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C.M.A.Nos.2427 & 2428 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2427 & 2428 of 2017
and C.M.P.Nos.13095 & 13096 of 2017

C.M.A.No.2427 of 2017

M/s.New India Assurance Co.Ltd.,
No.45, Moore Street,
Chennai-600 001.

... Appellant/Respondent-II

Vs

D.Mani (Since Deceased)

1.M.Anjalai

... Respondent-I/Petitioner-I

2.M.Dharani (Minor)

... Respondent-II/Petitioner-II

3.M.Nalini (Minor)

... Respondent-III/Petitioner-III

4.M.Karthi (Minor)

(Respondents 2 to 4 minors rep by their mother
and N.G.M.Anjalai)

... Respondent-IV/Petitioner-IV

5.R.Sarathammal

... Respondent-V/Respondent-I



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C.M.A.No.2428 of 2017

M/s.New India Assurance Co.Ltd.,
No.45, Moore Street,
Chennai-600 001.

... Appellant/Respondent-II

Vs.

K.Annadurai (Since Deceased)

1.A.Uma

... Respondent-I/Petitioner-I

2.A.Ramjithkumar

... Respondent-II/Petitioner-II

3.V.Vaijayanthi

... Respondent-III/Petitioner-II

4.K.Kuppammal

... Respondent-IV/Petitioner-II

5.R.Sarathammal

... Respondent-V/Petitioner-II

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and decree passed in M.C.O.P.Nos.2390 & 2391 of 2007 on 28.09.2012 on the file of the Learned Motor Accident Claims Tribunal (III-Judge) Small Causes Court at Chennai-District.

For Appellant
(in both CMAs) ... Mr.J.Chandran

For Respondents ... Mr.G.Balaji for R1 to R4
(in both CMAs)
... Notice dispensed with for R5 [Ex-parte]



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COMMON JUDGEMENT

Both the appeals arise out of a single accident.

2. Challenging the common judgment dated 2.09.2012 passed by the Motor Accident Claims Tribunal, Small Causes Court, Chennai in M.C.O.P.Nos.2390 & 2391 of 2007, the Appellant-Insurance Company has filed the present appeal questioning the liability as well as the quantum of compensation fixed by the Tribunal.

3. On 07.04.2007, when the deceased in M.C.O.P.No.2390 of 2017 namely D.Mani was riding TVS-50, in which the deceased in M.C.O.P.No.2391 of 2007 namely K.Annadurai was travelling as a pillion rider, the 5th respondent's Van bearing Reg.No.TN-25-X-3810 which came in a rash and negligent manner dashed against the TVS-50, thereby both the rider and the pillion rider of the Two Wheeler sustained fatal injuries. Aggrieved by the loss incurred in view of the said accident, the claimants have filed the



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respective claim petitions before the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.Nos.2390 & 2391 of 2007 claiming compensation towards the death of the deceased persons. After adjudication, the Tribunal awarded a sum of Rs.7,78,000/- & Rs.7,93,000/- in respective claim petitions under various heads. Aggrieved by the said award, the Appellant-Insurance Company has filed the present Appeals.

4. Learned counsel appearing for the Appellant/Insurance Company denied their liability to indemnify the claimants stating that though it is claimed that the deceased in respective claim petitions were died due to the said accident, however, the claimants have not adduced the postmortem so as to prove that the death of the deceased was purely due to the accidental injuries sustained by them. In the absence of any evidence, the Tribunal had had erroneously fastened the liability jointly and severally against the appellant/Insurance Company and the 5th respondent/owner of the van which is not sustainable. He further submitted that the compensation awarded by the Tribunal is highly excessive and so also the compensation under other heads.



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Accordingly, he prayed for allowing these Appeals.

