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CMA No.2416 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2023

PRONOUNCED ON : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2416 of 2022
and CMP No.18874 of 2022

The Manager,
United India Insurance Company Ltd.,
No.63, 1st Floor, Maruthi Complex,
Mysore Main Road, Bangalore,
Karnataka – 560 074.

.. Appellant/2nd respondent

Vs.

1. Bhuvaneswari
2. Minor Hema Sri
3. Minor Harini .S
4. Ellammal
5. R.Ravikumar

.. Respondents/petitioners
.. Respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.03.2022 passed in MCOP No.862 of 2020 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.S.P.Yuvaraj (for R1 to R4)



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JUDGMENT

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Insurance Company has preferred this Civil Miscellaneous Appeal, on the point of negligence and quantum.

2. The claims tribunal has awarded compensation of Rs.55,04,500/.

The appellant-Insurance company has admitted the liability to the tune of Rs.33,02,700/- and disputed the liability to the extent of Rs.22,01,800/- and with interest it comes to Rs.24,32,084/-. Hence, the matter was posted before this Court, after satisfying the pecuniary jurisdiction.

3. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

4. The factum of the accident is admitted. However, the manner of the accident and rash and negligence on the part of the driver of the 1st respondent vehicle is disputed. The quantum of compensation award by the claims tribunal, is also challenged.

5. Heard the learned counsel appearing for the appellant-Insurance



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Company and the learned counsel appearing for the respondents 1 to 4/claim petitioners.

6. The 1st petitioner, both in the claim petition as well as, as PW1 has categorically stated that her husband was driving the Hyundai i10 car in a moderate speed on the left hand side of the road and the offending vehicle Hyundai Santro came in a rash and negligent manner and dashed against the Hyundai i10 car, in which the 1st petitioner's husband died and hence, the MCOP. She relied upon Ex.P1 to P4.

7. As stated supra, in the counter filed by the insurance company of the Hyundai Santro Car (offending vehicle), denied the manner of the accident.

8. On the side of the claim petitioners, 1st petitioner-Bhuvaneshwari was examined as PW1 and Ex.P1 to Ex.P14, were marked. PW2, is the eyewitness, who travelled along with the deceased at the time of the accident. On behalf of the claim petitioners, Inspector, Income Tax Ward-I, Hosur, was examined as PW3 and marked Ex.P15 to Ex.P19. On the side of



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the 2nd respondent-Insurance Company, Special Sub Inspector of Gurabarapalli Police Station was examined as RW1 and Ex.R1 to Ex.R5, were marked.

9. On perusal of the oral and documentary evidence, this Court finds that the vehicles involved in the accident are Hyundai Santro Car bearing Regn.No.KA-05-MC-1125 and Hyundai Car bearing Regn.No.KA-51-MC-6496 and the death of one Shanmugam, S/o.Murugan in the accident are all admitted by the 1st and 2nd respondents.

10. The 1st petitioner examined herself as PW1 and marked Ex.P1 to Ex.P14. The insurance company has filed the counter denying the alleged negligence on the part of the driver of the 1st respondent vehicle viz., Hyundai Santro car. It remains to be stated that one of the drivers involved in the car is the deceased and another car driver is the driver of the 1st respondent car and he was not examined. The co-passenger with the deceased was examined as PW2. Ex.P1-FIR, Ex.P2-Postmortem Certificate, Ex.P3-Insurance Policy of 1st respondent's vehicle and Ex.P4-Motor Vehicle Inspector's report of 1st respondent's vehicle, goes to show that the driver of



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the 1st respondent was rash and negligent and the accident has taken place only due to his negligence.

11. Though on Court summons, the appellant-Insurance Company (2nd respondent before the tribunal), examined RW1-Special Sub Inspector of Police, in view of the answer elicited in the cross examination, this Court finds that

“On a reading of the evidence of RW1, coupled with Ex.R1 to Ex.R5 and from the fair admission is rendered by the RW1 during the course of cross examination, it is proved that the occurrence not had been happened in the middle of the road and the occurrence had been taken place on the extreme left side of the road that too it is ear marked in the Rough Sketch. And from the Final Report also it is admitted by the RW1, that the occurrence had been taken place due to the rash and negligent driving of the driver of the 1st respondent alone and there is no fault on the part of the deceased.”

