IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

CMA No.2086 of 2021 and
C.M.P.No.11362 of 2021 & 26608 of 2023
and Cros.Objection No.81 of 2021

Judgment reserved on 22.02.2024	Judgment pronounced on 28.03.2024

The Branch Manager,
Reliance General Insurance Company Limited,
III Floor, 408, Perundurai Road,
Erode -11. ... Appellant

Vs.

1.Mass Naicker
2.Palaniyammal
3.S.Jabar Basha ...Respondents

1.Masa Naicker
2.Palanyiammal ...Cros.Objectors in 81 of 2021

Vs.

1. The Branch Manager,
Reliance General Insurance Company Limited,
III Floor, 408, Perundurai Road,
Erode -11.

2.S.Jabar Basha ...Respondents

[The respondents 2 is remained ex-parte before the Tribunal. Hence, notice may be dispensed with for R2 in this Cross Appeal]

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.02.2019 made in MCOP No.137 of 2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Court at Bhavani.

Prayer in Cros.Obj.No.81 of 2021:- This Cross Objection filed under Order 41 Rule 22 C.P.C, against the judgment and decree made in M.C.O.P.No.137 of 2013, on the file of Motor Accident Claims Tribunal / IV-Additional District Court at Bhavani, dated 14.02.2019.

C.M.A.No.2086 of 2021:-

For Appellant : Mrs.C.Bhuvanasundari

For R1&R2 : Mr.Ma.P.Thangavel

For R3 : No appearance

Cross Objection No.81 of 2021:-

For Cross Objectors : Mr.Ma.P.Thangavel

For R2 : No appearance

****

COMMON JUDGMENT

The Insurance Company has filed CMA No.2086 of 2021 questioning the negligence as well as quantum of compensation and the claim petitioners have filed Cross Objection No.81 of 2021 seeking enhancement of compensation. Parties are referred to as per their ranking in the claim petition for the sake of convenience.

2. The claim petitioners are the parents of the deceased kannan

who died in the road transport accident on 23.09.2012 and filed M.C.O.P.No.137 of 2013 seeking compensation.

3. During trial, the claim petitioners examined P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5. P.W.1 is the father of the deceased, P.W.2 is the occurrence witness, P.W.3 is the person who filed Ex.P1 - F.I.R before the Police Station; P.W.4 is the attestor of the observation Mahazar in the criminal case; P.W.5 is also an occurrence witness and Exs.P1 to P9 were marked.

4. On behalf of the Insurance Company, on court summons the Sub Inspector of Police who laid the charge sheet - Ex.R1 was examined as R.W.1 and legal assistant from the Insurance Company was examined as R.W.2 and Exs.R2 to R5 were marked.

5. The trial Court based upon the oral and documentary evidence adduced before the Court, came to the conclusion that the accident has taken place due to composite negligence of both the driver of the two wheeler and accordingly fixed contributory negligence at 50% each and awarded compensation of Rs.5,04,100/- and hence, the appeal by the Insurance

Company and cross appeal by the claim petitioner.

6. The learned counsel appearing for the appellant/Insurance Company contended that as per Exs.R2, R3 and R4, the case arising out of the very same accident, another Tribunal has held that the accident has taken place due to the rash and negligent driving by the deceased Kannan, and hence 50% contributory negligence fixed upon the opponent vehicle cannot be sustainable and also contended that the compensation awarded by the Tribunal is on the higher side.

7. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the claim petitioners contended that the decision rendered in the other M.C.O.Ps that are marked as Ex.R2, R3 and R4 cannot be looked into since as the rider and owner of the two wheeler, the L.R's of the deceased Kannan were not impleaded in the earlier M.C.O.P.Nos.913 and 114 of 2013 had they been the L.R.'s of the owner of the vehicle in the said case.

8. They could have given clear picture back about the same and further the occurrence witness P.W.5 has categorically stated that the manner of the accident is only due to the fact that the driver of the opposite

vehicle driven by a person along with his two children and the wife was holding umbrella to evade from the rain and due to the wind, the umbrella which was holding by the wife of the rider of the offending vehicle came in between and obstructed visual of the driver of the offender and thus the accident has taken place.

9. In the instant case, the third respondent Mr.S.Jabar Basha who filed the earlier claim petition has remained exparte. The insurance company has not taken any steps to summon the said S.Jabara Basha, the rider of the two wheeler to dispute the version of P.W.5 assumes significance.

