IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.4023 of 2019

1. Nagalakshmi
2. Sekar
3. Raja
4. Venkatesh
5. Maheswari ... Appellants

Vs.

1. Ramesh
2. The Manager, Reliance General Insurance Company Limited, Sony Buildings, Haritha Towers, 965, Avinasi Road, Lakshmi Mills, Coimbatore – 641 012. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 14.03.2018 passed in M.C.O.P.No.300 of 2013 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Namakkal.

For Appellants : Mr.S.Sankar for C.Thangaraju

For Respondents : Not Ready in Notice [R1]
M/s.C.Bhuvana Sundari [R2]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, Principal District Judge, Namakkal in M.C.O.P.No.300 of 2013 dated 14.03.2018, the claimants are before this Court.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) On 08.01.2013 at about 7.45 a.m., when the deceased Narashima Chettiyar was riding his two wheeler bearing Regn.No.TN 28 AM 4813 on the left side of the road, at that time a lorry bearing Regn.No.KA 01 B 8242 driven by its driver belonging to the first respondent which was insured with the second respondent, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased sustained head injuries and died on the way to Hospital. Claiming compensation in a sum of Rs.15,00,000/-, the claimants have filed the claim petition.

3. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and

marked Exs.P.1 to Ex.P.9. The respondents examined R.W.1 and R.W.2 and marked Exs.R1 to R4. After adjudication, the Tribunal dismissed the claim made by the appellants on the ground that the claimants have not proved the negligence on the part of the driver of the lorry. Challenging the same, the present appeal has been filed by the claimants.

4. The learned counsel appearing for the appellants submitted that as per the counter affidavit filed by the second respondent, it is stated that on the alleged date of accident, the driver of the lorry drove the vehicle in a cautious manner after carefully following the traffic rules and it is the driver of the motor cycle who drove the vehicle in a rash and negligent manner and caused the accident. The claims Tribunal, upon perusal of Ex.P.10 MVI Report and after examination of R.W.2 Inspector of Police has come to a conclusion that the driver of the two wheeler had hit the lorry from behind and sustained injuries and since there was no damage to the lorry the FIR was closed as mistake of fact and on the said basis the Tribunal rejected the claim made by the claimants on the ground that the claimants filed to prove the negligence on the part of the second respondent. In order to disprove the negligence on the

part of the driver of the lorry, the second respondent / insurer of the lorry has not taken any steps to produce any documents or evidence before the Tribunal. Though the first petitioner was examined as P.W.1 and an eye witness was examined as P.W.2, merely because of the evidence of R.W.2 the Inspector of Police and Ex.P.10 MVI Report, the claim made by the appellants was dismissed, which is wholly unsustainable. Hence, he prayed to allow this appeal.

5. Per contra, the learned counsel appearing for the second respondent submits that though the final report was filed on 18.08.2015, however, the claimants have not taken any steps to challenge the same, hence, the FIR was closed as mistake of fact. Upon considering the oral and documentary evidence, the Tribunal has rightly dismissed the claim made by the appellants which does not require interference. Accordingly, the appeal deserves to be dismissed.

6. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials

available on record.

7. The only ground on which the negligence is fastened solely on the deceased is the fact that the deceased is alleged to have hit the lorry from behind and, therefore, negligence has been wholly attributed to him. True that the deceased had hit the lorry from behind, but that alone cannot be suffice to hold that the deceased alone had driven the vehicle in a rash and negligent manner. When a vehicle follows an other vehicle, the presumption of the driver of the vehicle is that the preceding vehicle would be moving at the same pace and in case of any slowing down, necessarily signal would be given so as to alert the driver of the succeeding vehicle to act accordingly. In the case on hand, the deceased was proceeding behind the lorry and had hit the lorry from behind. The Tribunal had negatived the claim of the claimants on the basis of the Motor Vehicle Inspector's report, which has shown that there was no damage to the lorry. When a two wheeler hits a lorry from behind, there would not be much damage to the lorry and, therefore, basing the opinion of the MV Inspector's report would be of no use.

