IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.681 OF 2022
AND
CMP NO.4907 OF 2022

The New India Assurance Co. Ltd.,
No.25, 1st Floor, 1st Street,
P.N.Road, 60 Feet Road,
Tiruppur – 3.
also at Third Party Claims Hub
No.232, NSC Bose Road,
Chennai – 600 001. ... Appellant / 2nd Respondent

Vs.

1.K.Paripoorani
2.N.Karuppusamy ... 1st & 2nd Respondents / Petitioners

3.S.Kalaiarasi ... 3rd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decreetal order dated 25.08.2021 in M.C.O.P.No.934 of 2018 passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Kangayam.

For Appellant	:	Mr.R.Rajesh
For Respondents 1&2	:	Mr.S.Ajay Prasanna
For Respondent 3	:	Served – No appearance

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Aggrieved by the compensation awarded at Rs.31,91,000/- for the death of one Ajithkumar in a motor accident that took place on 16.11.2017, the Insurance Company is on appeal.

2.For the sake of convenience, the parties herein will be referred to as per their rank before the Tribunal.

3.The parents of the deceased sought for compensation of Rs.50,00,000/- (Rupees Fifty Lakhs Only) contending that the accident occurred due to the rash and negligent driving of the Driver of the Car bearing Registration No.TN33-Y-2526 owned by the first respondent insured with the second respondent - Insurance Company. According to the claimants, while the deceased was riding his Motorcycle bearing Registration No.TN42-T-8935, near KVB Dyings, Balasamutharampudhur from west to east on the extreme left of the Sivagiri-Keeranur Road at a moderate speed, a Car that was driven by one Thandapani came from the opposite direction in a rash and negligent manner, hit against the Motorcycle of the deceased. As as result of the impact, the deceased was thrown off the vehicle and died on the spot. It was also claimed that the deceased was an Engineering Graduate in Electronics and Communication Engineering and was working as a Cooking Contractor earning Rs.25,000/- per month. As a result of the accident, the claimants, namely, the parents of the deceased have lost their only son and therefore, they sought for a compensation of Rs.50,00,000/-.

4.The claim was resisted by the second respondent - Insurance Company contending that the accident occurred due to the rash and negligent riding of the Motorcycle by the deceased. The final report filed by the Police referring the matter as 'mistake of fact' was heavily relied upon by the insurance company to buttress their claim that the accident happened only due to the negligent riding of the rider of the two wheeler. The quantum of compensation claimed was also termed as 'excessive'.

5.At trial, the second claimant, father of the deceased was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. Ex-P.1 to Ex-P.11 were marked. FIR was marked as Ex-P.1, Motor Vehicle Report of the two vehicles were marked as Ex-P.5 and Ex-P.6. The Driving License was marked as Ex-P.8. On the side of the second respondent, Sub-Inspector of Kangeyam Police Station one Mr.Magudeeshwaran was examined as R.W.1. The final report and the rough sketch were marked as Ex-R.1 and Ex-R.2.

6.On consideration of the evidence on record, the Tribunal concluded that the accident occurred only due to the rash and negligent driving of the Driver of the Car. On quantum, the Tribunal took the monthly income at Rs.15,000/- added 40% towards future prospects, deducted 1/2 towards his personal expenses and applying multiplier of 18 arrived at a total compensation of Rs.29,16,000/-. The Tribunal also awarded a sum of Rs.2,00,000/- towards loss of love and affection; Rs.10,000/- towards transportation; Rs.15,000/- towards funeral expenses; and Rs.50,000/- towards loss of estate. In all, the compensation awarded by the Tribunal worked out to Rs.31,91,000/-. Aggrieved, the Insurance Company is on appeal.

7.We have heard Mr.R.Rajesh, learned counsel appearing for the Insurance Company and Mr.S.Ajay Prasanna for Mr.N.S.Sivakumar, learned counsel appearing for the claimants.

8.The third respondent - owner of the vehicle though served is not appearing either in person or through counsel duly instructed.

9.Mr.R.Rajesh, learned counsel appearing for the appellant - Insurance Company would vehemently contend that the Tribunal was not right in concluding that the accident occurred due to the rash and negligent driving of the Driver of the Car and the negligence of the Driver of the Car is the sole reason for the accident. He would point out that in the final report filed by the Investigation Officer, it has been observed that it is the rash and negligent riding of the rider of the two wheeler which caused the accident. He would further contend that the Tribunal fell in error while calculating the loss of dependency. Though it had fixed the monthly income at Rs.15,000/- and the future prospects at 40% instead of applying deductions on the total amount, namely Rs.21000 (Rs.15,000+Rs.6000), the Tribunal had applied deductions towards personal expenses only on the sum of Rs.15,000/- and has added 40% of that Rs.15,000/- towards future prospects leading to it fixing the monthly loss of dependency at Rs.13,500/- instead of Rs.10500/-.

