



C.M.A.No.2634 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2634 of 2016

and

C.M.P.No.18803 of 2016

M/s.Oriental Insurance Company Ltd.,
Represented by its Branch Manager,
having office at Nungambakkam,
Chennai – 600 034.

... Appellant

..Vs..

1. Meenakshi
(R1 declared as major vide Court
order 06.12.18 made in C.M.P.Nos.21502 & 20342 of 2018
in C.M.A.No.2634 of 2016)
2. Shankar
3. Karthikeyan
4. TATA AIG Insurance Company Ltd.,
Represented by its Managing Director,
CNC Road, Chennai – 600 008.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 05.01.2016 made in M.C.O.P.No.350 of 2007 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai.



C.M.A.No.2634 of 2016

For Appellant : Mr.D.Bhaskaran
For R1 : Mr.K.Rajendran
For R4 : Mr.J.Michael Visuvasam
For R2 : No Appearance

JUDGMENT

This appeal is filed by the Insurance Company with which the Ambassadors car bearing Registration No.PY-01-W-9797 was registered and which would be involved in the accident on the fateful day.

2. The appellant is the 2nd respondent in M.C.O.P.No.350 of 2007 the claimant has filed the M.C.O.P.No.350 of 2007 claiming compensation of Rs.61,00,000/- for the death of her mother Shanthi in a road accident that had taken place on 10.09.2006.

3. As per the averments in the claim petition on 10.09.2006 at about 12.00 hours, the deceased Shanthi was travelling in the TATA Indica car bearing Registration No.TN-20-AW-9229. When the car was nearing a place



C.M.A.No.2634 of 2016

called Melpettai Village, Olakkur Spot, it is stated that the tire of the car had burst with a result, the driver lost control of the vehicle and over shot the median divider up to a height of 6 inch and stopped. Unfortunately at that time, the Ambassador car was driven by its driver on the opposite side and hit the TATA Indica car. In the impact, the deceased suffered grievous injuries and eventually she died.

4. In the claim petition among other things, it was stated that the deceased was aged 35 years and was a prominent entrepreneur who was the proprietrix of the two companies namely, M/s.Chennai Packaging Industries and Vijay Polymer. According to the claimant, at the time of accident the deceased was earning a sum of Rs.2.5 lakhs per year and he had a prospects of earning not less than 7.5 years had she survived the accident. Therefore, the claimant has filed the claim petition as against the owner of the two offending vehicles as well as their insurer as respondents. The claim petition was opposed by the appellant/Insurance Company by filing a counter affidavit. According to the appellant/Insurance Company, the driver of the Ambassador car had driven it in a careful manner at the time of accident. It is



C.M.A.No.2634 of 2016

also stated that the death of the deceased is not instantaneous and it does not have any nexus to the accident. It was stated that the accident had occurred due to the rash and negligent manner of the TATA Indica car alone and the driver of the Ambassadors car has not contributed to the accident.

5. During the course of the trial, on behalf of the claimant three witnesses were examined and Exs.P1 to P20 were marked. On behalf of the respondents R.Ws.1 to 3 were examined and Exs.R1 and R2 were marked. The Tribunal upon analysis of the oral and documentary evidence has directed payment of Rs.30,25,000/- as compensation to the claimant and it was directed to be paid by the insurer of the cars which involved in the accident and in the region of 50% each.

6. Aggrieved by the quantum of compensation awarded by the Tribunal as well as the direction, directing the appellant to pay 50% of the compensation the present appeal is filed.



C.M.A.No.2634 of 2016

7. It is note worthy to mention that the claimant did not filed any appeal as against the amount of Rs.30,25,000/- awarded by the Tribunal.

Similarly, the owner or insurer of the TATA Indica car involved in the accident has also did not question the award passed by the Tribunal by filing an appeal. The present appeal has been filed only by the appellant/Insurance Company. Assailing the award passed by the Tribunal both in respect of the quantum of compensation as well as the negligence attributed against them.

8. The learned counsel for the appellant would vehemently contended that the manner in which the accident had taken place has not been proved before the Tribunal.

