IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 1541 & 1950 of 2023
and
C.M.P. No. 18932 of 2023

C.M.A. No. 1541 of 2023:

1. Salaith Sharmili

2. Minor Anamika
Rep. by Next Friend/Guardian mother Salaith Sharmili

3. Vasantha

4. Ramachandran ... Appellants

Versus

1. M/s. Cosmo Carring Pvt. Ltd,
Rep. by the Proprietor Khaja Waris Khan,
Residing at Door No. 20-5-174/C, Qazipura,
Bhadurpura, Shalibando Po,
Hyderabad Dt, Telengana State.

2. M/s. TATA AIG General Insurance Co. Ltd.,
(Having Issuing Office at 5th and 6th Floor, Imperial Towers,
H.No. 7-1-69-617A, GHMC No. 615, 616,
Hyderabad, Telangana State)
Having Branch Office – No. 225/2,
Sree Vedaths Complex, 1st Floor,
Itteri Road, Meyyanur, Salem District. ... Respondents

For Appellants : Mr. R.Navaneetha Krishnan
For Respondents : Mr. K.Vinod for R2

R1 - exparte

C.M.A. No. 1950 of 2023:

M/s. TATA AIG General Insurance Co. Ltd.,
having issuing office at 5th and 6th Floor, Imperial Towers,
H.No. 7-1-69-617/A, GHMC, No. 615, 616,
Hyderabad, Telengana State,
Having Branch Office at No. 225/2, Sree Vedaths Complex,
1st Floor, Itteri Road, Meyyanur,
Salem Dt. ... Appellant

Versus

1. Salaith Sharmili

2. Minor Anamika

3. Vasantha

4. Ramachandran

5. M/s. Cosmo Carring Pvt. Ltd,
Rep. by the Proprietor Khaja Waris Khan,
Residing at Door No. 20-5-174/C, Qazipura,
Bhadurpura, Shalibando Po,
Hyderabad Dt, Telengana State. ... Respondents

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.04.2023 made in M.C.O.P. No. 206 of 2022 on the file of the Motor Accidents Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.

For Appellant : Mr. K.Vinod

For Respondents : Mr. R.Navaneethakrishnan for R1 to R4

R5 – exparte

COMMON JUDGMENT

C.M.A. No. 1541 of 2023 has been filed by the claimants and C.M.A. No. 1950 of 2023 has been filed by the Insurance Company challenging the award passed by the Tribunal in M.C.O.P. No. 206 of 2022 dated 05.04.2023. Both the appeals arise out of the same award and hence disposed of by this common Judgment. Parties are referred to as per their rank in the claim petitions for the sake of convenience.

2.The claimants / appellants have filed the claim petition seeking compensation stating that on 31.12.2021, when the deceased was traveling as a pillion rider in a two wheeler bearing Registration No. TN 93 C 8636 in Salem to Bangalore Main Road near Mamangam Ranganathan Petrol Bunk, a container lorry bearing Registration No. AP 29 TA 9025 driven by its driver in a rash and negligent manner in the same direction hit against the two wheeler, as a result of which, the deceased sustained severe injuries all over the body and died.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent / insurance company filed a counter denying all the averments made in the claim petition stating that the claim petition is bad for non-joinder of necessary parties; that the rider of the two wheeler did not possess valid driving license and he was in inebriated state and the deceased did not wear helmet at the time of the accident; that the driver of the container lorry did not possess valid driving license which is a violation of policy condition; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petitions.

5.The claimants examined three witnesses on their side as PW1 to PW3 and marked Ex.P.1 to Ex.P.24. On the side of the second respondent / insurance company, RW1 has been examined and Ex.R.1 has been marked. Further, Ex.X1 and Ex.X2 have been marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the container lorry and directed the second respondent / insurance company as well as the first respondent to pay a compensation of Rs.18,73,000/- to the claimants. Aggrieved by the said award, these instant appeals have been filed.

