



C.M.A.Nos.2264 & 2265 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.2264 & 2265 of 2021
and
Civil Miscellaneous Petition Nos.12551 & 12555 of 2021

C.M.A.No.2264 of 2021: (MCOP No.125/2017)

Shriram General Insurance Company Limited,
D.No.5-F, Sachin Plaza, Reddiyar Block No.1,
1st Floor, Alagapuram, Salem – 636 004. ... Appellant / 2nd respondent

Vs.

1. Peruman ... Respondent/Petitioner
2. Ramanatham Venkatta Srinivasalu ... Respondent / Respondent

C.M.A.No.2265 of 2021: (MCOP No.124/2017)

Shriram General Insurance Company Limited,
D.No.5-F, Sachin Plaza, Reddiyar Block No.1,
1st Floor, Alagapuram, Salem – 636 004. ... Appellant / 2nd respondent

Vs.

1. Deivam
2. Kavitha ... Respondents/Petitioners
3. Ramanatham Venkatta Srinivasalu ... Respondent / Respondent

COMMON PRAYER: Civil Miscellaneous Appeals filed under



Section 173 of the Motor Vehicles Act, 1988, against the Common Award and Decree dated 25.09.2020 made in M.C.O.P.No.125 of 2017 and M.C.O.P.No.124 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur.

For Appellant in both CMAs : Mr. S. Dhakshinamoorthy
For R1 in both CMAs : Ms. L. Aiswarya Lakshmi
For R2 in both CMAs : No appearance

COMMON JUDGMENT

Both the appeals filed by the Insurance Company challenging the direction that the Insurance Company to indemnify the first respondent to pay the compensation in the Common Award passed in M.C.O.P. No.124 of 2017 and M.C.O.P.No.125 of 2017, dated 25.09.2020, on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of the case is that on 19.08.2017 one of the claimant namely Peruman was riding his two-wheeler bearing Registration No.TN 29 BC 6235 along with the deceased Aravindan



on Harur to Salem Highways, while they reached near Pulithiyoor Perumal Temple at about 3.45 hours a Lorry bearing Registration No.AP 04 TN 2677, which was running behind them has suddenly stopped in the middle of the road, which resulted in causing accident. The two-wheeler hit on the lorry resulted, causing severe injuries to Peruman. The deceased Aravindan had sustained fatal injuries and died on the spot. For the death of the deceased Aravindan, his parents have filed claim petition in M.C.O.P.No.124 of 2017 and separately, injured Peruman has filed M.C.O.P. No.125 of 2017. Both the claim petitions were taken up together for enquiry and Common Award has been passed.

4. Before the Tribunal, the Insurance Company has taken a stand that the two-wheeler was driven by Aravindan and it was not driven by Peruman and since Aravindan has rode the two-wheeler, he sustained severe injuries and Peruman has sustained only simple injuries. Conveniently, First Information Report has been lodged against the driver of the Lorry. On the basis of complaint given by the Peruman as if, he rode the two-wheeler and the accident has happened due to the negligent act of the lorry driver.



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5. The Tribunal after considering the rival contentions and evidence held that the Final Report filed by the police could not be acceptable since there are certain lacuna in the investigation. The Tribunal has also recorded that no independent eyewitness were examined, fixed the negligent act of the driver of the lorry and further held that the two wheeler was ridden by Peruman and accordingly awarded compensation.

6. Aggrieved over the above finding, the Insurance Company has filed both the appeals.

7. The learned counsel for the Insurance Company has submitted that the Final Report, which was filed after due investigation by the police has categorically stated that the complainant himself is a tortfeasor and the Final Report was also taken on file by the concerned Court. That apart, the claimant is aged about 18 years and he was not having valid driving licence, hence complaint was lodged as if the pillion rider Peruman was riding the two-wheeler.

8. The learned counsel for the claimants submitted that no



witness examined to prove the fact that Anandan was riding the two-wheeler and the Tribunal has held that Peruman was the rider of the two-wheeler and awarded compensation. Hence prays to confirm the award.

9. I have considered the rival submissions made on both sides and also perused the records.

10. Before the Tribunal the claimant Peruman was examined as witness to the occurrence as P.W.2 and he has stated that while he was riding the two-wheeler, suddenly the driver of the lorry has stopped the vehicle in the middle of the road, which resulted in accident. He has further stated that the deceased Aravindan was not wearing helmet at the time of accident.

11. It is true that no contra evidence to support the respondents, have been produced before the Tribunal but they have relied on the Final Report, which was marked as Ex.R1. Though Ex.R1 has been found to have certain lacunas such as no witness to the occurrence and without properly considering the statement of Peruman, the Final Report has been filed. It is



also stated that the Protest Petition against the Final Report was also filed.

