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CMA Nos.2276 of 2017
and 63 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA Nos.2276 of 2017 and 63 of 2018
and CMP Nos.935 & 14717 of 2018

CMA.No.2276 of 2017

- 1.Chellammal
- 2.Mahalakshmi(Minor)
- 3.Sakthivel (Minor)
- 4.Santhiya (Minor)
- 5.Muruganandham (Minor)
- (Appellants 2 to 5 are minors and
rep. by their mother and natural
guardian, the first appellant Chellammal)
- 6.Ramasamy
- 7.Lakshmi

... Appellants

Versus

1. Sathya Saai Matriculation School
at NH 45, Trichy to Chennai Highway
Passar PO, Thittakkudi Taluk
Cuddalore District-606 304
Rep. by its Chairman
(1st respondent remained exparte before
the Tribunal)
- 2.Royal Sundaram Alliance Insurance
Company Ltd.,
No.8/H1, Mangalam Buildings
4 Roads, Salem-636 009
Rep. by its Manager.

... Respondents



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M/s.Royal Sundaram Alliance Insurance
Company Ltd.,
Rep. by its Branch Manager
No.8/H1, Mangalam Buildings
4 Roads, Salem-636 009

... Appellant

Vs

1.Chellammal
2.Minor Mahalakshmi
3.Minor Sakthivel
4.Minor Santhiya
5.Minor Muruganandham
(Minors rep. by their natural guardian
and N.R. Mother Chellammal)
6.Ramasami
7.Lakshmi
8.Sathya Saai Matriculation School
Rep. By its Chairman
NH 45, Trichy to Chennai High Way
Passar PO,
Thittakudi District-606 304.

... Respondents

COMMON PRAYER :

These two Civil Miscellaneous

Appeals filed against the award and decree dated 14.03.2017, made in
M.C.O.P.No.106 of 2014 on the file of the Motor Accident Claims
Tribunal/Principal District Judge), Perambalur.

For Appellants/Claimants : Ms.Priyavarshini
in CMA 2276 of 2017 For Mr.S.Kamadevan

For Appellant/Insurance
Company in CMA 63/2018 : Mr.M.Krishnamoorthy



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COMMON JUDGMENT

The claimants have preferred CMA No.2276 of 2019 and the Insurance Company has preferred CMA No.63 of 2018, against the award and decree, dated 14.03.2017, passed by the Motor Accident Claims Tribunal/ Principal District Judge, Perambalur in MCOP No.106 of 2014.

2. On 17.10.2013 at about 5.00 p.m, at Thittakudi to Thozhudur Main Road, near Kannammal Kalyanamandapam of Idaiseruvai Village, while the deceased Rajkumar was proceeding in his Hero Splendor motor cycle bearing Registration No.TN 46 P 4044 from east to west by overtaking a Government bus which was going ahead of him, at that time, a bus bearing Registration No.TN 31 AL 7187 which belongs to the 1st respondent came from opposite direction viz., west to east rashly and negligently and dashed against the deceased Rajkumar and in the impact, he sustained fatal injuries and died on the spot.

3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred due to the rash



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and negligent driving of both the deceased and the driver of the 1st respondent bus and hence, directed the 2nd respondent/Insurance Company to pay 50% of the compensation amount awarded by the Tribunal i.e. a sum of Rs.6,80,600/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimants.

4. Challenging the contributory negligence and being not satisfied with the quantum of the award, the claimants filed CMA No.2276 of 2017.

5. Questioning the negligence, the Insurance Company has come forward with CMA.No.63 of 2018.

6. The learned counsel for the appellants/claimants in CMA No.2276 of 2017 contended that though the Tribunal has awarded a total compensation of Rs.13,61,200/-, it has erred in fixing the contributory negligence against the deceased and thereby restricting the benefit of award only to an extent of 50%. Admittedly, the driver of the first



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respondent vehicle hit against the motorcycle which was driven by the deceased, the reduction of the award amount applying the principle of contributory negligence to an extent of 50% against the deceased is unjustifiable. The Tribunal has failed to appreciate the evidence of PW2 who is an eye witness and the FIR which was marked as Ex.P1 wherein it is clearly stated that the accident had occurred only due to rash and negligent driving of the driver of the 1st respondent bus. The driver of the 1st respondent bus was not examined on the side of the respondents to disprove the evidence of PW1 and the contention made in the FIR. That being the case, the conclusion arrived by the Tribunal, the fixation of contributory negligence and denying 50% of the compensation is unacceptable and hence, she prays to enhance the award amount.

