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C.M.A. Nos.1418 and 1450 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. Nos.1418 and 1450 of 2018

and

CMP No.11533 of 2018

In CMA No.1418/2018

1. Kaliappan
2. Manonmani

... Appellants

Vs.

1. Shanmugam
2. Saravanan
3. United India Insurance Company Limited
No.2, Bhuvaneswari Complex
Dr.Sankaran Road, Namakkal
(1st and 2nd respondents remained ex-parte
before the Tribunal. Hence, notice may be dispensed
with in this appeal)

... Respondents

In CMA No.1450/2018

United India Insurance Company Limited
No.2, Bhuvaneswari Complex
Dr.Sankaran Road, Namakkal

... Appellant

Vs.

1. Kaliappan
2. Manonmani
3. Shanmugam
4. Saravanan

... Respondents



Common Prayer: This Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.01.2016 made in MCOP No.1825 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

For Appellants in CMA No.1418/2018
and R1 and R2 in CMA No.1450/2018 : Mr.M.A.P.Thangavel

For R3 in CMA No.1418/2018 and
Appellant in CMA No.1450/2018 : Mr.S.Arunkumar

COMMON JUDGMENT

This Civil Miscellaneous Appeal in CMA No.1418 of 2018 is filed by the claimants for against the judgment and decree dated 12.01.2016 made in MCOP No.1825 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur, for enhancement of compensation. The Civil Miscellaneous Appeal in CMA No.1450 of 2018 is filed by the Insurance Company against the above said Award questioning the liability.

2. Since both the appeals are arising out of the same Award, they both are heard together.



3. The appellants 1 and 2 in CMA No.1418 of 2018/Respondents 1 and 2 in CMA No.1450 of 2018 are the claimants. The 3rd respondent in CMA No.1418 of 2018/appellant in CMA No.1450 of 2018 is the insurer of Lorry bearing Regn. No.TN-28-M-2787. The respondents 1 and 2 in CMA No.1418 of 2018/Respondents 3 and 4 in CMA No.1450 of 2018 are the driver and owner of the above said Lorry.

4. The case of the claimants is that on 29.09.2013 at about 12.30 p.m., on the Tricity to Coimbatore National Highways, near Bangalore Sakthi Nagar N.N.R. Mess, the deceased Gokul was proceeding in the car bearing Regn. No.TN-39-C-3235 at the extreme left side of the road. At that time, a Lorry bearing Regn. No.TN-28-BM-2787 was stationed in the middle of the road without signal and safety measures. Since in the opposite direction, another vehicle came with bright light, the deceased could not identify the parked lorry and thereby, he hit on the backside of the Lorry due to which, he sustained injuries. Subsequently, he was taken to Palladam Government Hospital and later to KMCH Hospital, Coimbatore, where he succumbed to the injuries.

5. The claimants who are the parents of the deceased Gokul filed



a claim petition in MCOP No.1825 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur, claiming compensation of Rs.30,00,000/- for the death of their son who was aged 19 years and studying B.com 2nd year at the time of accident.

6. Before the Tribunal, the driver and owner of the said Lorry remained ex-party.

7. In order to substantiate the claim before the Tribunal on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 4 documents were marked as Ex.R1 to Ex.R4.

8. The Tribunal, after hearing the submissions of the learned counsel on either side and considering the materials, awarded compensation of Rs.18,00,000/- and directed the insurer of the Lorry to pay the said compensation with cost and interest at 7.5% from the date of petition till the date of realization.

9. Challenging the said Award, the claimants have filed the appeal in CMA No.1418 of 2018 for enhancement and the insurer of the



Lorry has filed the appeal in CMA No.1450 of 2018 questioning the liability.

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10. The learned counsel for the claimants submitted that the accident had occurred only due to the negligent act of the driver of the said Lorry who had parked the Lorry in the middle of the road without observing the road traffic rules. The deceased could have not expected that a Lorry would be parked without signal and observing road traffic rules that too on the middle of the road. Though a case was registered against the deceased and subsequently, it was closed as abated. Even the driver of the Lorry was not examined and no other witnesses on the side of the offending Lorry has narrated that the accident had occurred due to the rash and negligent driving of the driver of the car/deceased. Therefore, the Tribunal by appreciating the materials, held that the accident had occurred only to the negligent act of the driver of the Lorry and awarded compensation. Therefore, there is no merit in the appeal filed by the Insurance Company.



11. The learned counsel for the claimants further submitted that as far as the quantum of compensation is concerned, it is settled proposition of law that, multiplier has to be adopted based on the age of the deceased and not on the age of the dependents of the deceased, whereas in this case, the Tribunal has adopted the multiplier '14' based on the age of the mother of the deceased/2nd claimant which is against the proposition of law. Further, the Tribunal has not properly awarded compensation under the other heads and therefore, the Award passed by the Tribunal does not reflect the “just and reasonable compensation” which warrants interference.

