



C.M.A.No.4402 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4402 of 2019

And

C.M.P.No.25031 of 2019

Bajaj Allianz General Insurance Co. Ltd.,
Represented by its Authorized Signatory
No.25/26, Prince Tower, 4th Floor,
College Road, Nungambakkam, Chennai
Chennai.

... Appellant

Vs.

1.R.Susila
2.Minor R.Barani
3.Minor R.Vinoth
(RR-2 & 3 rep. by their mother
& natural guardian - R-1)

4.Karthik

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.04.2017 made in M.C.O.P.No.308 of 2012 on the file of the Motor Accidents Claims Tribunal, Vellore, Vellore District.

For Appellant : Mr.T.K.Prem Kumar
For Respondents : Mr.S.P.Yuvaraj for R1 to R3
R4 – No Representation



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JUDGMENT

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The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 10.04.2017 passed by the Motor Accidents Claims Tribunal Vellore, Vellore District, in M.C.O.P.No.308 of 2012.

2.The brief facts of the case is that on 23.04.2012, at about 9.45a.m., the deceased Ravi was riding Hero Honda bearing Registration No.TN-23-AX-1391 along with his friend Natarajan as pillion rider in Thiruthani to Chittoor Road near Samathuvapuram Bus Stand. At that time, the car bearing Registration No.KA-02-MD-6841 owned by the fourth respondent driven from Thiruthani to R.K.Pettai direction came in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased lost his life.

3.Thereafter, the dependants of the deceased Ravi/ respondents 1 to 3 filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.37 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.12,90,000/- as



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compensation and fixed 50% contributory negligence on the part of the deceased Ravi and directed that the claimants are entitled to compensation of Rs.6,45,000/- with interest at the rate of 7.5% p.a. from the date of filing of the petition (17.08.2012) till the date of deposit and costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant had filed this appeal questioning the 50% negligence fixed on the driver of the vehicle owned by the fourth respondent and insured with the appellant. The learned counsel further submitted that R.W.2 in his evidence clearly stated that the deceased drove the vehicle in a rash and negligent manner and tried to overtake a bus which was stopped at the bus stop and hit against the car. Hence, the Tribunal fixing 50% negligence on the part of the driver of the vehicle owned by the fourth respondent is not sustainable one. Further, without any basis, the Tribunal awarded a sum of Rs.10,08,000/- for loss of income which is onerous and the amount awarded under the other heads are also excessive.



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5.Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants submitted that P.W.2 who travelled along with the deceased as a pillion rider clearly deposed that the vehicle insured with the appellant came from opposite direction and dashed against the motorcycle, due to which, the accident happened, however, the Tribunal fixed 50% contributory negligence on the part of the deceased Ravi.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

7.The respondents 1 to 3 in their claim petition claim that on 23.04.2012, at about 9.45 a.m., the deceased Ravi was riding the motorcycle along with his friend Natarajan as pillion rider in Thiruthani to Chittoor Road near Samathuvapuram Bus Stand. At that time, the car owned by the fourth respondent driven from Thiruthani to R.K.Pettai direction came in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased lost his life.

8.P.W.2 who travelled along with the deceased as a pillion rider



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clearly deposed that the vehicle insured with the appellant came from opposite direction and dashed against the motorcycle, due to which, the accident happened, however, the Tribunal fixed 50% contributory negligence on the part of the deceased Ravi. The claimants have not filed any appeal challenging the 50% contributory negligence fixed on the part of the deceased.

9.Insofar as the fixation of contributory negligence is concerned, though the appellant examined R.W.2 to prove the negligence aspect, on behalf of the claimants P.W.2 who travelled along with the deceased as a pillion rider was examined and he has clearly deposed that the vehicle insured with the appellant came from opposite direction and dashed against the motorcycle, due to which, the accident happened. In the absence of any evidence contrary to the same and also the other materials do not in any way support the case of the appellant on the aspect of contributory negligence, the fixation of 50% contributory negligence on the part of the deceased is not sustainable. Accordingly, this Court fixes the entire negligence on the driver of the vehicle insured with the appellant and, therefore, the compensation, that is to be awarded, would be payable in entirety by the insurance company/appellant to the claimants.