9. According to the learned counsel for the appellant R.W.3 is none other than the husband of the deceased, who had driven the TATA Indica car at the time of the accident. The R.W.3 is the best person to speak about the manner in which the accident had occurred. However, he did not step into the witness box and has given evidence. The Tribunal failed to consider that it was the driver of the Ambasaddor car who had given a complaint against the



C.M.A.No.2634 of 2016

husband of the deceased, who drove the TATA Indica car. Based on the complaint, the First Information Report was registered only against the husband of the deceased. However, the Tribunal has rendered a finding that the husband of the deceased has suffered head injuries and he is not competent enough to depose before the Court due to such injuries. The Tribunal come to such conclusion has not placed reliance on any documentary evidence. In any event, in the given facts and circumstances of the case, the Tribunal ought not to have directed the appellant to pay 50% of the compensation. This is more so that the driver of the Ambassadors car had driven the vehicle carefully and he was got unaware of the over shooting of the TATA Indica car above the median divider. In such event, no prudent car driver will be in a position to avert the accident. While so, the Tribunal ought not to have attributed carelessness and negligence on the part of the driver of the TATA Indica car to direct the appellant/Insurance Company to pay 50% of the compensation amount. The conclusion of the Tribunal that the driver of the Ambassadors car had seen the TATA Indica car over shooting the median divider atleast from 60 feet away from the sight of the accident and therefore, we ought to have exercised caution and prudence cannot be accepted. The



C.M.A.No.2634 of 2016

place where the accident has taken place is a highway the vehicles tend to speed up in such event the award passed by the Tribunal is only on the basis of assumption and presumption, without there been any documentary evidence to suggest negligence attributable on the part of the driver of the Ambasadddor car.

10. As regards the quantum, the award of Rs.28,80,000/- granted by the Tribunal towards non-pecuniary benefits is excessive and it is required to be interfered with. The Tribunal without any basis fixed a sum of Rs.15,000/- per month as her salary and by adding 50% thereof towards future prospects arrived at a sum of Rs.22,500/- as monthly income. After deducting 1/3 income and by applying multiplier '16', the Tribunal awarded a total sum of Rs.28,80,000/- as compensation which is on the higher side.

11. The learned counsel for the respondent/claimant would contend that before the Tribunal on behalf of the claimant Exs.P8, 10 & 16 have been filed to prove the income of the deceased Ex.8 relates to the income tax certificate for the year 2006-07 and Ex.P10 it was stated that a sum of



C.M.A.No.2634 of 2016

Rs.72,000/- was paid to the deceased by M/s.Chennai Packaging Industries for the year 2005-06 towards her salary. Similarly under Ex.P11 for the financial year 2005-06 a sum of Rs. 60,000/- was paid as salary to her and under Ex.P14 it could be evident that a sum of Rs.6,000/- was paid as salary for the deceased by Vijay Polymers. Thus, it was stated that there are several documents produced on behalf of the claimant to show that the deceased was an upcoming entrepreneur and whose death has dented the monetary support which the claimant could receive.

12. As regards the negligence, the Tribunal has given justifiable reasons stating that the driver of the car had witnessed the over shooting of the TATA Indica car above the median atleast from a distance of 60 feet. While so, we ought to have exercised caution and prudence while driving the vehicle. Therefore, due to the negligence attributable on the part of the driver of the Ambassador car the accident had occurred merely because the driver of the Ambassador car had given the complaint against the husband of the deceased it will not be a conclusive proof to show that the driver of the TATA Indica car had largely contributed for the accident. In such



C.M.A.No.2634 of 2016

circumstances, according to the learned counsel for the respondent/claimant the tribunal is wholly justified in directing the appellant/Insurance Company to pay 50% of the compensation amount and prayed for dismissal of the appeal.

13. This Court heard the submissions of the learned counsel for the appellant/Insurance Company as well as the learned counsel for the respondent/claimant and perused the materials available on record.

14. At the outset, it must be stated that on the fateful day the car driven by R.W.3 had met with an accident due to deflection of the tire of the car. In order to prove the same, the Motor Vehicle Inspector has examined the TATA Indica car and concluded that due to deflection of tire, the TATA Indica car had over shot the median divider Ex.P3 is the motor vehicle inspector report this is not seriously disputed by the appellant in this appeal. Thus, it can be inferred that due to deflection of the tire the TATA Indica car had over shot the median divider. At the same time, R.W.3 was the solitary witness in this case has deposed that atleast from distance of 60 feet he had



C.M.A.No.2634 of 2016

seen the TATA Indica car above the median divider. However, his evidence

is silent as to what prevented him to avert the accident. It is seen that even the driver of the Ambassador car also sustained minor injuries. It is also seen that it is he who had given a complaint as against the driver of the TATA Indica car attributing negligence on his part. In a situation of this nature, this Court is of the view that the negligence on the part of the driver of the TATA Indica car is more, that he had over shot the median divider in spite of the deflection of the tire. This Court can consider the speed with which the car was driven by the husband of the deceased which lead to over shooting of the car atop the median divider. On considering this aspect of the matter even though the driver of the Ambassador car had seen the TATA Indica car atop from the distance of 60 feet and he could have averted the accident, but unfortunately he had hit the TATA Indica car. Therefore, the claim of the appellant/Insurance Company to exonerate them from any liability cannot be accepted at the same time, this Court, in the given facts and circumstances can fix the liability on the part of the driver of the TATA Indica car at 70% and the driver of the Ambassador car at 30%, which would meet the ends of justice.