10. Admittedly, as pointed out by the learned counsel for the claim petitioners, in the earlier M.C.O.P. filed by the injured in the above case in M.C.O.P.Nos.913 and 114 of 2013 that are marked as Exs.R2 to R4 would go to show that they have conveniently not impleaded the legal heirs of the owners of the vehicle namely the present claim petitioners also smell rat.

11. After perusing Ex.C1, final report filed by the investigation officer R.W.1, I find that the F.I.R was against Kannan - the deceased. Since he died as he succumbed to the injuries sustained in the accident, final report has been closed. In this regard, the evidence of P.W.3 assumes significance, he had categorically deposed that police have obtained the signature in the blank paper and subsequently it has been created as a complaint as per Ex.P1 and hence, this Court is of the considered view that the Tribunal has rightly taken into consideration the version of the independent witnesses P.W.2, P.W.3 and P.W.5, who are said to have been present at the time of the accident and also witnessed the manner of the accident and non-examination of complainant, the third respondent in this appeal by the insurance company to elicit or to contradict the oral evidence of the above said P.W.2, P.W.3 and P.W.5, I find that the version of P.W.2, P.W.3 and P.W.5 are found to be reliable and accordingly as the incident has taken place in the middle of the road, the Tribunal has rightly come to the conclusion that it is a head on collusion happened in the middle of the road as per Ex.P2 - rough sketch and Ex.P3 - Observation Mahazar which was spoken to by P.W.4 - the attestor of the observation mahazar and hence, the 50:50 composite negligence fixed by the Tribunal is well merited and well considered which does not require any interference. Accordingly,

all the contentions raised by the appellant Insurance Company is hereby stands negatived.

12. On the point of quantum of compensation, I find that the notional income is fixed at Rs.6500/- per month. As per the evidence of P.W.1, the deceased was doing tailoring job and the date of the accident is 23.09.2012. As per Ex.P6 - Postmortem certificate, the deceased was aged about 28 years on the date of the accident and the claim petitioners are the parents of the deceased. Hence, the pecuniary loss sustained by the claim petitioners are re-assessed as follows:-

10000+4000 (40% of 10000) x 12 x 17 x 50% = Rs.14,28,000/-

13. Considering the distance between the residential place and the hospital, the Tribunal has awarded a sum of Rs.10,000/- towards transportation charges which is enhanced to Rs.15,000/-.

14. For Filial Consortium, the petitioners 2&3 are entitled to a sum of Rs.75,000/- (Rs.75,000/- each) and hence the compensation awarded by the Tribunal is hereby enhanced to Rs.1,50,000/- .

15. The amounts awarded by the Tribunal under other heads are just and reasonable and hence those are confirmed.

16. Accordingly, the compensation awarded by the Tribunal is

enhanced from **Rs.5,04,100/- to Rs.8,11,500/-,** break-up as follows -

Sl. No	***Heads under which the amount is awarded***	***Amount awarded by the Tribunal – Rs.***	***Amount awarded by this Court – Rs.***
1.	Loss of income	Rs.928200/-	Rs.14,28,000/-
2.	Filial Consortium	Rs.40000/-	Rs.1,50,000/-
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
5.	Transportation	Rs.10000/-	Rs.15,000/-
	Total	**Rs.10,08,200/-**	**Rs.16,23,000/-**
	Less : Contributory negligence at 50%	**Rs.5,04,100/-**	**Rs.8,11,500/-**

Since the composite negligence is fixed in the ratio 50:50, the appellant-Insurance Company is liable to pay 50% of Rs.16,23,000/-, i.e. Rs.8,11,500/-

17. In total, the claim petitioners are entitled to a sum of Rs.8,11,500/- (Rupees Eight Lakhs Eleven Thousand and Five Hundred only).

18. In fine,

(i) **CMA No.2086 of 2021 filed by the Insurance Company is dismissed.**

(ii) Cross Objection **filed by the claim petitioners is partly allowed enhancing the award amount from Rs.5,04,100/- to**

Rs.8,11,500/- to the extent indicated above, along with 7.5% interest per annum.

(iii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) on such deposit being made, the claim petitioners are permitted to withdraw the entire enhanced award amount, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(v) the claim petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

(vi) No costs. Consequently, connected C.M.Ps are closed.

28.03.2024

nvi

Index : Yes/No
Speaking/Non-speaking order

To

1.The Motor Accident Claims Tribunal,
IV Additional District Court at Bhavani.

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

RMT.TEEKAA RAMAN, J.

nvi

Common Judgment in
CMA No.2086 of 2021 and
C.M.P.No.11362 of 2021 & 26608 of 2023
and Cros.Objection No.81 of 2021

28.03.2024