12. The learned counsel for the Insurance Company submitted that the accident had occurred only due to the rash and negligent driving of the deceased Gokul. FIR was also registered against the deceased and subsequently, it was closed as abated after the death of the deceased Gokul. The said Lorry was stationed on the side of the road before an eatery due to some technical reason by observing road traffic rules. Despite that, due to his rash and negligent driving, the deceased dashed at the back side of the Lorry and sustained injuries and subsequently succumbed to the injuries. The deceased himself is the tort-feasor to the accident and therefore, the Insurance Company is not liable to pay any compensation. The Tribunal, failed to



consider the negligence of the deceased and fastened the liability on the driver of the Lorry and directed the Insurance Company to pay the compensation which warrants interference.

13. Heard both sides and perused the materials available on record.

14. Admittedly, the car of the deceased dashed at the backside of the Lorry which was parked in the road. Initially, a case was registered against the driver of car/deceased and subsequently, the same was closed as abated since the deceased died. The evidence of P.W.2 and P.W.3 clearly shows that only the driver of the Lorry had parked the Lorry in the middle of the road, without signal and observing road traffic rules and due to the negligent act of the driver of the Lorry, the accident had occurred and contra to their evidence, on the side of the Insurance Company, no evidence was let in. Even the driver of the Lorry was not examined and proved that the Lorry was parked only due to technical reason and unavoidable circumstances or he had parked the Lorry on the side of the road with parking signal and observed the road traffic rules. Further, he was also not subjected him to cross examination. Under these circumstances, the Tribunal rightly appreciated the evidence and held that the evidence put before the Tribunal has to be taken



into consideration. Though, FIR was registered against the deceased, FIR is not an Encyclopedia and that there is no material to show that the accident had occurred due to the rash and negligent driving of the deceased. In the absence of the same, the Tribunal rightly fixed the liability on the driver of the Lorry. Since, the Lorry was insured, the Tribunal directed the Insurance Company to pay the compensation on behalf of the owner of the Lorry. This Court does not find any perversity in the findings of the Tribunal in fixing liability on the Insurance Company. Therefore there is no merit in the appeal filed by the Insurance Company and the same is liable to be dismissed.

15. However, a perusal of records shows that the accident had occurred during day time i.e. around 12.30 noon. Even assuming that the driver of the Lorry had parked the vehicle in the middle of the road, without signal and observing road traffic rules, if at all the deceased was cautious, he could have avoided the accident. Therefore, this Court finds that the deceased has also contributed his negligence to the accident. Therefore, this Court fix contributory negligence of 50-50 on both the driver of the Lorry as well as the driver of the car/deceased.

16. As far as quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.10,000/- as the notional income of the deceased and taken 50% towards future prospects and has awarded a sum of



Rs.16,80,000/- towards "loss of income" by applying multiplier method and deducting 1/3 towards personal income.

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17. As stated above, admittedly, the Tribunal while computing the loss of income, has erroneously taken into consideration the age of the mother of the deceased and adopted the multiplier '14' instead of '18'. Since the age of the deceased was 19 years at the time of accident as per the post mortem report, the multiplier '18' has to be adopted. Further, the Tribunal has erroneously taken 50% towards future prospects instead of 40%. Further, since the deceased was a Bachelor, the Tribunal ought to have deducted 50% towards personal expenses, whereas, the Tribunal has deducted 1/3.

18. Therefore, this Court awards a sum of Rs.15,12,000/- towards "loss of income" instead of Rs.16,80,000/-, after adding 40% towards future prospects and deducting 50% towards personal expenses and applying multiplier '18' (Rs.10,000/- (+) 40%- (-) 50% x12x18).

19. Insofar as the compensation awarded under the other heads are concerned, this Court finds that they are reasonable and reflects the 'just compensation'.



20. Accordingly, the Award passed by the Tribunal is re-worked

as follows;

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S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1	Loss of Income	Rs.16,80,000/- -	Rs.15,12,000/-	Reduced
2	Loss of love and affection (Rs.50,000/- each)	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
3	Medical Bills	Rs.14,000/-	Rs.14,000/-	Confirmed
4	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Funeral Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
	Total	Rs.18,14,000/- -	Rs.16,46,000/-	
	Rounded off	Rs.18,00,000/- -	Rs.16,46,000/-	
	Less: Contributory Negligence 50%		Rs.8,23,000/-	
	Total Compensation		Rs.8,23,000/-	Reduced



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21. The Award of the Tribunal is modified by reducing the compensation amount from Rs.18,00,000/- to Rs.8,23,000/-.

22. The Insurance Company is directed to deposit the modified award amount of Rs.8,23,000/- to the credit of MCOP No.1825 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur, with cost and interest at 7.5% from the date of petition till the date of realization, 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.

23. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimants, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

24. The Insurance Company is permitted to withdraw the excess



amount if any, already deposited by them.

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25. With the above modifications, both the Civil Miscellaneous Appeal are disposed of. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeals.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

1.The Motor Accident Claims Tribunal,
II Additional District Court, Tiruppur

2.The Section Officer,
VR Section, High Court, Madras.

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P.VELMURUGAN. J.

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