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C.M.A Nos.2018 and 2158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2018 and 2158 of 2023
and C.M.P.No.20838 of 2023

1.N.Vasantha
2.D.Neelakandan

... Appellants/Claimants in C.M.A.No.2018 of 2023

The General Manager,
Third Party Claims Cell,
The Oriental Insurance Company Ltd.,
No.215, Oriental House, 2nd Floor,
Prakasam Salai, Broadway,
Chennai-600 001.

... Appellant/Respondent-2 in C.M.A.No.2158 of 2023

Vs.

1.L.Vinoth Kumar

2.The General Manager,
Third Party Claims Cell
The Oriental Insurance Company Ltd.,
No.215, Oriental House, 2nd Floor,
Prakasam Salai,
Broad way, Chennai-600001.

... Respondents/Respondents in C.M.A.No.2018 of 2023



C.M.A Nos.2018 and 2158 of 2023

1.N.Vasantha

2.D.Neelakandan

3.L.Vinoth Kumar

... Respondents/Claimants 1 & 2 and 1st Respondent
in C.M.A.No.2158 of 2023

Prayer in C.M.A.No.2018 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acct, 1988, seeking to allow this appeal by enhancing the award passed by the Tribunal in MCOP.No.3020 of 2020 dated 09.06.2023 on the file of the Chief Judge, Small Causes Court, Chennai (MACT Court).

Prayer in C.M.A.No.2158 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acct, 1988, seeking to set aside the decree and judgment passed in MCOP.No.3020 of 2020 dated 09.06.2023 on the file of the learned Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai and be pleased to dismiss the above claim and allow the C.M.A.

In C.M.A.No.2018 of 2023

For Appellants : Mr.S.Udhayakumar

For Respondents : Mr.J.Chandran for R2

In C.M.A.No.2158 of 2023

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Udayakumar



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COMMON JUDGMENT

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On 09.11.2019, a 21 years old Diksa died in a road accident involving a two wheeler that she drove and a tipper lorry bearing No.TN 14 L 0487. There are at least two versions to the way the accident has happened and more to it later. Seeking compensation for the death of her daughter, Diksa's parents approached the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai with MCOP.No.3020 of 2020. Diksa was a science graduate and was prosecuting her B.Ed course at the time of the accident. The Tribunal reckoned her income notionally at Rs.18,000/- per month, to which it added another 40% towards future prospects, applied 18 as a multiplier and reduced it by half, with the other half was set aside towards personal expenditure of the victim and arrived at the loss of dependency at Rs.27,21,600/-. After adding other conventional heads of compensation, it arrived at a total compensation of Rs.28,31,600/-. The Tribunal had assigned 50% of the negligence on the part of the victim and reduced the total compensation by 1/2.

2.First respondent in C.M.A.No.2158 of 2023, owner of the vehicle



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remained ex parte before the Tribunal. Since these appeals in

C.M.A.Nos.2018 and 2158 of 2023 have been preferred by the claimants and the insurance company questioning the quantum, this Court considers that notice to the first respondent is not necessary.

3.The insurance company of the offending vehicle namely the lorry in question has preferred the appeal in C.M.A.No.2158 of 2023 on the ground that the entire negligence must be assigned to the victim. The appellant / insurance company also contended that with no shred of documents to support, the Tribunal had fixed the notional income of the victim at Rs.18,000/- per month, which is on a higher side.

4.For the claimants part, they contend that the Tribunal was wrong in fastening 50% negligence on the victim, and they want to shift the entire responsibility on the driver of the lorry.

5.As earlier indicated, there are two versions to the accident, the first version is that, Diksha with the pillion rider was riding her two wheeler when she was fatally knocked down by a rashly and negligently driven tipper lorry. Here, in this version, both the vehicles are in motion. This



version is spoken to by P.W.2. The second version is that, the tipper lorry was stationary on the highway and the victim had ran on the rear side of the stationary lorry and died. This version is supported by Ex.P.1, the F.I.R registered on a complaint preferred by one Mahadevan, another road user who saw the accident at the relevant time. Now, the blame game is between the two sides, essentially based on the two versions of the accident as presented before the Court.

6.Ex.P1 is the earliest document and as said, it was registered at the instance of a certain Mahadevan, a socially conscientious citizen. As per the F.I.R, the complainant, on seeing the accident, rushed to the spot of accident and understood that the two wheeler was driven by the victim and whose pillion was one Vignesh. Curiously enough, both the sides did not examine the best evidence who could have supported the best versions. To elaborate, the claimants did not examine Vignesh, and the insurance company did not examine the complainant. The Tribunal, however, had relied only on the version narrated in the F.I.R to fasten 50% negligence on the victim. This Court, as was the Tribunal, finds that neither of the two versions has been proved to create a preponderating probability to ascertain negligence.



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7. Since F.I.R is the most proximate document in point of time, this Court intends to make the said document as a basis. If the theory that the lorry was stationary is considered as forming the basic premise for understanding the accident, then it has to be appreciated in the context under Section 122 and 126 of Motor Vehicles Act, 1988. As per these provisions, no automobile shall be parked on a public highway causing obstruction or inconvenience to the other road users. Therefore, merely because the vehicle was parked stationary that cannot absolve the owner of the stationary vehicle, and consequently its insurer from facing liability. Turning to the case of the victim, even though the version is not conclusive, it has to be understood in the context of the facts herein above said. When it comes to apportioning the liability, this Court considers it appropriate to fasten 65% on the lorry and 35% on the victim. After all, the accident had taken place at 11.00 hrs and it is not adequately known whether there was anything to block the vision of the victim at the relevant time. Therefore, apportioning liability in the ratio of 65% : 35% as between the driver of the lorry and the victim would be appropriate. The second part pertains to the quantum of compensation award, more particularly, the compensation awarded under the head ' loss of



dependency' where the Tribunal had fixed Rs.18,000/- per month. It is not in dispute that the victim was a science graduate and that she was prosecuting further studies in Bachelor of Education.

8.Turning to compensation part of it, the Tribunal has determined the total compensation payable at Rs.28,31,600/-. This Court does not consider that the approach of the Tribunal in fixing the notional income is faulty. Given the fact, this Court has apportioned only 35% negligence on the victim. Therefore, this sum of Rs.28,31,600/- may have to be reduced by 35%. Accordingly, the net value of the compensation payable will be Rs.18,40,540/-.

9.In conclusion, both the appeals are allowed, but the net benefits essentially goes to the claimants. In fine, the compensation payable is enhanced from **Rs.14,15,800/-** to **Rs.18,40,540/-**. This Court is informed that the insurance company concerned has deposited only Rs.25,000/- before the Tribunal. The insurance company / the appellant in C.M.A.No.2158 of 2023 / the second respondent in C.M.A.No.2018 of 2023 is now required to pay the differential sum with interest at 7.5% per annum from the date of the claim petition till the date of deposit, within a



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period of six (6) weeks from the date of receipt of a copy of this order.

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On such deposit being made, the claimants in both the appeals are permitted to withdraw the award amount falling to their share, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The claimants in both the appeals are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. No Costs. Consequently, the connected miscellaneous petition is closed.

24.11.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes), Chennai

N.SESHASAYEE, J.

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