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10. Coming to the question of award of compensation, the accident is of the year 2012. Though P.W.1 had deposed about the income of the deceased as Rs.15,000/-, however, no documentary evidence has been produced to substantiate the same and, therefore, the Tribunal, by adopting Rs.6,500/- as notional income of the deceased on the basis of the ratio laid down by the Apex Court in the case of **Syed Sadiq - Vs - Divisional Manager, United India Insurance Company (2014 (2) SCC 735)** and taking the age of the deceased at 45 years on the basis of Ex.P-2, post-mortem certificate and adding future prospects at 30% and 14 as multiplier as laid down in the decision in **Sarla Verma & Ors. - Vs - Delhi Transport Corporation & Ors. (2009 (6) SCC 121)** and after deducting 1/3rd of the amount towards the personal expenses of the deceased, arrived at the compensation payable to the claimants at Rs.10,08,000/- (Rs.9000 - 3000 = 6000 * 12 * 14 = Rs.10,08,000/-) under the head 'loss of income'.

11. Further, The Tribunal has awarded a sum of Rs.1 Lakh towards loss of consortium; Rs.1 Lakh for loss of love and affection; Rs.50,000/- under the head loss of estate; Rs.25,000/- under the head



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funeral expenses.

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12.It is the contention of the appellant/insurance company that the amounts awarded under the above heads are not in consonance with the decision of the Constitution Bench in the case of ***National Insurance Co. Ltd. - VS - Pranay Sethi (2017 (16) SCC 680*** and to that extent the said amounts required to be brought down.

13. A careful perusal of the decision of the Apex Court in *Pranay Sethi case* reveals that the amount of compensation to be awarded under the heads, viz., loss of estate, loss of love and affection, loss of consortium and funeral expenses have been laid down by the Apex Court in the said decision. Applying the same, the amount that could be awarded under the aforesaid heads is as under :-

Loss of Consortium (to wife) -	Rs.40,000/-
Loss of Love & Affection (to children)	: Rs.40,000 * 2 = Rs.80,000/-
Loss of Estate	: Rs.15,000/-
Funeral Expenses	: Rs.15,000/-

Therefore, to the said extent, the compensation awarded under the aforesaid heads stand modified.



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14. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under:-

<i>Head of Compensation</i>	<i>Amount Awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Loss of Income	10,08,000/-	10,08,000/-
Loss of Consortium	1,00,000/-	40,000/-
Loss of Love & Affection	1,00,000/-	80,000/-
Loss of Estate	50,000/-	15,000/-
Funeral Expenses	25,000/-	15,000/-
Total	12,83,000/-	11,58,000/-

15. The Court below had awarded the aforesaid compensation of which 50% alone was directed to be paid by the insurance company, as contributory negligence was fastened on the deceased. However, in view of the fact that this Court has set aside the findings with regard to contributory negligence and held that there is no contributory negligence on the part of the deceased, necessarily, the entire compensation awarded by this Court has to be paid by the insurance company and the claimants would be entitled to the entire compensation awarded by this Court.

16. For the reasons aforesaid, the civil miscellaneous appeal is



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dismissed by modifying the compensation awarded to the claimants and the claimants would be entitled to the entire compensation awarded by this Court to the tune of Rs.11,58,000/-. To the aforesaid extent, the judgment and decree dated 10.04.2017 passed by the Motor Accidents Claims Tribunal, Vellore, Vellore District, in M.C.O.P.No.308 of 2012, stands modified. The apportionment in terms of the amount as ordered by the Tribunal with regard to the share of each claimant stands confirmed and the modified compensation ordered by this Court shall also be apportioned in terms of the above percentage.

17.The appellant Insurance Company is directed to deposit the entire award amount as ordered by this Court, along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any, already deposited. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the first respondent/claimant along with interest and proportionate costs, less the amount amount already withdrawn, directly to the bank account of the 1st respondent/claimant through RTGS. If respondents 2 and



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3/claimants have attained majority, the Tribunal is directed to transfer their respective shares, as apportioned, directly to their respective bank accounts after satisfying itself with the proof submitted by respondents 2 and 3 with regard to their attaining majority and if they are still minors their respective share shall be kept in an interest yielding fixed deposit in anyone of the Nationalized Bank, initially, for a period of three years to be renewed periodically until they attain majority and the interest derived from their respective share shall be paid to the first respondent/mother every quarter to be utilized for the welfare of the said minors.

18.The civil miscellaneous appeal is dismissed with the aforesaid modification and directions. No costs. Consequently, the connected miscellaneous petition is closed.

28.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

The Motor Accidents Claims Tribunal,
Vellore, Vellore District.

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M.DHANDAPANI, J.

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