8. There is no material available on record in the form of ocular testimony to show that the lorry was not driven in a rash and negligent manner, except for the deposition of the investigating officer and the MV Inspector's report. In the absence of any corroborating testimony to show that the lorry was driven in a safe manner and adhering to the rules of traffic and had given necessary signal, placing reliance on the deposition of the investigating officer and the MV Inspector's report to negative the claim of the claimants is wholly erroneous.

9. The investigating officer is not an eye witness to the occurrence, yet has given his deposition, allegedly on the basis of the investigation conducted by him. Had anyone spoken about the occurrence in the manner spoken to by the investigating officer, necessarily, the insurer would have examined the said individual as a witness. In the absence of any testimony in that regard, the fixation of negligence wholly on the deceased is *per se* defective and unsustainable.

10. A careful perusal of the materials available on record, both oral and

documentary, coupled with the MV Inspector's report, the unassailable conclusion that could be arrived at is that the sudden stopping of the lorry would have resulted in the motor cycle of the deceased behind the lorry leading to the accident. In the absence of any material to show that the lorry was not driven in a rash and negligent manner and had adhered to all the traffic rules relating to giving the necessary signals to the vehicles following it, definitely the lorry should also be held to be equally negligent in the cause of the accident and, therefore, has to equally share its share of rash and negligence and necessarily this Court has to hold that both the vehicles has equally contributed to the accident. This Court, accordingly, fixes the negligence at 50% on the deceased and 50% on the lorry and to the extent of 50% fixed on the lorry, the insurer is liable to indemnify the insured.

11. Once this Court has come to the conclusion that the lorry had also equally contributed to the accident, necessarily, the quantum of compensation to be payable to the claimants requires to be computed of which the insurer would be liable to pay 50%.

12. It is seen from the claim petition that the deceased had earned a sum of Rs.25,000/- and it has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TANMAC 459,* fixing a notional income of Rs.10,000/-. Deducting $1/4^{th}$ towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.7500/- per month and the deceased being aged within the age group 61 to 65 years, adopting the multiplier of 7 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.7500/- * 12 * 7 = Rs.6,30,000/-.

13. This Court fixes a sum of Rs.40,000/- each to the appellants 2 to 5 is awarded under the head loss of love and affection. A sum of Rs.40,000/- is awarded to the first appellant under the head “loss of consortium”. A sum of Rs.15,000/- is awarded under the head “funeral expenses”. A sum of Rs.15,000/- is awarded under the head “loss of estate”. A sum of Rs.15,000/- is

granted under the head “Transportation expenses”.

14. In the above circumstances, this Court is inclined to pass the following award as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	-	6,30,000/-
Loss of love and affection (Rs.40,000/- x 4)	-	1,60,000/-
Loss of consortium	-	40,000/-
Transportation expenses	-	15,000/-
Funeral Expenses	-	15,000/-
Loss of estate	-	15,000/-
Total	-	**8,75,000/-**

15. Accordingly, the appeal is allowed and the impugned Award of the Tribunal is set aside. Deducting 50% towards contributory negligence on the part of the deceased, the award amount granted by this Court payable by the second respondent / insurance company would amount to **Rs.4,37,500/-** along with interest at 7.5% p.a. from the date of claim petition till the date of deposit. Of the said amount, the appellants 1 and 5 are entitled to a sum of

Rs.1,50,000/- each with accrued interest and the appellants 2 to 4 are entitled for the remaining amount along with interest in equal proportion. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.300 of 2013 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 six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount apportioned to the share of the respective appellants/claimants by this Court above, directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

23.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.Motor Accident Claims Tribunal / Principal District Judge, Namakkal.
2.The Section Officer,
V.R. Section,
High Court, Madras.

<u>M.DHANDAPANI,J.,</u>

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<u>C.M.A.No.4023 of 2019</u>

<u>23.11.2023</u>