IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

Civil Miscellaneous Appeal Nos.1743 and 1744 of 2021

and CMP Nos.9238 and 9240 of 2021

HDFC Insurance Co. Ltd. now known as
HDFC ERGO General Insurance Company Ltd.,
No.528/529, II Floor, Anna Salai,
Teynampet, Chennai 18. ... Appellant in both the Appeals

The cause title accepted vide Court order
dated 18.03.2021 made in CMP 4118 & 4115/2021 in
CMA SR No.45994 & 61181/219 [RPSJ & SSSKJ]

Vs

1. Mallika
2. Chitra
3. Sankari
4. Thiruvengadam
5. ICICI Lombard Insurance Co. Ld.,
   Ist Floor, Arinichant Plazam,
   84/85, Wall Tax Road, Chennai 3.
6. Rajamani ... Respondents in CMA No.1743 of 2021

1. Ramesh
2. Thiruvengadam
3. ICICI Lombard Insurance Co. Ld.,
   Ist Floor, Arinichant Plazam,
   84/85, Wall Tax Road, Chennai 3.
4. Rajamani ... Respondents in CMA No.1744 of 2021

Prayer: These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the decree ad judgment dated 1st day of November 2018, made in (i) MCOP No.1105 of 2012 (ii) MCOP No.1093 of 2012 respectively on the file of Motor Accident Claims Tribunal (III Court of Small Causes), of Madras.

For Appellant : Mr.K.Vinod
(in both the Appeals)

For Respondents : Ms. Reena
for M/s.S.R.Suga,
for RR1 to 3 in CMA1743 of 2021
& for R1 in CMA 1744 of 2021

Ms.R.Sreevidhya
for R5 in CMA 1743 of 2021
& for R3 in CMA 1744 of 2021

R4 & R6 -served - No appearance
in CMA 1743 of 2021
R2 & R4 -served - No appearance
in CMA 1744 of 2021

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These two appeals are at the instance of the Insurance Company challenging the compensation awarded at Rs.25,000/- for the injury caused to the claimant in MCOP No.1093 of 2012 and at Rs.18,35,000/- for the death of one Gopi @ Gopinath, in MCOP No.1105 of 2012, in a motor accident that occurred on 01.11.2009.

2. While the deceased Gopinath was the rider of the Motorcycle, the injured Ramesh was a pillion rider. The claimants lodged the claim petition seeking compensation for the death as well as the injury contending that while Gopinath was riding the Motorcycle bearing Registration No.TN-21- AW-8777 with Ramesh and one Srinivasan as pillion riders on the East Coast Road near Koovathur, a Chevrolet Tavera Car, bearing Registration No.TN-29-H-7585 which was going ahead of them, suddenly stopped without any warning, resulting in the Motorcycle colliding with the car from behind.

3. As a result of the impact, the rider and the pillion riders in the

Motorcycle were thrown off the vehicle and they fell on the right side of the Road, unfortunately a TATA Ace goods vehicle bearing Registration No.TN-25-S-4185 which was coming in the opposite direction, ran over Gopinath, as a result of which the said Gopinath suffered fatal injuries, despite treatment he died 17 days thereafter. The pillion rider Ramesh suffered various injuries.

4. While the pillion rider Ramesh sought for a compensation of Rs.1,00,000/- in MCOP No.1093 of 2012, the claimants, who are the mother and sisters of the deceased Gopinath sought for a compensation of Rs.50,00,000/- in MCOP No.1105 of 2012. The quantum was sought to be justified by pleading that the deceased Gopinath was a mechanic and was earning about Rs.10,000/- per month.

5. The Insurance Company resisted the claim contending that the accident occurred due to the rash and negligent driving of the motorcycle. Reliance is sought to be placed on the FIR which was registered at the instance of the driver of the Tavera Car, to justify the contention that the negligence was on the rider of the motorcycle only. It was also contended that the quantum of compensation claimed is excessive.

6. Before the Tribunal, the injured claimant Ramesh was examined as P.W.1 and Mallika, mother of the deceased Gopinath was examined as P.W.2. Exhibits P1 to P14 were marked. No evidence either oral or documentary was let in by the Insurance Company

7. The Tribunal, on the question of negligence faulted the Insurance Company for not having examined the driver of the Tavera Car, the Tribunal also found that the collision happened due to the sudden breaking of the Tavera Car. The Tribunal, however, held that the deceased has also contributed to the accident an extent of 5% because three persons were travelling in the motorcycle.

7.1. On the quantum, the Tribunal took the monthly income at Rs.10,000/- for the deceased, added 50% towards future prospects, deducted 50% towards personal expenses, applied a multiplier of 18 and arrived at the total pecuniary loss at Rs.16,20,000/-. It also awarded a sum of Rs.1,50,000/- towards loss of love and affection, Rs.50,000/- towards medical expenses and Rs,15,000/- towards funeral expenses. Thus, the total award in respect of the deceased worked out to Rs.18,35,000/-.