12. Hence, in view of the availability of the positive evidence of PW2-occurrence witness, along with the documentary evidence of Ex.P1-FIR and Ex.P4-MVI report of 1st respondent's vehicle, coupled with Ex.R2-Rough Sketch and the answer elicited during the cross examination of RW2, the claims tribunal has rightly come to the conclusion that the deceased was



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driving his Hyundai i10 car on the left hand side of the road, while the driver of the offending car has crossed over the middle path and dashed against him, as duly corroborated by Ex.R2-Rough Sketch, coupled with oral evidence of occurrence witness PW2 and accordingly, fixed the liability on the part of the owner of the Hyundai Santro Car, which is insured with the appellant-Insurance company.

13. Hence, I find that on a combined reading of PW2, RW1's Cross examination and Ex.P1, Ex.P4, Ex.R1 and Ex.R2, the finding rendered by the tribunal is just and fair and does not require any interference at this appellate stage, since they does not suffer from any irregularity or illegality. Accordingly, the said finding of the trial Court that the owner of the offending car and the appellant-Insurance company are liable to pay the compensation, is hereby confirmed.

14. On the point of quantum of compensation, the learned counsel for the appellant-Insurance company could contend that 5% of income tax was not deducted.



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15. On perusal of the judgment of the claims tribunal, at paragraph No.9-9 and 9-10, this Court finds that

“(9-9).....as per Ex.P6 to Ex.P8/Income Tax Returns, the Annual Income of the deceased is Rs.3,67,961/-, Rs.3,76,750/- and Rs.3,95,855/- for the years of 2016-2017, 2018-2019 and 2019-2020 respectively. From Ex.P6 to Ex.P8, average of these three years is to be taken Rs.3,67,961/- + Rs.3,76,750/- + Rs.3,95,855/- = Rs.11,40,566/-. From the total amount of Rs.11,40,566/-, it is to be divided by 3 and Rs.3,80,189/-, is fixed as yearly income of the deceased.

(9-10)....The deceased had paid the Income Tax amount as per Ex.P6, Rs.4898/- and as per Ex.P7, Rs.1708/- and as per Ex.P8, Rs.200/-. Now the total amount does come into Rs.4898/- + Rs.1708/- + Rs.200/- = Rs.6,806/-. From the total Annual Gross Income – the total income Tax amount has paid is to be deducted. It comes Rs.11,40,566 – 6806 = Rs.11,33,760/-. Now from the amount of Rs.11,33,760/- is to be divided by 3 and it comes as Rs.11,33,760 / 3 = Rs.3,77,920/-. Now the said amount is fixed as average yearly income of the deceased. Now for fixing the future prospects and to arrive monthly income, the average yearly income amount as Rs.3,77,920 is to be divided by 12. Now it comes as Rs.3,77,920 / 12 = Rs.31,493/-. Hence the monthly income of the deceased is fixed as Rs.31,493/-” [emphasis supplied]

16. Hence, I find that even before arriving at the monthly notional income of the deceased, proper deduction of income tax, has been clearly



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spelt out by the learned Tribunal and hence, I have no hesitation to negate the contention raised by the learned counsel for the appellant-Insurance Company. Accordingly, the quantum of compensation awarded by the claims tribunal, is confirmed.

17. Perusal of the records shows that while granting interim stay, this Court vide order dated 09.11.2022 in CMP No.18874 of 2022 in CMA No.2416 of 2022, has directed the appellant-Insurance company to deposit 50% of the award amount, along with interest and costs.

18. In view of the above, it is ordered as follows:

- (i) The judgment and decree dated 05.03.2022, made in MCOP No.862 of 2020 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri, is confirmed.
- (ii) The appellant-Insurance Company is directed to deposit the balance award amount with proportionate interest and costs to the credit of MCOP No.862 of 2020 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.



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(iii) On such deposit, the claim petitioners/respondents 1 to 4, are permitted to withdraw their share in the award amount, as apportioned by the tribunal, less the amount already withdrawn, if any, on making necessary applications.

19. With the above directions, the Civil Miscellaneous Appeal stands dismissed. No Costs. The stay granted in CMP No.18874 of 2022, stands vacated.

10.04.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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To

The Special District Court,
Motor Accident Claims Tribunal, Krishnagiri.

Pre-delivery Judgment in
CMA No.2416 of 2022

10.04.2023