7. The learned counsel for the appellant/Insurance company in 63 of 2018 contended that the Tribunal has erred in fixing 50% equal negligence on the driver of the 1st respondent school bus and the deceased. The deceased was solely responsible for the accident as he drove the motorcycle in a rash and negligent manner without wearing helmet; overtook a Government bus; went to the wrong side of the road



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and hit the bus insured with the appellant which was coming from the opposite side keeping its left side. The Tribunal did not consider the fact that the deceased was shown as an accused in the FIR and after investigation, the police authorities came to a conclusion that the deceased was responsible for the accident and closed the case as charge abated. The Tribunal ought to have fixed the entire negligence on the deceased by applying the principles of res ipso-loquitur and hence, the award is liable to be dismissed.

8. Heard Ms. K.Priyavarshini appearing on behalf of Mr.S.Kamadevan, the learned counsel for the appellants/claimants in CMA No.2276 of 2017 and Mr.M.Krishnamoorthy, the learned counsel appearing for the appellant/Insurance Company in CMA No.63 of 2018.

9. As far as the negligence aspect is concerned, the learned counsel for the appellants/claimants in CMA No.2276 of 2018 contended that though the Tribunal has awarded a total compensation of Rs.13,61,200/-, it has erred in fixing the contributory negligence against the deceased and thereby restricting the benefit of award only to an extent



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of 50%. Further, the learned counsel contended that the Tribunal has failed to appreciate the evidence of PW2 who is an eye witness and the FIR which was marked as Ex.P1 wherein it is clearly stated that the accident had occurred only due to rash and negligent driving of the driver of the 1st respondent bus. Further, the driver of the 1st respondent bus was not examined on the side of the respondents to disprove the evidence of PW1 and the contention made in the FIR. On the other hand, the learned counsel for the appellant/Insurance Company in CMA No.63 of 2018 contended that the deceased was solely responsible for the accident as he had driven the motorcycle in a rash and negligent manner without wearing helmet; overtook a Government bus; went to the wrong side of the road and hit the bus insured with the appellant which was coming from the opposite side keeping its left side. Further, the Tribunal did not consider the fact that the deceased was shown as an accused in the FIR and after investigation, the police authorities came to a conclusion that the deceased was responsible for the accident and closed the case as charge abated. As seen from the records, the Tribunal has considered the contentions made in the FIR and as well as the oral evidence and arrived a conclusion that the accident had occurred due to the rash and negligent



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driving of both the deceased and the driver of the school bus, who is the 1st respondent in MCOP No.106 of 2014 and the deceased was also responsible for the accident and had rightly fixed 50% equal negligence on the part of both the appellant/insurance company and the deceased. Therefore, the Tribunal has directed the 2nd respondent/Insurance Company to pay 50% of the compensation amount i.e. a sum of Rs.6,80,600/- out of the entire compensation of Rs.13,61,200/-. Thus, the award passed by the Tribunal does not warrant any interference by this Court.

10. In the result,

(i) The Insurance Company is directed to deposit the award amount i.e, Rs.6,80,600/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.106 of 2014 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 respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the claimants 1, 6



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and 7 along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) Insofar as the minor claimants 2 to 5 are concerned, the Tribunal is directed to deposit the share of their award amount bearing fixed deposit in any one of the Nationalised Bank till they attain majority and the first claimant/ mother of the minors is permitted to withdraw the interest accrued once in three months for the welfare of the minors. No costs.

11. Accordingly, the award passed by the Tribunal in MCOP No.106 of 2014 dated 14.03.2017 on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Perambalur stands confirmed and these two Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order/Non-Speaking order: Yes/No
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A.A.NAKKIRAN, J.

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To

1.The Motor Accidents Claims Tribunal
Principal District Judge, Perambalur.

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

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and CMP Nos.935 & 14717 of 2018

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