THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.Nos.1921 & 2469 of 2017
and
C.M.P.No.10311 of 2017

The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
No.140, 2 and 3rd Floor,
Nungampakkam High Road,
Nungampakkam,
Chennai. ... Appellant/4th Respondent in C.M.A.No.1921 of 2017 & 5th respondent in C.M.A.No.2469 of 2017

M/s.Iffco Tokio General Insurance Company Limited,
Rept. By its Duly Constituted Attorney (S),
Customer Service Centre,
KSCMP Building, 3rd Floor, 3rd Block,
No.8, Cunnigham Road,
Bangalore – 560 052. ... Appellant/2nd respondent in C.M.A.No.2469 of 2017 & 4th respondent in C.M.A.No.1921 of 2017

Vs.

1.V.R.Basheer

2.Mahaboob Jhan ... Respondents 1 & 2 /Petitioners in both CMAs

3.Anbalagan ... 3rd respondent/ 1st respondent in both CMAs

4.K.S.Kanimozhi ... 5th respondent/3rd respondent in C.M.A.No.1921 of 2017 & 4th respondent in C.M.A.No.2469 of 2017

<u>Prayer in both C.M.A.s :</u> Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree passed in M.C.O.P.No.816 of 2014 dated 18.01.2017 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant in C.M.A.No.1921 of 2017 & For R5 in C.M.A.No.2469 of 2017	:	Mr.R.V.Sivaraj
For Appellant in C.M.A.No.2469 of 2017 & For R4 in C.M.A.No.1921 of 2017	:	Mr.E.Rajadurai for M/s.M.B.Gopalan Associates
For R1 & R2 in C.M.A.No.1921 of 2017	:	Died
For R1 in C.M.A.No.2469 of 2017	:	Died (Legal heir already brought on record)
For R2 in C.M.A.No.1921 of 2017	:	Died
For R3 in both CMAs	:	No appearance
For R4 in C.M.A.No.2469 of 2017	:	Not ready in notice
For R5 in C.M.A.No.1921 of 2017	:	Not ready in notice

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COMMON JUDGEMENT

Aggrieved by the award fixing 30% of the liability on the appellant, the appellant/ICICI Lombard General Insurance Company Ltd., has filed the appeal in C.M.A.No.1921 of 2017 and on the ground that quantum of compensation awarded by the Tribunal is excessive, the appellant/M/s.Iffco Tokio General Insurance Company Limited has filed the appeal in C.M.A.No.2469 of 2017.

2. The brief facts necessary to dispose of the above appeals are as follows :-

(i) The claimants are the parents of the deceased V.B.Farooq. On 12.11.2007, when the deceased after procuring onion and other vegetables at Bangalore market, while transporting the same through the Mini Lorry bearing Reg.No.TN 23 AD 6894 belonging to the first respondent which was driven by the the first respondent, when the lorry while nearing Putthukoil, at Natrampalli to Vaniyambady road, at about 12.00 hrs of midnight, the first respondent/Anbalagan drove the lorry in a rash and negligent manner and dashed against the stationed lorry bearing

Reg.No.TN 24 W 5401, which was parked opposite to Puthukoil without any parking signal, as a result of which, the deceased sustained fatal injuries and died. The Mini Lorry was insured with the second respondent, who is the appellant in C.M.A.No.2469 of 2017 and the stationed lorry was insured with the fourth respondent, who is the appellant in C.M.A.No.1921 of 2017. Thereafter, the claimants had filed claim petition claiming a total compensation of a sum of Rs.20,00,000/- under various heads.

3. Before the Tribunal, the petitioners examined two witnesses viz., P.W.1 and P.W.2 and marked nine documents viz., Ex.P1 to Ex.P.9. On the side of the respondents, they examined one witness viz., R.W.1 and marked two documents viz., Ex.R.1 and Ex.R.2 and third party document Ex.X1 was also marked before the Tribunal. After adjudication, the Tribunal awarded a sum of Rs.13,63,000/- as compensation by fixing 70% liability on the second respondent and 30% liability on the fourth respondent.

4. The learned counsel appearing for the appellant in C.M.A.No.2469 of 2017 submitted that, the driver of the stationed lorry instead of parking the vehicle in the parking bay, had parked the lorry in the middle of the road without any indication, thereby the accident had happened. Hence, the liability of 70% fixed as against this appellant is not sustainable. Further, he submitted that the accident is of the year 2007 and as per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** the notional income of the vegetable vendor has to be fixed at Rs.6,500/-. However, without any documents, the Tribunal has fixed a sum of Rs.8,000/-, which is also not sustainable. It is further submitted that, though the Tribunal has rightly adopted the multiplier of 18, however, the Tribunal had added 50% towards future prospects, which was not in consonance with the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680***. Accordingly, he prays for appropriate orders.

