IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.638 of 2014
and

M.P No.1 of 2014

The Branch Manager
The Oriental Insurance Co. Ltd.,
CBO 18, Swami Ram, Tirath Nagar
Jhandewallah Extension,
New Delhi-55. .. Appellant

Vs.

1.G.Kalaivani
2.Ram Kumar Kaushik
3.Pasupathi
4.The Branch Manager
The United India Insurance Company Ltd.,
Branch Office No.1170, Mettur Road
II Floor, Muthiah Complex
Erode-638 011. ..Respondents

Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 17.07.2013 made in MACTOP No.286 of 2013 on the file of the Motor Accident Claims Tribunal/ Special Sub Judge, Krishnagiri.

For Appellant	:	Mr.M.Krishnamoorthy
For Respondents	:	Mr.J.R.Bhavanatham for R1 M/s.I.Malar for R4

J U D G M E N T

The appeal on hand is filed against the impugned award dated 17.07.2013 passed in MCOP No.286 of 2013, on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Krishnagiri.

2. The Oriental Insurance Company Limited has filed this appeal questioning the negligence and quantum of compensation.

3. The accident occurred on 24.12.2007 at 3.30 hours, at Krishnagiri to Vellor Road, near Athur-Kuppam petrol bunk beyond Natrampalli. The Natrampallu Police Station registered a case in Crime No.973 of 2007 for the offences under Sections 279, 338 and 304(A) IPC. The 1st

respondent/claimant was travelling along with other family members to go to Tirupathi from Kanmangalam in a Maruthi Omni car bearing Registration No.TSK 5505. At that time, near Athurpakkam Petrol bunk, the driver of the truck bearing Registration No.HR.38/F 0781, going in front of the car suddenly stopped the truck in the middle of the National Highway Road without any signal and due to which, the car driver could not control the car and dashed on the backside of the truck. Due to the impact, one Kuttiappa @ Kuttiapppa Chetty sustained fatal injuries and died on the spot. The first respondent/claimant, due to the accident sustained the following injuries: i) 6 cm laceration over left supra optical region, ii) 2 cm laceration over left upper eyelid, iii) 4 cm laceration over lower jaw, iv) 1 cm laceration over lower hip, v) 1.5 cm laceration mucose of upper hip, vi) fracture both bones right leg and vii) multiple injuries all over the body. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.4,20,986/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. The Tribunal has erred in holding that the driver of the lorry, owned by the second respondent and insured with the appellant was equally responsible for the accident along with the driver of the Omni car owned by the 3rd respondent and insured with the 4th respondent. The driver of the Omni car insured with the 4th respondent was solely responsible for the accident as he drove the car in a rash and negligent manner with uncontrollable speed and dashed against the lorry which was kept parked on the left side of the road and as such the entire liability ought to have been fastened only on 3rd and 4th respondents. The Tribunal has not properly considered the evidence of RW1, an independent eyewitness who had deposed that the lorry was kept parked on the left side of the road near the petrol bunk which was corroborated by Ex.P1, FIR registered on the complaint lodged by a passenger in the car who had stated that the car driver had driven the car with speed and negligence and dashed the rear side of a lorry which was kept parked on the left side of the road. The compensation

granted towards pain and suffering and mental agony, transport and nutrition charges, attender charges, medical expenses, future medical expenses, partial loss of earning are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. The Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. This apart, the first respondent/claimant is working as Teacher and there is no loss of income. For the aforesaid reasons, the award is liable to be dismissed.

5. The learned counsel for the 1st respondent/claimant disputed the said contention by stating that after considering both the oral and documentary evidence, the Tribunal has rightly fixed equal negligence on the part of the drivers of both the offending vehicles and also considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and hence, the appeal is liable to be dismissed.

6. The learned counsel for the 4th respondent/Insurance Company submitted that in this case, the drivers of both the Omni Car and Truck/Lorry were not examined and no rough sketch or observation mahazar have been marked on the side of the appellant/Insurance Company to prove the mode of accident. Further, RW1 who is an independent witness examined on the side of the appellant/Insurance company deposed that he did not see the accident directly and after hearing the sound only, he had seen the accident. In such circumstances, the Tribunal has rightly fixed equal negligence on the part of the drivers of both the vehicles involved in the accident and hence, the appeal is liable to be dismissed.

7. As far as the negligence is concerned, the Tribunal had fixed 50% negligence on the part of the driver of the Omni car which belongs to the 3rd respondent and insured with the 4th respondent insurance company and had also fixed negligence at 50% on the part of the driver of the Truck which belongs to the 2nd respondent and insured with the appellant insurance company. The main contention of the learned counsel for the

appellant/insurance company is that driver of the Omni car insured with the 4th respondent was solely responsible for the accident as he drove the car in a rash and negligent manner with uncontrollable speed and dashed against the lorry which was kept parked on the left side of the road and as such the entire liability ought to have been fastened only on the 3rd and 4th respondents. In this regard, RW1, who is an independent witness, had deposed that the truck / lorry was kept parked on the left side of the road near the petrol bunk and the same was corroborated by Ex.P1, FIR registered on the complaint lodged by a passenger in the car who had stated that the omni car driver had driven the car with speed and negligence and dashed the rear side of a lorry which was kept parked on the left side of the road. Further, RW1 also admitted that only after hearing the sound, he has seen the accident and he has not seen the accident directly. In such circumstances, no other independent witness has been examined to prove that the driver of the Truck had driven the vehicle in a rash and negligent manner and he is also responsible for the accident. In the considered view of this Court, it would be appropriate to fix 60% negligence on the part of the driver of the Omni car which belongs to the 3rd respondent and 40% contributory negligence on the part of the driver of the Truck which belongs to the 2nd respondent as it is not the case of the 2nd respondent that the truck was parked in the bay reserved for parking.

8. Insofar as the assessment of disability by the Tribunal is concerned, the PW5/doctor assessed the disability at 40%. However, the Tribunal has reduced the same to 30%. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the 1st respondent/claimant at 40%.

9. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant is employed, more specifically she was working as Teacher in St. Louis Matriculation School, Thimammampatti. Therefore, there is no future loss of income. This being the factum, the

award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.2,500/- for 1% disability shall be granted considering the year of the accident is 2007. Accordingly, the disability compensation is reduced to Rs.1,00,000/- by this Court instead of Rs.2,75,400/- assessed by the Tribunal.

10. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

11. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Disability compensation	2,75,400/- (4,500/- x 12 x 30/100 x 17)	Rs.1,00,000/- (Disability at 40% x 2500)
Pain and suffering	25,000/-	25,000/-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Transport and nutrition	20,000/-	20,000/-
Attender charges	10,000/-	10,000/-
Medical Expenses Ex.P4	43,586/-	43,586/-
Future Medical Expenses	20,000/-	20,000/-
Loss of Income (4500 x 6)	27,000/-	27,000/-
Total	**4,20,986/-**	**2,45,586/-**

12. In the result,

(i) This appeal is partly allowed and the Appellant /Insurance Company and the respondents 2 to 4 are directed to deposit the modified award amount i.e, Rs.2,45,586/- in the ratio aforesaid, fixed by this Court, along with interest at the rate of 6% per annum and proportionate costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.286 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

23.03.2023

Index : Yes/No
Speaking Order/Non-Speaking Order (1/4)
uma

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge, Krishnagiri

2.The Section Officer,
V.R Section,
High Court, Madras.

A.A.NAKKIRAN, J.
uma

C.M.A.No.638 of 2014

and

MP No.1 of 2014

(1/4)

23.03.2023