.Nos.3200 and 3201 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.Nos.3200 and 3201 of 2017

The Branch Manager
United India Insurance Co. Ltd.,
No.171/E, R.K.S. Complex, Nehru Road
Villupuram - 605 602.

.. Appellant in both CMAs

-Vs.-

1. N.Gopal	... 1st respondent in CMA.No.3200 of 2017
2.Lakshmi Devi	... 2nd respondent in CMA.No.3200 of 2017
3.G.Sekar	... 3rd respondent in both CMAs
4.R.Sivasubramanian	... 4th respondent in both CMAs
5.N.Sriramulu	... 1st respondent in CMA.No.3201 of 2017
6.Rathnamma	... 2nd respondent in CMA.No.3201 of 2017

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.03.2017 made in M.C.O.P. No.223 of 2016 and M.C.O.P.No.224 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.



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For Appellant ... Mr.S.Arunkumar
(in both CMAs)

For Respondents ... Mr.Mukund R.Pandiyan
(in both CMAs) for RR1 & 2
R4 - Served (No appearance)
R3 - Died

COMMON JUDGMENT

The Insurance Company is the appellant in the above appeals. C.M.A.No.3200 of 2017 arises against the Award in M.C.O.P.No.223 of 2016 and C.M.A.No.3201 of 2017 is filed, challenging the Award in M.C.O.P.No.224 of 2016. Both M.C.O.Ps were filed on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri.

2. The parties are referred to in the same ranking as before the Tribunal.

3. Two appeals arise from out of a single accident. The petitioners in M.C.O.P.No.223 of 2016 are the parents of one Jagadeesh, who was riding his Hero Honda Splendor Plus motor-cycle bearing registration No.TN 24 Q 3299. The petitioners in M.C.O.P.No.224 of 2016 are the



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parents of Sampath Kumar, who was the pillion rider. Apart from the said Sampath Kumar on the date of the accident, i.e. 05.05.2015, there was one more person, who was traveling pillion, Babu. The deceased Jagadesh was stated to be 24 years of age and working as a computer operator as well as doing second hand computer sales and service work. The petitioners claimed a compensation of a sum of Rs.35,00,000/- for his death. As regards M.C.O.P.No.224 of 2016, the deceased Sampath Kumar was a III year B.C.A student of Anna College, Krishnagiri. They would contend that he was also engaged in a part time job. However, no documents had been filed in support of the claim petition to show that he was doing part time job. The petitioners in M.C.O.P.No.223 of 2016 had claimed a total compensation of a sum of Rs.35,00,000/-.

4. It is the case of the petitioners in both these M.C.O.Ps that on 05.05.2015, at about 23.25 hours, the deceased Jagadeesh was driving his Hero Honda motor-cycle and the deceased Sampath Kumar and Babu were travelling pillion. They were returning to their house from Krishnagiri after attending a marriage there. When they were travelling on the Krishnagiri to



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At Veapanapalli Road, the driver of the lorry belonging to the first respondent, bearing Registration TN 31 AD 8166 which is proceeding in front of the motor-cycle had applied a sudden brake and stopped the vehicle without giving any indication, as a result, the rider of the motor-cycle had dashed against the said vehicle, which resulted in death of the rider, Jagadeesh and one pillion rider, Sampath Kumar. There is no mention about the injuries sustained by the other pillion rider, Babu.

5. The first respondent-owner of the lorry remained *ex-parte* and it was the insurance Company which had filed separate counters in both M.C.O.Ps, wherein they had submitted that since the rider of the bike had violated the road Rules by traveling with 2 pillion riders and without wearing proper head gear, he has contributed to the accident. That apart, had he maintained some distance, the accident would not have occurred. The Insurance Company has also questioned the age, income and occupation of the deceased in both the petitions.

6. The Tribunal below on considering the evidence on record



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proceeded to rely upon the oral evidence of P.W3 and Exs.P1 and P2 to arrive at a conclusion that the accident had occurred only on account of the rash and negligent driving of the driver of the lorry. The Tribunal has chosen not to rely upon the evidence of R.W1, the driver of the lorry, who has deposed that he had stopped the vehicle near the petrol bunk only to enquire about the address. It was the deceased Jagadeesh, who was driving the motor-cycle in a rash and negligent manner at a high speed that too with two pillion riders, who had dashed against the lorry, as he was unable to control the vehicle on account of the speed. The Tribunal has brushed aside the said evidence only on the ground that R.W1 has not taken steps to file the complaint first, which would only go to show that he was negligent.