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5. Learned counsel appearing for the claimants in both the Appeals submitted that insofar as the claim of the appellant with regard to the death of the deceased persons, the Tribunal had examined six witnesses viz., P.W.1 to P.W.6 of which two of the witnesses were the doctors viz., P.W.3 & P.W.6 who have stated that the injuries sustained in view of the said accident was the direct cause for the death of the deceased. However, no contra evidence has been placed by the Insurance Company in order to disprove the statements of P.W.3 & P.W.6. In the absence of any contra evidence, the Tribunal had rightly fastened the liability on the Insurance Company and therefore, the said findings does not require any interference. Further, the learned counsel relied upon the decision of this Court in C.M.A.No.3510 of 2013 dated 26.02.2014 in case of *New India Assurance Co.Ltd Vs. R.Vijay Kumar (since died) & Others* reported in *2014 (2) TN MAC 685*.



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6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant-Insurance Company as well as the claimants and perused the materials available on record.

7. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company had challenged the liability on the ground that the death of the deceased in respective claim petitions was not due to the accidental injuries suffered by them as the claimants have not adduced the postmortem report before the Tribunal to prove their claim with regard to the death of the deceased persons. However, the Tribunal had passed an award based on the evidence of P.W.1 & P.W.6, of which, two of the witnesses viz., P.W.3 & P.W.6 are the doctors who had categorically deposed that the injuries suffered by the deceased was the direct cause for their death. When such deposition had been given by P.W.3 & P.W.6, merely because the Postmortem report was not adduced before the Tribunal cannot be the ground for the appellant to deny



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their liability and no other material, contra to the same has been placed by the appellant to substantiate their case that the death of deceased in respective claim petitions was not due to the injuries sustained in the said accident. In the absence of any contra evidence, the Tribunal has rightly fixed the liability as against the insurance company which cannot be interefered with.

8. The issue involved in these appeals stands squarely attracted to the the decision of this Court in case of ***New India Assurance Co.Ltd Vs. R.Vijay Kumar (since died) & Others*** reported in ***2014 (2) TN MAC 685*** in C.M.A.No.3510 of 2013 dated 26.02.2014. The relevant portion of the order is extracted hereunder:-

*“ 7.With regard to the cause of death, the Doctor, P.W.4 has given evidence to the effect that the death might be due to the injuries sustained by the deceased and has issued his opinion, Ex.P-15. Of course, a Division Bench of the Honourable Apex Court has held in **Mayur Panabhai Shah v. State of Gujarat**, AIR 1983 SC 66, that there cannot be any presumption that the Doctor is always sa witness of truth. But, such a finding came to be rendered in a Criminal Appeal filed by an accused challenging the dismissal of the Appeal by the learned Single Judge of High Court. The Honourable Apex Court*



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observed that the evidence of the Doctor has to be appreciated like that of any other witness. Such an observation went in favour of the Accused therein. The same principle cannot be adopted in the case on hand as against the claimants to avoid the liability in the beneficial legislation.”

9. On the question of compensation, this Court had perused the impugned award whereby, considering the age and income of the deceased in respective claim petitions, the Tribunal had fixed the notional income of the deceased at Rs.3,375/- in both the petitions and has awarded a sum of Rs.6,48,000/- and Rs.6,07,500/- respectively by adopting multiplier method which cannot be said to be excessive.

10. Further, the Tribunal has awarded a sum of Rs.10,000/- towards Funeral Expenses; Rs.25,000/- towards Loss of Consortium; Rs.75,000/- towards Love and affection; Rs.10,000/- towards Transport to Hospital and Rs.10,000/- towards Extra Nourishment. This Court finds that the compensation awarded under above heads is just and reasonable and does not require any interference.



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11. Accordingly, the Civil Miscellaneous Appeals are dismissed and the common judgment dated 28.09.2012 in M.C.O.P.Nos.2390 & 2391 of 2007 stands confirmed. There shall be no orders as to costs in these appeals. Consequently, connected miscellaneous appeals are closed.

17.10.2023

Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal,
(III-Judge) Small Causes Court,
Chennai.

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



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M.DHANDAPANI, J

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