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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.2304 of 2018

and

CMP.No.17593 of 2018

The New India Assurance Company Limited,
Division Office 710900, Garden Apartments,
No.68, P.H.Road, Purasawalkam, Chennai - 7.

...Appellant/2nd Respondent

Vs.

1. S.K.Bharath

2. K.V.Subadhra

...Respondents 1&2/Petitioners

3. M/s.Empees International Hotels and Resorts Ltd.,
No.693, Mount Road, Chennai - 28.

(R3 before the Tribunal died in the course of trial.

Hence R3 is not arrayed as a party to the proceedings.)

...3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 28.02.2018 made in MCOP No.1278 of 2009, on the file of the Motor Accidents Claims Tribunal / Chief Court of Small Causes, Chennai.

For Appellant : Mr.J.Chandran

For R2 : Mr.A.Babu

J U D G M E N T

The 2nd respondent in MCOP No.1278 of 2009 on the file Chief Court of Small Causes, Chennai / Motor Accident Claims Tribunal is the appellant herein, aggrieved with the quantum of compensation granted by award dated 28.02.2018 which compensation was granted owing to the unfortunate death of the wife of the 1st claimant, Mythili Bharath who was also the sister of the 2nd and the 3rd claimants. The accident occurred on 27.04.2008, when Mythili was travelling as passenger in an



autorickshaw bearing registration No.TN-07-H-9805 at around 12.30 p.m from T.Nagar to Mandaiveli on Chamiers road from west to east, opposite to Tumbulls signal. At that time, a Tata Indigo car bearing registration No.TN-01-AB-3646 came from east to west and dashed against the autorickshaw. It was stated that there was a signal for the car to stop, but the car did not stop in the signal and jumped the signal and dashed on the auto and as a result, the auto capsized and over turned. The deceased fell down and suffered serious injuries in her spinal column and lungs. Immediately, thereafter she was admitted in Venkateswara Hospital for one day and later referred to Apollo Speciality Hospital. She took treatment from 28.04.2008 to 12.08.2008 as an inpatient and again from 02.09.2008 to 03.10.2008 and also again from 03.11.2208 to 18.11.2008 and she died on 18.11.2008.

2.One fact that must be kept in mind was the substantial period of hospitalization at Apollo Speciality Hospital. Medical records with respect to same had also been produced. Claiming that compensation should be granted for the death of Mythili Bharat, her husband and her two sisters had filed MCOP.No.1278 of 2009.

3.During the course of trial, the 1st claimant S.K.Bharat was examined as PW-1 and another witness S.K.Lakshmanan was examined as PW-2. On the side of the petitioner, Exs.P1 to P23 were marked. Relevant documents would be the copy of First Information Report Ex.P2, the discharge summary issued by Venkateswara Hospital and series of discharge summary issued by the Apollo Speciality Hospital, which were marked as Exs.P3, P5, P7 and P9 and also the medical bills which were marked as Exs.P4, P6, P8, P12 and P14. Ex.P13 has also to be examined, namely, Identity card and Log book issued by Unit Trust of India / New India Assurance Company Limited. On the side of the respondents, RW-1 S.Saravanan, an official from hospital of Venkateswara was examined and he marked Ex.R2 copy of the medical bills issued by Venkateswara hospital, which is actually equivalent to Ex.P4.

4.The Tribunal by its judgment dated 28.02.2018, framed the points for determination with respect to the nature of the accident and whether it was owing to the rash and negligent driving of the 1st respondent and as to who is liable to pay the compensation and the compensation amount actually payable.

5.With respect to the first point, the Tribunal came to a definite finding that the accident was caused only by the rash and negligent driving of the Tata Indigo car bearing Regn. No.TN-07-AB-3646 and it was also noted that owing to the impact of the accident, the auto over turned and the unfortunate victim, Mythili Bharat, had been caught in between and suffered serious injuries, which necessitated being in hospital in four



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spells namely, the first spell in Venkateswara Hospital and later three spells in Apollo Speciality Hospital. She finally died. Therefore, the negligence was fixed on the driver of the Tata Indigo car bearing Regn. No.TN-07-AB-3646. I would confirm such finding.