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12. As far as the standard of proof required for proving the motor accident claims cases, are preponderance of probabilities. Strict proof of evidence is not applicable in this case. (*Refer Bimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors [AIR 2009 SC 2819 : 2010 (1) SCC (CRI) 1101]*)

13. P.W.2 has admitted in his evidence that he rode the two-wheeler and the deceased Aravindan was a pillion rider. The pillion rider has sustained fatal injuries than the rider of the two-wheeler. But this fact alone is not sufficient to raise presumption that the person who suffered simple injury should be the rider of the two wheeler. This Court is of the view that the evidence of P.W.2 is more probable than the evidence adduced on the side of the respondents herein. However, it is admitted fact that the deceased was not wearing helmet at the time of accident and at the time of riding the two-wheeler. This Court in *The Branch Manager, Oriental Insurance Company Ltd., vs. Indirani and 8 others [C.M.A(MD).Nos.987 and 988 of 2014, dated 13.02.2017]* has held that non-wearing of head gear is not only



criminal offence but it shall be treated as contributory negligence. Facts also shows that, if it rider was wearing the head gear/helmet, he could not have sustained fatal injuries. Accordingly, this Court is inclined to fix 20% contributory negligence on Peruman and 20% contributory negligence on the deceased Aravindan.

14. As far as the claimant Peruman is concerned, the compensation awarded by the Tribunal by treating the case as simple injury and awarded only a sum of Rs.25,000/- as compensation and this Court is of the view the same is reasonable and this Court is not inclined to modify the same. As far as the quantum of compensation to the deceased Aravindan is concerned, the award of the Tribunal is reasonable and the same is hereby confirmed and 20% deduction to be made towards contributory negligence in both the cases. The compensation amount determined by the Tribunal in both the cases are hereby confirmed and after deducting 20% of the total compensation, the Insurance Company is directed to pay the remaining amount along with proportionate interest and costs to the claimants.

15. Thus, the award passed by the Tribunal under various heads in



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C.M.A.No.2264/2021 is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Injuries	Rs.6,000/-	Rs.6,000/-	Confirmed
2.	Pain and sufferings	Rs.6,000/-	Rs.6,000/-	Confirmed
3.	Loss of Happiness	Rs.3,000/-	Rs.3,000/-	Confirmed
4.	Transportation Expenses	Rs.3,000/-	Rs.3,000/-	Confirmed
5.	Extra Nourishment	Rs.4,000/-	Rs.4,000/-	Confirmed
6.	Loss of Personal belongings	Rs.4,000/-	Rs.4,000/-	Confirmed
	Total Compensation (Less 20% contributory negligence)	* Rs.25,000/- (sic)	Rs.26,000/- Rs.5,200/-	
		Rs.26,000/-	Rs.20,800/-	Reduced by Rs.5,200/-

*** Total compensation amount comes around Rs.26,000/- but the award shows that Rs.25,000/-.**

16. The Tribunal has held while awarding compensation that the first petitioner in M.C.O.P.No.124/2017 i.e., the father of the deceased is not eligible for compensation as per the dictum laid down by the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC 121]. The Apex Court in paragraph No.15 of the said judgment has observed that since the father is likely to have his own income he will not be considered as dependent subject to the



evidence to the contrary. In this case, there is no contra evidence adduced before the Tribunal to show that the father of the deceased Aravindan is not a dependent. I am of the view that rejecting the compensation payable to the father of the deceased is not proper. Further, the Tribunal awarded a sum of Rs.40,000/- under the head loss of love and affection to the mother of the deceased alone. Recently, the Hon'ble Apex Court in ***United India Insurance Co., Limited vs. Satinder Kaur and Ors.*** [MANU/SC/0500/2020 : (2021) 11 SCC 780] and ***Magma General Insurance Co. Ltd., vs. Nanu Ram*** [2018 ACJ 2018] has also confirmed that the claimants/dependents are entitled to get Rs.40,000/- under the head loss of consortium. The head loss of love and affection included under the head loss of consortium and the dependents are entitled to get loss of consortium. Hence, under the head loss of filial consortium, the parents of the deceased Aravindan are entitled and a sum of Rs.40,000/- each is awarded.

17. Thus, the award passed by the Tribunal under various heads in C.M.A.No.2265/2021 is hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.19,51,128/-	Rs.19,51,128/-	Confirmed
2.	Loss of Love and affection	Rs.40,000/-	---	Set aside
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of Filial Consortium	---	Rs.80,000/-	Granted
	Total Compensation (Less 20% contributory negligence)	Rs.20,21,128/- -	Rs.20,61,128/- Rs.4,12,225/-	
		Rs.20,21,128/- -	Rs.16,48,903/-	Reduced by Rs.4,12,225/- -

18. In the result,

(i) C.M.A.No.2265 of 2021 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.124 of 2017 at Rs.20,21,128/- is hereby reduced to Rs.16,48,903/- [Rupees Sixteen Lakhs Forty Eight Thousand Nine Hundred and Three only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit excluding the default period, if any. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, 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 to the credit of M.C.O.P.No.124 of 2017, on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur. On such deposit, both the claimants are permitted to withdraw the award amount now determined by this Court equally along with proportionate interest and costs, less the amount, if any, already withdrawn.

(ii) C.M.A.No.2264 of 2021 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.125 of 2017 at Rs.25,000/- (sic) is hereby reduced to Rs.20,800/- [Rupees Twenty Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit excluding the default period, if any. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, 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 to the credit of M.C.O.P.No.125 of 2017, on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with



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

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(iii) The Tribunal shall disburse the amount now determined by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The Appellant-Insurance Company is permitted to withdraw the excess amount, which was lying in the credit of M.C.O.P.No.124 of 2017 and M.C.O.P.No.125 of 2017 respectively, already deposited, if any. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petitions stands closed.

22.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

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1. The Sub Judge,
Motor Accidents Claims Tribunal,
Harur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.



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