7.The learned counsel for the second respondent / insurance company submitted that the manner in which the accident took place would clearly show that the the rider of the two wheeler was the tort feasor. The accident took place in a National Highway. The evidence discloses that the accident took place when the rider of the two wheeler attempted to enter into the National Highway from the service lane without taking due care and caution. The learned counsel submitted that in any case, the evidence suggests that both the rider as well as the driver of the offending vehicle are guilty of negligence. The learned counsel further submitted that in the case of composite negligence, the second respondent / Insurance Company must be permitted to initiate separate legal proceedings to the extent of negligence on the part of the rider of the two wheeler. He relied upon the Judgment of the Honourable Apex Court in ***Khenyei Vs. New India Assurance Co. Ltd. and Others*** reported in ***2015 ACJ 1441*** and the Division Bench of this Court in ***Tata AIG***

General Insurance Co. Ltd., Vs. Kaveri and others reported in ***2021 (1) TN MAC 307*** (DB).

8.Per contra, the learned counsel for the claimants submitted that though the claimants had examined the Manager of the concern where the deceased was working and marked Ex.P.8 and Ex.X.2 to prove the monthly income of the deceased, the Tribunal had fixed a very low monthly income of Rs. 12,000/- including the future prospects. Hence, the same requires enhancement. The Tribunal had also awarded a meagre compensation under the head loss of love and affection and hence, prayed for enhancement.

9. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the claimants has sought permission of this Court to dispense with the notice to them. He has made endorsement to that effect and hence notice to the first respondent is dispensed with.

10.The questions that arise for consideration in these instant appeals are;

(i) Whether the Tribunal was right in fixing entire negligence on the driver of the offending vehicle insured with the second respondent / insurance company?

(ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11.As regards the first question, it is seen that the claimants had examined PW.1 eye-witness to the occurrence and marked Ex.P.1 copy of the FIR to prove the manner of accident. The second respondent / insurance company had not examined the driver of the offending vehicle, but had examined RW1, who was the Sub-Inspector of Police, who had registered the FIR. It is seen from the evidence RW1 that the final report was filed against the rider of the two wheeler stating that the accident took place due to the rash and negligent driving of the rider of the two wheeler. However, this Court finds that the Sub-Inspector of Police had given contrary answers in the cross-examination and in the re-examination. At the same time, considering the manner in which the accident had taken place even as spoken by PW1, this Court cannot rule out the negligence on the part of the rider of the two wheeler. However, as held by the Hon'ble Apex Court and the Division Bench of this Court in the judgments cited supra, the said fact would not dis entitle the claimants from getting the compensation amount from the insurance company. But, if the insurance company is able to show that the rider of the two wheeler had contributed to the accident, it is open to them to initiate separate legal proceedings against the rider of the two wheeler.

12.As regards the second question, this Court finds that the claimants have examined PW3 Manager of the concern where the deceased was working as Electronic Database Processing Manager. They have also filed Ex.P.9 appointment letter and Ex.P.8 salary slip in which the salary is shown as Rs.19,982/-. There is no reason to disregard the above evidence as regards the monthly income. Therefore, this Court is of the view that the Tribunal erred in adopting the notional income and it would be just and reasonable to fix the income at Rs. 20,000/- per month. Since the deceased was aged 31 years at the time of the accident, the claimants are entitled to 40% future prospects and the multiplier applicable is 16. Since there are four dependants, 1/4th has to be deducted towards personal expenses. After adding the future prospects of 40%, the notional income would be Rs.28,000/- per month. Thus, the annual income of the deceased would be Rs.3,36,000/- (Rs.28,000 X 12). The accident occurred on 31.12.2021. During the financial year 2021-2022, for the income between Rs.2,50,001/- to Rs.5,00,000/-, the tax is 5%. Thus, the calculation for arriving the loss of income is as follows;

Monthly salary of the deceased	---	Rs.20,000/-
40% enhancement towards future prospects	---	Rs.8,000/-
		Rs.28,000/-
Annual income (Rs.28,000 X 12)	---	Rs.3,36,000/-

<u>Income Tax Slab for financial year 2021 – 2022:</u>

From Rs.2,50,001 to Rs.5,00,000/-	-	5%
[Rs.3,36,000/- (-) Rs.2,50,000/-]	-	Rs.86,000/-
	-	Rs.86,000 X 5%
Income Tax	-	Rs.4,300/-.

Since the income tax payable by the deceased is arrived at Rs.4,300/- which is less than Rs.12,500/-, after rebate under Section 87 A of the I.T. Act, the income tax paid by him would be 'nil'.