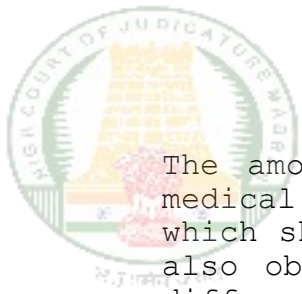
6. Thereafter, the Tribunal determined the issue No.2 stating that the insurer of the Tata Indigo car will have to pay the compensation and answered the point accordingly and I would also affirm the said finding.

7. This appeal is primarily focussed on the quantum granted. The Tribunal had granted a total compensation of Rs.22,34,384/-. It observed that the deceased was earning pension of Rs.9,500/- and deducted 50% towards personal expenses. It applied the multiplier of 7. There is no issue on the aforementioned method in which the compensation was determined. The Tribunal also granted amounts towards loss of consortium to the 1st petitioner and loss of estate and also towards funeral expenses. No issues are raised with respect to the same. Let me also not interfere with those findings. The Tribunal granted a sum of Rs.17,65,384/- towards medical expenses and had actually observed that the total medical bills incurred was Rs.19,67,200/- and adjusted Rs.3,00,000/- which had been paid by United Trust of India for which Ex.P13 had been marked on behalf of the claimants and the balance medical bills had been granted as they were presented as documents.

8. Learned counsel for the appellant took umbrage at that particular fact and stated that the medical bills produced were duplicate copies and no reliance should have been placed by the Tribunal on such medical bills.

9. This necessitated, examination of the records as marked before the Tribunal. The records were also available. As a fact, medical bills with respect to Apollo Speciality Hospital namely, Exs.P6, P8 and P12 were duplicate copies. The duplicate copies had been marked since the claim for the medical bills for Rs.19,67,200/- had been preferred by the claimants and forwarded to United Trust of India seeking a claim under a scheme, which the deceased had been eligible. The United Trust of India / New India Assurance Company Limited, had however granted only a sum of Rs.3,00,000/-. This necessitated claiming the balance in the claim petition before the Tribunal.

10. The bills presented are not xerox copies. They cannot be strictly construed as secondary evidence. They are duplicate bills which are copies of the original prepared and attested as duplicate bills by the Apollo Speciality Hospital. Therefore, I would not enter any adverse finding with respect to admissibility of such document. I would take them on record.



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The amount reflected the amount paid by the claimants towards medical treatment of the deceased Mythili Bharat. The dates in which she had been in hospital had been stated by me and I would also observe quite extensive treatment had been given in three different spells. Naturally, expenses would have been incurred by the claimants towards treatment in the hope that Mythili Bharat would recover. But she unfortunately died. I would not interfere with the quantum granted.

11.Learned counsel for the 2nd respondent, however, placed a small caveat claiming that the 2nd claimant / sister of the deceased had actually spent a substantial amount for the medical treatment and had also pointed out the proof affidavit of the 1st claimant / husband of the deceased, wherein, he had stated that he had no objection for apportionment of the award amount into two equal halves, one to be paid to him and the other to the 2nd respondent. It is to be noted that the 3rd claimant another sister of the deceased had died pending the claim petition.

12.I would go with the representations made and interfere with the apportionment granted. The Tribunal had recognized the services of the sister to a very negligible extent and had granted a sum of Rs.21,00,000/- to be paid to the 1st claimant and balance Rs.1,34,384/- to be paid to the 2nd claimant. I would interfere with that finding and rather divide the award into two equal halves namely, 50% to the 1st claimant S.K.Bharath and balance 50% to the 2nd claimant K.V.Subadhra. This apportionment would also accrued to the interest which would have accrued to the amount already deposited. The appellant is directed to deposit the compensation as quantified by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order at 7.5% interest from the date of filing of the petition till the date of actual deposit and that amount must also be divided into two equal halves between the 1st and 2nd claimant.

13.It is again reiterated that except the terms of apportionment, the other aspects in the order are not interfered with.

14.With the above observations, the present Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To:-

The Motor Accidents Claims Tribunal /
Chief Court of Small Causes,
Chennai.

+1cc to M/s.J.Chandran, Advocate, S.R.No.16369

CMA.No.2304 of 2018
and
CMP.No.17593 of 2018

SSN(CO)
SU(18/05/2022)