10.According to the learned counsel, the Tribunal should have added future prospects and thereafter, made the deductions. The proper calculation according to the learned counsel would be Rs.15,000/- taken as notional income plus Rs.6,000/- towards future prospects. Therefore, the total monthly income would be Rs.21,000/- and if 50% is deducted therefrom, the total loss of dependency would be Rs.10,500/- and not Rs.13,500/- as fixed by the Tribunal. The learned counsel would also fault the Tribunal for awarding Rs.2,00,000/- towards loss of love and affection to the parents, which is against the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi & Others [2017 (16) SCC 680].*** The award of Rs.50,000/- towards loss of estate is also termed as 'excessive' by the learned counsel.

11.Contending contra, Mr.S.Ajay Prasanna, learned counsel appearing for the respondents / claimants would submit that a perusal of the final report in comparison with the sketch marked as Ex-R1 would show that the Car Driver alone was negligent. Drawing our attention to the final report namely Ex-R.2, learned counsel would submit that if the two wheeler had proceeded from east to west on the east-west road and turned towards north as described by the Investigation Officer in the final report, then the place where the accident took place is on the extreme left side of the road, which is the proper side fort he rider of the two wheeler. The Car had come on the wrong side and hit against the two wheeler. No doubt, the claimants have stated that the two wheeler rider was proceeding towards north-south and turned towards east, but the version of the Investigation Officer is totally different.

11.1.Learned counsel would also point out that it is brought out in evidence that R.W.1 was not sure as to whether the final report was sent to the Court or not. On the quantum, learned counsel would submit that fixation of Rs.15,000/- as monthly income, for the accident that has taken place on 16.11.2017 itself is on the lower side.

12.Considering the fact that the deceased was an Engineering Graduate, the Tribunal should have taken a much higher amount towards monthly income. Learned counsel is unable to support the calculation made by the Tribunal as it is on the face of it erroneous. The award of Rs.2,00,000/- towards loss of love and affection and Rs.50,000/- towards loss of estate are also on the higher side and the counsel is unable to support the same.

13.We have considered the rival submissions.

14.On the negligence, we find that there are two contradictory versions regarding the manner in which the accident had occurred. The version of the claimants is an interested testimony. Therefore, the final report filed by the Police though it has not been shown that it was sent to the Court would deserve more weight than the evidence of the claimants which is interested testimony. Comparison of the final report and the sketch would show that the two wheeler rider was on the right side of the road and it was the Car which came on the wrong side and hit against him. If a vehicle was traveling from east to west and turning towards north, it will have to keep left that is on the western side of the road. A perusal of the sketch which has been marked as Ex-R.1 would show that the two wheeler rider was keeping left and it was the Car which came on the wrong direction and hit against the two wheeler.

15.We are therefore unable to fault the Tribunal for having come to the conclusion that the Car Driver alone was responsible for the accident. As regards the quantum, fixation of Rs.15,000/- per month is undoubtedly on the lower side. However, since we find that the deceased was not wearing a Helmet, instead of deducting a percentage and the compensation towards contributory negligence for not wearing a Helmet, we choose to adopt the same Rs.15,000/- as monthly income which would largely compensate for the contributory negligence. We therefore adopt Rs.15,000/- as monthly income. If we add 40% towards future prospects, the total monthly income would come to Rs.21,000/-. The deceased being a Bachelor, 50% has to be deducted towards his personal expenses. Therefore, the monthly loss of dependency would be Rs.10,500/-. Since the deceased was aged 21 years, multiplier of 18 should be applied and the total loss of dependency would be Rs.10,500 X 12 X 18 = Rs.22,68,000/-. The award on the head of loss of love and affection is definitely on the higher side and it requires reduction. Hence, we award a sum of Rs.80,000/- i.e., Rs.40,000/- to each claimants. The award on the head of transportation and funeral expenses are confirmed. The award on the head of loss of estate is reduced to Rs.15,000/- from Rs.50,000/-. Thus calculated, the total compensation would be Rs.23,88,000/- (Rupees Twenty Three Lakhs Eighty Eight Thousand Only).

16.In view of the above, the appeal is partly allowed and the award of the Tribunal is modified. The compensation granted is reduced to **Rs.23,88,000/-** (Rupees Twenty Three Lakhs Eighty Eight Thousand Only) and the interest awarded by the Tribunal is upheld and the compensation is apportioned equally between the parents of the deceased. It is stated that the insurance company has deposited 50% of the amount awarded by the Tribunal along with interest. Therefore, the insurance company is hereby directed to deposit the remaining amount as per the modified award, within twelve (12) weeks from today. On such deposit, the claimants are entitled to withdraw their proportionate share with interest. Parties will bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.] **[R.S.V., J.]**

05.07.2024

Index : No
Internet : Yes
Neutral Citation : No
Speaking Order
TK

To

The Subordinate Judge
Motor Accident Claims Tribunal
Kangayam.

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

CMA NO.681 OF 2022

05.07.2024