IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3580 of 2021,
CROS. OBJ. No.45 OF 2022
and C.M.P. Nos.20890 of 2021

The Branch Manager,
Reliance General Ins. Co. Ltd.,
No.6, Haddows road,
6th Floor, Nngambakkam,
Chennai City Civil Court laka,
Chennai – 8. ... Appellant / 2nd Respondent

Vs.

1. M. Jayalakshmi
2. Minor M. Jayapriya
   (rep. by natural Guardian/ mother M. Jayalakshmi)
3. Mariappan
4. Chandra ... Respondents 1 to 4/ Petitioners

5. V. Ashok Kumar ... 5th Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.09.2020 passed in M.C.O.P. No. 60 of 2016 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Tiruvarur.

For Appellant : M/s. C. Bhuvanasundari
For RR 1 to 4 : M/s. Ma. P. Thangavel
For R5 : Notice Dispensed with

CROS. OBJ. No. 45 of 2022

1. M. Jayalakshmi
2. Minor M. Jayapriya
   (rep. by natural Guardian/ mother M. Jayalakshmi)
3. Mariappan
4. Chandra ... Cross Objectors

Vs.

1. The Branch Manager,
   Reliance General Ins. Co. Ltd.,
   No.6, Haddows road,
   6th Floor, Nngambakkam,
   Chennai City Civil Court laka,
   Chennai – 8.

2. V. Ashok Kumar ... Respondents

The Cross objector filed this Memorandum of Cross objections under Order 41 Rule 22 of the Civil Procedure Code, 1908 to set aside the contributory negligence fixed on the part of the deceased and to enhance the compensation awarded in M.C.O.P. No. 60 of 2016, dated 24.09.2020 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Tiruvarur.

For Cross objectors : M/s. Ma. P. Thangavel
For R1 : M/s. C. Bhuvanasundari

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and decree passed in M.C.O.P. No. 60 of 2016, dated 24.09.2020 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Tiruvarur. The claimants have filed separate cross objection in CROS. OBJ. No. 45 of 2022 to set aside the contributory negligence fixed on the part of the deceased and to enhance the compensation in this appeal.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 22.09.2013, at about 11:30 PM, the deceased Muthukumar was riding a Hero Honda Splendor plus motorcyle bearing Registration No.TN-50-P-2795 from Mayiladuthurai to Tiruvarur main road, while he reached near Agarakirankudi workshop, a lorry bearing Registration No.TN-50-H-0947 was driven by its driver in reverse direction without proper signalling and in negligent manner, thereby the deceased hit on the rear side

of the lorry and sustained grievous injuries and subsequently, he succumbed to injuries. A criminal case was registerd in Cr.No.325 of 2013 under Section 304(A) of IPC on the file of Perambur Police Station. The claimants are the wife, minor daughter and parents of the deceased, who have filed claim petition seeking compensation for a sum of Rs.30,00,000/-.

4. The first respondent is the owner of the lorry has not contested the claim and remained ex-parte. The second respondent – insurance company has filed a counter and contended that the deceased herein is the tortfeasor and he has ridden the motorcycle negligently, and invited the accident, hence the insurance company is not liable to pay compensation. The insurance company also disputed the dependency and insurance of the lorry.

5. The Tribunal after considering the evidence placed on record has accepted the case of the claimants and awarded compensation after holding that the deceased has also contributed to the accident to the extent of 50%. The Tribunal also quantified and granted compensation for a sum of Rs.9,19,500/- along with interest @ 7.5% per annum from the date of filing

of claim petition till the date of realization.

6. Aggrieved over the award, the insurance company has filed this appeal on the liability fixed on them and similarly, the claimants have filed cross objection in this appeal challenging the contributory negligence fixed on the deceased and for enhancement of compensation.

7. The learned counsel appearing for the insurance company submitted that the insurance policy of the lorry is not a valid policy and it is a fabricated policy produced before the Tribunal for the purpose of getting compensation. She has further submitted that the F.I.R was registerd against the deceased and the Tribunal has also held that the claimant has contributed to the accident to the extent of 50%, whereas the evidence placed on record shows that claimant himself is a tortfeasor, hence the claimants are not entitled to get any compensation. The claimants have failed to prove their dependency, hence they are not entitled to get any compensation, hence prays to set aside the award of the Tribunal.

8. The learned counsel for the claimants submitted that, it is true

that the F.I.R was registered against the deceased immediately, after the accident, based on the statement given by the driver of the lorry, who is the tortfeasor in this case. The deceased herein has sustained severe injuries and by taking advantage of the situation, the driver of the lorry has lodged a false complaint against the deceased, hence prays to set aside the contributory negligence fixed on the deceased. The learned counsel also further submitted that the quantum of compensation fixed on various heads are on the lower side, hence prays to award a just and reasonable compensation.