Thus, the compensation awarded under the head loss of income would be Rs.3,36,000 X 16 X 3/4 = Rs.40,32,000/-. The claimants 2 to 4 are entitled to Rs. 44,000/- each under the head loss of love and affection and hence, the same is enhanced to Rs. 1,32,000/-. The amount of Rs. 25,000/- awarded under the head funeral expenses is on the higher side and the same is reduced to Rs.16,500/-. Since no amount has been awarded under the head loss of estate, Rs. 16,500/- is awarded under the said head. Further, the award under the head loss of consortium is enhanced to Rs.44,000/- (Since the claimants would be entitled to 10% enhancement as per the Judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd vs Pranay Sethi and others*** reported in ***2017 (2) TN MAC 27)***. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	17,28,000	40,32,000	Enhanced
2.	Loss of love and affection	80,000	1,32,000	Enhanced
3.	Loss of consortium	40,000	44,000	Confirmed
4.	Funeral expenses	25,000	16,500	Reduced
5.	Loss of estate	---	16,500	Granted
	Total	18,73,000	42,41,000	Enhanced by Rs.23,68,000/-

13.With the above modification, C.M.A. No. 1950 of 2023 is dismissed and C.M.A. No. 1541 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.18,73,000/- is hereby enhanced to Rs.42,41,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent / insurance company and the first respondent are 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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first claimant is permitted to withdraw Rs. 15,00,000/- and the claimants 3 and 4 are permitted to withdraw Rs.6,10,500/- each along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor second claimant of Rs.15,00,000/- is directed to be deposited in the interest bearing fixed deposit in any of the Nationalized Banks till she attains majority and the first claimant is permitted to withdraw the accrued interest once in six months. The claimants are directed to pay the necessary court fee if any on the enhanced award amount. As stated earlier, it is open to the second respondent / insurance company to initiate separate recovery proceedings as against the rider of the two wheeler in the manner known to law. Consequently, the connected miscellaneous petition is closed. No costs.

01.09.2023

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Index: Yes/Nopeaking Order / Non-Speaking Order

Neutral Citation: Yes / No
To

1. The Motor Accidents Claims Tribunal, Special District Court,
   MCOP Tribunal, Salem.

SUNDER MOHAN, J

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2. The Section Officer,
   VR Section,
   Madras High Court,
   Chennai – 600 104.

C.M.A. Nos. Nos. 1541 & 1950 of 2023
and
C.M.P. No. 18932 of 2023

Dated: 01.09.2023

C.M.A.Nos.1541 and 1950 of 2023
and
C.M.P.No.18932 of 2023

SUNDER MOHAN,J

Today, the above matter is listed under the caption 'For Being Mentioned'.

2. Learned counsel on either side is present.

3. It is reported that there is an error in calculation in the Judgment and that the claimants 3 and 4 are each entitled to Rs.6,20,500/- instead of Rs.6,10,500/-. On perusal of the Judgment, it is seen that there is an error which requires modification. Therefore, this Court modifies paragraph 13 of the above Judgment and the same shall be substituted as follows:

> "13.With the above modification, C.M.A. No. 1950 of 2023 is dismissed and C.M.A. No. 1541 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.18,73,000/- is hereby enhanced to Rs.42,41,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent / insurance company and the first respondent are 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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first claimant is permitted to withdraw Rs. 15,00,000/- and the claimants 3 and 4 are permitted to withdraw **Rs.6,20,500/-** each along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor second claimant of Rs.15,00,000/- is directed to be deposited in the interest bearing fixed deposit in any of the Nationalized Banks till she attains majority and the first claimant is permitted to withdraw the accrued interest once in six months. The claimants are directed to pay the necessary court fee if any on the enhanced award amount. As stated earlier, it is open to the second respondent / insurance company to initiate separate recovery proceedings as against the rider of the two wheeler in the manner known to law. Consequently, the connected miscellaneous petition is closed. No costs."

4. Registry is directed to issue order copy after carrying out the above corrections. The other contents of the Judgment of this Court dated 01.09.2023 shall remain unaltered.

31.01.2024

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<u>Note: Issue order copy by 02.02.2024</u>

SUNDER MOHAN,J.

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C.M.A.Nos.1541 and 1950 of 2023
and
C.M.P.No.18932 of 2023

31.01.2024