IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.Nos.1766 and 2518 of 2018
and CMP.No.13692 of 2018

CMA.No.1766 of 2018

The New India Assurance Company Limited
Jyothi Chambers
J.V.Road, Ghatkopar (West)
Mumbai 400 086. ...Appellant

Vs.

1.Annapurani

Subburathinam (Died)

2.Muthukumar

3.M/s.Hindustan Construction Company Limited
Chennai Bye-Pass Projects
HIG Flats, Nolambur
Mogappear, Chennai 600 108.

4.G.Sivaprakasam

5.M/s.Bajaj Allianz General Insurance Company Limited
No.105-A, Cears Plaza
No.136, Residency Road
Bangalore 560 025. ...Respondents

For Appellant : Mr.S.Dhaksnamoorthy
For Respondents
for R1 & R2 : Vacated
for R3 : Left
for R4 : Insufficient address

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.11.2016 made in MCOP.No.1420 of 2008, the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

CMA.No.2518 of 2018

1. Annapoorani
2. Muthukumar ...Appellants

Vs.

1. Ms.Hindustan Construction Company Limited,
   Chennai By-pass Project,
   HIG Flats, Nolambur,
   Chennai 600 108.
2. The New India Assurance Company Limited,
   Jothy Chambers, JV Road,
   Ghatkopar (West),
   Mumbai 400086.
3. G.Sivaprakasam
4. M/s.Balaji Allianz General Insurance Company Limited,
   No.105-A, Cears Plaza, No.136,
   Residency Road,
   Bangalore 560025. ...Respondents

For Appellant	: Mr.M.R.Thangavel
For Respondents	
for R1	: No such company in the address
for R2	: Mr. M.S.Dhakshnamoorthy
for R3	: Want of detailed address
for R4	: Mr.S.Arun Kumar

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 02.11.2016 made in MCOP.No.1420 of 2008 on the file of the Motor Accidents Claims Tribunal & Special District Judge, Salem.

COMMON JUDGMENT

[Judgment of the Court was delivered S.S.SUNDAR, J]

The Claimants are the appellants in CMA.No.2581 of 2018 and the New India Insurance Company Limited, insurer of the vehicle, which caused the accident is the appellant in CMA.No.1766 of 2018. Since the appeals arise out of the award passed in MCOP.No.1420 of 2008, they are disposed of by this common judgment.

2. The appellants in CMA.No.2518 of 2018 are the claimants who are the mother and brother of the deceased. The case of the claimants before the

Tribunal is that on 26.06.2007, the deceased was travelling as a pillion rider in a two wheeler driven by the owner of the vehicle by name Sivaprakasam. It is their further case that a Transit Mixer Lorry insured with the Insurance Company without any indication, suddenly turned to the right and the two wheeler hit the Lorry and as a result, the driver of the motorcycle and the pillion rider, viz., the deceased were thrown out and suffered head injuries. The deceased succumbed to fatal injuries on 29.06.2007 and it was deducted that he suffered serious brain stem injury. Therefore, on the ground that the accident was due to the rash and negligent act of the driver of the Lorry, who took a sudden twist on his right side, the claimants prayed for a compensation from the appellant in CMA.No.1766 of 2018.

3. Before the Tribunal, the Insurance Company denied their liability on the ground that the accident was caused due to the negligent driving of the driver of the two wheeler. It is stated that he could have avoided the accident, if he had driven the vehicle in a normal speed. It is further stated that the claimants are not the dependents of the deceased and therefore the claim is not maintainable.

4. The Tribunal framed a specific issue regarding the cause of accident whether it was due to the rash and negligent driving of the two wheeler or the driver of the Lorry. A specific finding is rendered by the Tribunal stating that the accident was caused due to the rash and negligent driving of the driver of the Lorry, who took a sudden twist on the right side and even if the two wheeler was coming in a normal speed, the accident could not be avoided.

5. The victim was working as an Assistant System Engineer in Tata Group of Companies and the income as per the documents was proved as Rs.23,100/-. The Tribunal adding 50% towards future prospects and deducting 20% towards income tax, granted a sum of Rs.28,27,440/- towards Loss of Income. By adding compensation under the conventional heads, the Tribunal arrived at a sum of Rs.28,91,440/- as the amount of compensation payable to the claimants.

6. Aggrieved by the judgment and decree of the Motor Accident Claims Tribunal, the Insurance Company has preferred appeal in

CMA.No.1766 of 2018 and the claimants have preferred appeal in CMA.No.2518 of 2018.