5. The learned counsel appearing for the appellant in C.M.A.No.1921 of 2017 submitted that, due to rash and negligent driving of the mini lorry's driver, the accident was happened. He also submitted that there was no fault on the driver of the stationed lorry who parked the lorry by following all traffic rules. He further submitted that, when P.W.2 deposed that due to his rash and negligent driving, the accident had happened, the Tribunal ought to have fixed the entire negligence on the appellant's vehicle in C.M.A.No.2969 of 2017, however, the Tribunal has fixed 30% liability on this appellant, which is not sustainable. Accordingly, he prays for appropriate orders.

6. Heard the learned counsel appearing for the appellants in both the appeals and perused the materials available on record.

7. Admittedly, the deceased travelled in the mini lorry insured with the appellant in C.M.A.No.2469 of 2017. The driver of the mini lorry driven the same in a rash and negligent manner, which is evident from the fact that he dashed against the stationed lorry, which was insured with the appellant in C.M.A.No.2469 of 2017. Though it is claimed that

the stationed lorry was parked in the middle of the road without any parking signal, however, it is the duty of the driver of the mini lorry to drive the vehicle in a careful manner. However, he dashed against the stationed lorry, thereby the Tribunal had fixed 70% liability on the mini lorry, which is *per se* sustainable. Equally, the Tribunal had fixed 30% liability on the stationed vehicle, as it was parked without proper parking signal in the road in the thick of the night, which was also a factor in the happening of the accident. Hence, the liability fixed by the Tribunal is based on proper reasoning and does not required to be interfered with.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, as per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.8,000/- as notional income without any valid documents, which is against the aforesaid decision. Hence, by applying the ratio laid down by

the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.6,500/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.9,100/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.4,550/- per month and the deceased being aged about 22 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.4,550/- * 12 * 18 = Rs.9,82,800/-, which is worked out as follows :-

Loss of Income	***Amount in Rs.***
Notional income (Per month)	6,500
Add: Future Prospects (Rs.6,500 x 40%) (Per month)	2,600
	9,100
Less: Personal expenses (50%) (Rs.9,100/- x 50%) (Per month)	4,550
	4,550
Notional income (per annum) (Rs.9,450/- x 12)	54,600
Multiplier	18
Total	**9,82,800**

9. The claimants are entitled to a sum of Rs.40,000/- each under the head of loss of love and affection. Therefore, the amount under this head is enhanced to a sum of Rs.80,000/-. Further, the amount of compensation awarded under the head of funeral expenses is meagre, which is hereby enhanced to a sum of Rs.15,000/- and since no amount has been awarded under the head of loss of estate, a sum of Rs.15,000/- is granted under this head.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
Loss of Income	**12,96,000/-**	**9,82,800/- (reduced)**
Loss of Consortium	-	-
Loss of love and affection	**50,000/-**	**80,000/- (enhanced)**
Loss of Estate	**Nil**	**15,000/-**
Medical Expenses	Nil	Nil
Funeral Expenses	**10,000/-**	**15,000/- (enhanced)**
Transport expenses	5,000/-	5,000/-
Damages to cloths and articles	2,000/-	2,000/-
Total	**13,63,000/-**	**10,99,800/-**

11. The appellant in C.M.A.No.2469 of 2017 is directed to deposit 70% of Rs.10,99,800/- and the appellant in C.M.A.No.1921 of 2017 is directed to deposit 30% of Rs.10,99,800/- to the credit of M.C.O.P.No.816 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. It is seen that the first claimant died and the second respondent is the legal heir of the first claimant. Therefore, the share apportioned to the first claimant would enure on the second claimant. On such deposit being made, the Tribunal is directed transfer the award amount along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, directly to the bank account of the second claimant through RTGS within a period of two weeks thereafter.

12. In the result, the appeal in C.M.A.No.1921 of 2017 is dismissed and the appeal in C.M.A.No.2469 of 2017 is partly allowed.

There shall be no order as to costs in the present appeals. Consequently, the connected miscellaneous petition is closed.

08.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

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

M.DHANDAPANI, J.,

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C.M.A.Nos.1921 & 2469 of 2017

08.11.2023