7. The Tribunal has granted the following compensation in M.C.O.P.No.223 of 2016 and M.C.O.P.No.224 of 2016:

M.C.O.P.No.223 of 2016



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (in Rs)</i>
1	Loss of Earnings	10,80,000
2	Transport to hospital	5,000
3	Funeral expenses	25,000
4	Loss of love and affection	2,00,000
	TOTAL	13,10,000

M.C.O.P.No.224 of 2016

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (in Rs)</i>
1	Loss of Earnings	13,50,000
2	Transport to hospital	5,000
3	Funeral expenses	25,000
4	Loss of love and affection	2,00,000
	TOTAL	15,80,000

8. The Insurance Company has filed the above appeals questioning the quantum as also the fact that no negligence has been fastened on the rider of the motor-cycle especially when the accident is a case of *res ipsa loquitur*. Further, both the deceased were students and the



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Tribunal has erred in fixing the monthly notional income at Rs.12,000/- in the case of M.C.O.P.No.223 of 2016 and Rs.15,000/- in the case of M.C.O.P.No.224 of 2016. In M.C.O.P.No.224 of 2015, the Tribunal below has deducted 50% towards future prospects. That apart, under the heads of Funeral expenses and loss of love and affection, huge amounts of Rs.25,000/- and Rs.2,00,000/- respectively have been awarded contrary to the judgment of the Hon'ble Supreme Court, reported in **(2017) 16 SCC 680 [National Insurance Company Ltd., -vs- Pranay Sethi and Others]**. Therefore, it is the case of the appellant that the rider of the bike should be fastened with 15% contributory negligence for not maintaining the requisite distance between the 2 vehicles and taking 2 pillion riders along with him.

9. Per contra, Mr.Mukund R.Pandiyan, learned counsel for the respondents 1 and 2 would submit that the loss of earnings calculated by the Tribunal is fair and within the parameters. In fact, no amounts have been granted towards the future prospects in the case of M.C.O.P.No.223 of 2016. He would submit that the Tribunal has rightly fastened the liability on the lorry as it was on account of the driver of the lorry suddenly stopping



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his vehicle that the accident had occurred. He would therefore submit that the Award is fair and does not require any re-consideration. He would also submit that the appropriate multiplier of 18 has not been adopted by the Tribunal.

10. Heard the learned counsel on either side and perused the materials available on record.

11. It is admitted that the deceased Jagadeesh was riding a motor-cycle, in which 2 of his friends were riding pillion. Further, he had not maintained the mandatory distance between the two vehicles. Therefore, it is a clear violation of the Rule 23 of the Rules of the Road Regulations, 1989. Therefore, the Tribunal has failed to fasten contributory negligence on the deceased rider of the motor-cycle, taking into account the above two violations, **15% contributory negligence is fastened on the rider of the motor-cycle (the deceased rider) Jagadeesh.**

12. Coming to the question of compensation, the Tribunal has fixed a monthly income of Rs.12,000/- for the deceased in M.C.O.P.No.223 of



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2016, but has however fixed a sum of Rs.15,000/- as the monthly income for the petitioner in M.C.O.P.No.224 of 2016, which is to be reduced to a sum of Rs.12,000/- in both M.C.O.Ps. Therefore, in both cases, the notional monthly income is taken as Rs.12,000/- and 40% is to be added towards towards the future prospects, which would work out to a sum of Rs.16,800/- The annual income would be a sum of Rs.2,01,600/- of which, 50% is to be deducted towards the personal expenses, the petitioners' family would get a sum of Rs.1,08,000/-. Considering the age of the deceased in both M.C.O.Ps, the multiplier of 18 would be the appropriate multiplier and therefore, the amount under the loss of income would be Rs.18,14,400/- Further, under the head of funeral expenses, a sum of Rs.25,000/- has been granted, which is to be reduced to a sum of Rs.15,000/-. Likewise, a sum of Rs.2,00,000/- has been awarded under the head of loss of love and affection, which is to be reduced to Rs.88,000/- The amount of Rs.5,000/- has been granted under the head of Transport to hospital, the same is deleted and a sum of Rs.15,000/- has been granted towards the loss of estate. Therefore, the compensation payable in both M.C.O.Ps would be a sum of Rs.19,32,400/-. Therefore, the Compensation awarded by the Tribunal is



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reworked in both M.C.O.Ps as below:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by this Court</i>
1	Loss of earnings	18,14,400
2	Loss of estate	15,000
3	Love and Affection	88,000
4	Funeral Expenses	15,000
	TOTAL	19,32,400

13. In the result, these Civil Miscellaneous Appeals are partly allowed with the rider of the motor-cycle bearing registration No.TN 24 Q 3299 being fastened with 15% negligence. The appellant-Insurance Company is directed to deposit 85% of the said amount (i.e) **Rs.16,42,542/-** to the credit of M.C.O.P.Nos.223 and 224 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The claimants in both M.C.O.Ps shall forfeit the remaining 15% of the award amount, the petitioners in M.C.O.P.No.223 of 2016 since the deceased himself had contributed to the accident and the



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claimants in M.C.O.P.No.224 of 2016 since he has not impleaded the owner and insurer of the motor-cycle. On the deposit being made by the Insurance Company, the claimants are permitted to withdraw the award amount, along with proportionate accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. Excess amount if any deposited shall be withdrawn by the Insurance Company. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

18.11.2022

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To

1. The District Judge, Special District Court (MACT), Krishnagiri
2. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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