9. I have heard the submissions made on both sides and perused the materials available on record:

10. Admittedly, the F.I.R was registered against the deceased on the basis of the complaint given by the lorry driver and in the F.I.R, it is stated that, on the date of occurrence, the lorry driver has reached near Agarakirankudi workshop on the Mayiladuthurai to Tiruvarur road, due to mechanical defects in the lorry, he has parked the lorry on the left hand side of the road with due care and by turning on the parking lights and attending the repair work. At that time, the two wheeler ridden by the deceased in a

rash and negligent manner, hit on the lorry and thereby sustained grievous head injury, hence he has made necessary arrangment for taking the deceased to the hospital.

11. Admittedly, the lorry driver has not been examined by the insurance company before the Tribunal and the recitals in the F.I.R states that the vehicle was parked on the left hand side of the road at night time and there is no evidence placed on record to show whether the lorry was parked with proper precautions with parking lights. The evidence of P.W.2, who is the winess to the occurrence has stated that the lorry has suddenly came reverse and at the same time, the two wheeler which was ridden by the deceased came towards the lorry and dashed against the rear side of the lorry. In the cross examination of P.W.2, not even a suggestion was put forth to him to contend that the two wheeler has dashed on the stationed lorry and it was parked in a safe place and with proper precautions to avoid any accident.

12. In this case, the fact remains that the lorry was parked on the left hand side of the road and the two wheeler ridden by the deceased has hit

on the rear side of the stationed lorry. In the highways, parking of vehicles requires, maximum precautions to be taken by the vehicle driver. In this case, no evidence has been placed to show whether the precautionary measures were taken by the lorry driver. The evidence of P.W.2 shows that the lorry has suddenly moved in reverse without any proper signalling, which resulted in accident. Without adverting to these facts, the Tribunal based on the F.I.R has accepted the case of the respondents that the deceased has negligently ridden the two wheeler and contributed to the accident, however the Tribunal has not appreciated the fact that the F.I.R was lodged by the lorry driver, who was also alleged as tortfeasor in this case. There is no evidence to show that any of the relatives of the deceased were available at the spot of occurrence and lodged a police complaint or registered a F.I.R.

13. This Court is of the view that, since the F.I.R has been registered by the lorry driver, who is alleged to be a tortfeasor and in the absence of examining him before the Tribunal, the Ex.P.1 - F.I.R lodged by the lorry driver could not be used against the deceased. Similarly, the evidence of P.W.2 - eye witness to the occurrence has contradicted the recitals in the F.I.R. Hence, the reliance placed by the Tribunal based on the recitals in the F.I.R alone and rejecting the evidence of P.W.2 is not proper.

This Court in ***New India Assurance Co. Ltd., Coimbatore vs. Manimaran and another [2008 (2) TNMAC 137]*** and ***The New India Assurance Company Limited vs. G. Vijay Kandiban and others [IV (2006) ACC 96]*** has held that merely based on F.I.R, negligence cannot be fastened, since F.I.R. in accident cases is often lodged in a haste manner and the same cannot be substituted for evidence and cannot be raised to the pedestal higher than that of a statement on oath. Therefore, this Court is of the view that the evidence of P.W.2 is more probable than the recitals in the F.I.R, since in the absence of any contra evidence, the Tribunal ought to have accepted the evidence of P.W.2, hence the finding of the Tribunal that the deceased has also contributed to the accident to the extent of 50% is not proper and the same is hereby set aside.

14. The next contention raised by the insurance company regarding the dependency of the claimants is not appreciable, since the insurance company has not adduced any evidence and more particularly, the insurance company has not chosen to question the P.W.1, who is the wife of the deceased regarding the dependency before the Tribunal, hence the contention of the insurance company that the dependency is not proved

could not be considered and the same is hereby rejected.