C.M.A.No.2634 of 2016

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Ex.A10-income tax certificate for the year 2006-07 of the deceased was produced salary certificate issued by the M/s.Chennai Packaging Industries to the deceased on 20.07.2006 was marked as Ex.P10 similar certificate issued by Vijay Polimers on 20.07.2006 which was marked as Ex.P11. Several other documents also have been marked to show that the deceased was an upcoming entrepreneur who was earning considerably. Even though on behalf of the claimant it was projected that the deceased was earning atleast Rs.30,000/- per month. The Tribunal rejected the same and proceeded to fix the income of the deceased only at Rs.15,000/- per month on the basis of the certificates issued by two companies with which the deceased associated herself. In such circumstances, a sum of Rs.15,000/- fixed by the Tribunal to award compensation for the claimant cannot be said to be excessive or on the higher side. In fact, the Tribunal has given $\frac{1}{3}$ rd deduction towards the earning of the deceased besides 50% towards future prospects of the deceased. Ultimately a sum of Rs.22,500/- was fixed as the monthly salary of the deceased by applying multiplier '16' the tribunal awarded total a sum of



C.M.A.No.2634 of 2016

Rs.28,80,000/- as compensation for loss of income. The Tribunal has wrongly

awarded 50% of the enhancement towards future prospects and the same is reduced to 40%. As per *Sarala Varma* case, multiplier applicable to the age of deceased would be 16. Hence the 1st respondent is entitled to a sum of Rs.26,88,000/- (Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-) X 12 X 16 X 2/3) towards loss of dependency. That apart a sum of Rs.1,00,000/- was awarded towards loss of love and affection to the minor claimant. It is seen that now the minor has attained majority that she was declared as major by this Court on 06.12.2018. At the same time, taking note of the fact that the accident has occurred in the year 2006, a sum of Rs.1,00,000/- awarded is hereby reduced to Rs.40,000/-. Similarly, a sum of Rs.25,000/- awarded towards funeral expenses is hereby reduced to Rs.15,000/- taking note of the year of accident. For transportation and damages to clothing and articles, the tribunal has awarded a sum of Rs.20,000/- which does not call for any interference by this Court.



C.M.A.No.2634 of 2016

WEB COPY

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	28,80,000	26,88,000	Reduced
2.	Loss of love and affection	1,00,000	40,000	Reduced
3.	Funeral expenses	25,000	15,000	Reduced
4.	Transportation and damages to clothing and articles	20,000	20,000	Confirmed
	Total	Rs.30,25,000/-	Rs.27,63,000/-	reduced by Rs.2,62,000/-
		Rs.30,25,000/- after deducting 50% contributory negligence, it comes to Rs.15,12,500/-	Rs.27,63,000/- after deducting 30% contributory negligence, it comes to Rs.8,28,900/- and 70% contributory negligence, it comes to Rs.19,34,100/-	



C.M.A.No.2634 of 2016

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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,25,000/- is hereby reduced to Rs.27,63,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The portion of the award fixing 50% contributory negligence on the part of the appellant/Insurance Company is modified and 30% negligence is fixed on the part of the appellant/Insurance Company. The 1st respondent directed to pay necessary Court fee, if any, on the reduced compensation. The appellant/Insurance Company is directed to deposit 30% of the award amount now determined by this Court i.e., Rs.8,28,900/- along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The 4th respondent/Insurance Company is directed to deposit 70% of the award amount now determined by this Court i.e., Rs.19,34,100/- along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw her respective share of the award amount along with



C.M.A.No.2634 of 2016

proportionate interest and costs, less the amount if any, already withdrawn.

No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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To

- 1.The Judge,
Additional Sub Court,
Motor Accidents Claims Tribunal,
Mayiladuthurai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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C.M.A.No.2634 of 2016

A.A.NAKKIRAN, J.,

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**C.M.A.No.2634 of 2016
and
C.M.P.No.18803 of 2016**

01.03.2023