8. In respect of the injured in MCOP No.1093 of 2012, the Tribunal awarded a sum of Rs.25,000/- as a consolidated compensation, as there was no evidence of any permanent disability having been caused to the injured.

9. We have heard Mr.K.Vinod, learned counsel appearing for the appellant/ Insurance Company, insurer of the Chevrolet Tavera Car, Ms.Reena, learned counsel appearing for M/s.S.R.Suga for the claimants and Mrs.Sreevidhya, learned counsel appearing for the fifth respondent in CMA 1744/21 and the third respondent/Insurance Company in CMA No.1743/21, the insurer of the TATA ACE goods vhicle.

10. Mr. K.Vinod learned counsel appearing for the Insurance Company would vehemently contend that the FIR shows that the accident happened only due to the rash and negligent driving of the two-wheeler and therefore, the Tribunal was not right in mulcting 95% of the liability on the insurer of the Car. He would also submit that the apportionment of the contributory negligence at 5% on the Two-wheeler for violation of the Traffic Rules viz. three persons travelling in the motorcycle is very low and it has to be at a higher percentage.

11. Contending contra, Ms. Reena, learned counsel appearing for the claimants would submit that it is common for three people to travel in a motorcycle and therefore, the same cannot amount to contributory negligence. She would also submit that the FIR was lodged by the driver of the Car and therefore, the same cannot be taken as gospel truth. Drawing our attention to the evidence of P.W.1/Ramesh, who was an eye witness to the accident, on the manner in which the accident happened, the learned counsel would submit that it was the rash and negligent driving of the Car that had caused the accident. She would also justify the addition of 50% towards future prospects considering the age of the deceased.

12. We have considered the rival submissions.

13. No doubt, three persons travelling in a motorcycle is an offence and is in violation of the Traffic Rules, particularly Section 128 of the Motor Vehicles Act. Three persons travelling in a motorcycle has become a very common phenomenon, or we can say, the order of the day. Unless the law enforcing machinery takes very strict action in respect of such violations, such violations are bound to continue. We and the Tribunals exercising the benevolent jurisdiction under the Motor Vehicles Act, cannot take a very strict view of such violations. However, in the case on hand, we find that there is an admission that three persons travelled in the motorcycle. We cannot turn a blind eye to a statutory violation of this nature. Hence, we find that the apportionment of negligence must be at a higher percentage and on the facts and circumstances of this case, we fix the percentage of negligence at 25% instead of 5% as fixed by the Tribunal.

14. Adverting to the quantum of compensation as rightly contended by the learned counsel Mr.K. Vinod, an addition of 50% as future prospects for the deceased is wholly unacceptable. Admittedly, the deceased was working as a mechanic, who was a self-employed person, even according to the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in

(2017) 16 SCC 680, the future prospects in such case would only be 40% and not 50%. Therefore, the compensation awarded to him has to be necessarily reworked.

15. The compensation awarded for the death of Gopinath is reworked as follows:

Monthly income at Rs.10,000/-, add 40% towards future prospects, this takes us to the monthly income would be Rs.14,000/-. We have to deduct 50% towards personal expenses ,the deceased being a bachelor. The applicable multiplier is 18. thus the loss of dependency would be Rs.14,000/- X 12 X 18 X ½ = Rs.15,12,000/-. To this we need to add a sum of Rs.1,20,000/- towards loss of love and affection for the three claimants, Rs.50,000/- towards medical expenses, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, the total amount would be Rs.17,12,000/-. We have fixed the contributory negligence at 25%, which works out to Rs.4,28,000/-, if this is deducted, the claimants would be entitled to Rs.12,84,000/- as compensation for the death. The claimants would be entitled to 7.5% interest on the said sum.

16. We apportioned the compensation as follows:

The mother of the deceased/first petitioner in MCOP 1105 of 2012 would be entitled to a sum of Rs.7,00,000/- and the two sisters/ Petitioners 2 and 3 in MCOP No.1105 of 2012 would each be entitled to Rs.2,92,000/- with proportionate interest. In view of the above, the Appeal in CMA No.1743 of 2021 is partly allowed.

17. As far as the injured claimant is concerned, the compensation fixed at Rs.25,000/- is confirmed, hence the Appeal in CMA No.1744 of 2021, is **dismissed**. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

18. The Insurance Company is directed to deposit the balance award amount as fixed by us along with interest within a period of eight weeks from the date of receipt of a copy of the order. On such deposit, the claimants will be entitled to withdraw the entire amount as apportioned with proportionate interest.

(R.SUBRAMANIAN, J.) (N.SENTHILKUMAR, J.)

15.12.2023

Index: No

Internet: Yes

Speaking order

Neutral Citation: No

jv

To

1.The III Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

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

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

jv

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