15. The next contention raised by the insurance company with regard to fabricated insurance policy is concerned, the Tribunal, in its award has categorically held that considering the allegations raised in the insurance policy, it has directed the insurance company to produce a cover note or proforma, which is the first document came into existence prior to policy. Ex.R.1 – Insurance policy marked by the insurance company, was issued from 24.09.2013, whereas the Ex.P.6 - insurance policy produced by the claimants, the coverage period of the policy starts from 21.09.2013. Before the Tribunal, the insurance company has not produced any proforma or cover note to prove the date of issuance of policy and when and how the contract between the owner of offending lorry and insurance company had entered. Even though, the Ex.R.1- insurance policy marked by the respondent shows that the insurance policy was issued on 21.09.2013, it has not been supported by any other documents and in this case, the claimants have come forward to claim compensation for the death of the deceased, who is a third party to the insurance company, hence the burden heavily lies on the part of the insurance company to prove that they are not liable to pay

any compensation. Since the insurance company failed to produce any additional documents such as cover note or proforma, the Tribunal has rightly held that the insurance policy marked as Ex.R.1 has not been proved by the respondent - insurance company and it is observed that the Policy Number, Insurer Name and Vehicle number in both Ex.P.6 and Ex.R.1 are same, hence rejected the contention of the insurance company. This Court finds no infirmity in the above finding of the Tribunal, hence the contention of the insurance company is hereby rejected.

16. With regard to quantum of compensation, the Tribunal has fixed Rs.11,000/- as monthly notional income of the deceased by adopting the guidelines of the Division Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]***, since no oral or documentary evidence were adduced on the side of the claimant to prove the income of the deceased. In this case, the deceased is a self employed and considering the date of accident, the Tribunal has rightly fixed the monthly notional income of the deceased, hence this Court finds no infirmity in the above fixing of notional income by the Tribunal and the same is hereby confirmed.

17. As per the dictum laid down in Hon'ble Apex Court judgment in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the Tribunal considering the age of the deceased, who is 31 years at the time of accident, has rightly adopted the multiplier as '16' and after deducting one-fourth of his income towards personal and living expenses of the deceased awarded Rs.15,84,000/- towards loss of income/ dependency. However, the Tribunal has not awarded future prospectus, as per the Hon'ble Apex Court judgment in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the applicable future prospectus is 40% as future prospectus, accordingly, the future prospectus is assessed as follows:

Future prospectus @ 40% = Rs.15,84,000/- x 40% = **Rs.6,33,600/-**

18. The Tribunal has awarded compensation towards loss of consortium and loss of love and affection, as per the Hon'ble Apex Court in three Judge Bench judgment reported as ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC***

780] and ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018],*** all the claimants who are the wife, minor daughter and parents of the deceased are entitled for loss of consortium, which inclued loss of love and affection of Rs.40,000/- each, accordingly, Rs.1,60,000/- is awarded under the head loss of consortium, similarly, the compensation awarded under the head loss of love and affection is hereby rejected. The Tribunal has not awarded compensation under the conventional head loss of estate, hence this Court is inclined to award Rs.15,000/- towards loss of estate and the compensation of Rs.15,000/- awarded by the Tribunal towards funeral expenses is hereby confirmed.

19. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income	15,84,000/-	15,84,000/-	Confirmed
2.	Loss of love and affection	2,00,000/-	---	Rejected
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Spousal consortium/ modified to loss of consortium to all the	40,000/-	1,60,000/-	Enhanced

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	claimants @ Rs.40,000/- each			
5.	Future prospectus	---	6,33,600/-	Granted
6.	Loss of estate	---	15,000/-	Granted
	Total	18,39,000/-	24,07,600/-	
	Contributory negligence fixed @ 50%	9,19,500	---	Set aside
	Total Compensation	9,19,500/-	**24,07,600/-**	**Enhanced**

20. In the result, this Civil Miscellaneous Appeal is dismissed and the cross objection filed by the claimants is allowed. The contributory negligence of 50% fixed on the part of the deceased is set aside and the compensation awarded by the Tribunal at Rs.9,19,500/- is hereby enhanced to **Rs.24,07,600/- [Rupees Twenty Four Lakhs Seven Thousand and Six Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The appellant/ second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.60 of 2016 on the file of the Chief Judicial Magistrate, Motor Accidents Claims Tribunal,

Tiruvarur. On such deposit, the claimants 1,3 and 4 are permitted to withdraw the award amount now determined by this Court along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. As far as minor claimant/ 2nd respondent herein is concerned, the award amount to the minor claimant shall be deposited in the name of the minor claimant in any one of the Nationalized Bank in Fixed Deposit under the guardianship of her mother/ 1st respondent herein, till she attains the age of majority, and the 1st respondent herein is also permitted to withdraw the accrued interest, every six months for the welfare of the minor claimant, if she already attained the age of majority, her share amount may be disbursed. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since, this Court has enhanced the compensation, the claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

01.02.2024

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Index:Yes/No
Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K. RAJASEKAR, J.

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To:

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Tiruvarur.

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

C.M.A. No. 3580 of 2021
and
CROS. OBJ. No.45 OF 2022

01.02.2024