7. The learned counsel appearing for the claimants submitted that the sum of Rs.7,06,860/- had been deducted by the Tribunal towards income tax by a wrong calculation. The counsel then submitted that the Tribunal failed to award sufficient compensation towards Loss of Love and Affection to the mother and the brother of the deceased separately.

8. On the other hand, the learned counsel appearing for the Insurance Company submitted that the future prospects cannot be 50% as granted by the Tribunal in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]***. The learned counsel then submitted that the liability cannot be fixed in entirety on the Insurance Company as the driver of the two wheeler also contributed to the accident. Referring to the First Information Report, the learned counsel for the Insurance Company tried to persuade this Court to accept the case of the Insurance Company that the accident was caused by the two wheeler as the driver of the two wheeler could not control the vehicle and hit the back side of the Lorry. The learned

counsel then submitted that there must be some deduction towards contributory negligence because the deceased was not wearing helmet at the time of the accident.

9. On the issue whether the accident was due to the contributory negligence of the driver of the two wheeler, the Tribunal has given a specific finding on appreciation of the evidence. The learned counsel for the Insurance Company relied upon the FIR registered. This Court while reading the FIR finds that it is unable to accept the arguments of the learned counsel for the Insurance company. It is specifically stated that the Lorry took a right turn unexpectedly without any signal and therefore the two wheeler which was coming behind the Lorry could not control and dashed against the Lorry. The Insurance Company even failed to examine the driver of the Lorry to suggest that there was contributory negligence and the accident was also contributed by the driver of the two wheeler. Therefore, this Court has no sufficient reason to accept the case of the Insurance Company on contributory negligence.

10. As regards wearing of helmet, it is not a case pleaded by the Insurance Company before the Tribunal. The question whether the deceased

was wearing helmet or nor cannot be decided at the appellate stage. Merely because there is no reference to helmet by any of the witnesses examined, that cannot be taken advantage by the Insurance Company to build a case in appeal, which is not pleaded before the Tribunal.

11. As regards quantum, this Court finds that the Tribunal has added 50% towards future prospects, which is contradictory to the dictum in ***Pranay Sethi case***. Similarly, the contention of the learned counsel appearing for the claimants regarding deduction of Rs.7,06,860/- towards 20% of income tax has to be accepted. Therefore, the compensation is reworked in the following manner:

(i) It is admitted that the deceased was drawing a salary of Rs.23,100/- on the date of the accident. Therefore, the annual income of the deceased is arrived at Rs.2,77,200/-. Since the sum of Rs.1,50,000/- may be exempted from tax, the tax liability of the deceased cannot be more than Rs.12,720/-. If the said amount is deducted, the amount comes to Rs.2,64,480/-. Considering the employment and age of the deceased, if 40% is added towards future prospects, the amount comes to Rs.3,70,272/-. Deducting 50% towards personal expenses of the deceased, contribution to the family comes to Rs.1,85,136/-. Then, by applying multiplier 17, the Loss of Income works out to Rs.31,47,312/-.

(ii) In addition, this Court is inclined to grant a sum of Rs.80,000/- in all towards Loss of Love and Affection for the mother as well as the brother. Further, the sum of Rs.15,000/- is granted towards Funeral Expenses and Rs.15,000/- towards Loss of Estate. Therefore, adding Rs.1,10,000/- to the amount payable by way of Loss of Income, a sum of Rs.32,57,312/- should be paid as compensation to the claimants.

12. Thus, the appeal in CMA.No.1766 of 2018 is dismissed and the appeal in CMA.No.2518 of 2018 is partly allowed. The Insurance Company is liable to pay the enhanced amount of **Rs.32,57,312/-** to the claimants as compensation. The Tribunal has apportioned Rs.5,00,000/- to the brother and the remaining amount to the mother of the deceased. In view of the enhancement, the brother is given Rs.6,00,000/- and the rest of the amount shall go to the mother of the deceased. The Insurance Company is directed to deposit the enhanced compensation before the Tribunal together with interest and costs, less the amount already deposited, within a period of two

months from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire amount in accordance with law before the Tribunal. The claimants shall pay the necessary Court fee for the enhanced compensation. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J.) (P.B.B.J.)
17.03.2023

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The Special District Court,
   Motor Accidents Claims Tribunal, Salem.
2. The Section Officer,
   VR Section High Court, Madras.

S.S.SUNDAR, J.
and
P.B.BALAJI, J.

pvs

C.M.A.Nos.1766 and 2518 of 2018

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