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C.M.A. Nos. 2994 and 2995 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 2994 and 2995 of 2021
and C.M.P. Nos.17051 and 17059 of 2021

(a). C.M.A. No.2994 of 2021:

The Regional Manager,
Regional Office,
National Insurance Co. Ltd.,
No.110, Jawaharlal Co. Ltd., 2nd Floor,
Puducherry ... Appellant / 2nd Respondent

Vs.

1. Radhakrishnan
2. Minor Purushothaman ... Respondent 1&2 / Petitioners 1 &2
3. Sankar ... 3rd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.09.2019 passed in M.C.O.P. No. 530 of 2015 on the file of the III Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore @ Virudhachalam.



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For Appellant : M/s. J. Chandran
For RR 1 and 2 : M/s. S. Udhayakumar
For R3 : No Appearance

(b). C.M.A. No.2995 of 2021:

The Regional Manager,
Regional Office,
National Insurance Co. Ltd.,
No.110, Jawaharlal Co. Ltd., 2nd Floor,
Puducherry ... Appellant / 2nd Respondent

Vs.

1. Radhakrishnan ... 1st Respondent/ Petitioner
2. Sankar ... 2nd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 05.12.2020 passed in M.C.O.P. No. 539 of 2015 on the file of the III Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore @ Virudhachalam.

For Appellant : M/s. J. Chandran
For R1 : M/s. S. Udhayakumar
For R2 : No Appearance



JUDGMENT

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These appeals have been filed by the insurance company challenging the liability and quantum of compensation awarded in M.C.O.P. Nos. 530 of 2015, dated 18.09.2019 and 539 of 2015, dated 05.12.2020 on the file of the III Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore @ Virudhachalam,

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 28.01.2015, at about 6:00 PM, the first claimant namely Radhakrishnan was riding a two wheeler bearing Registration No.TN-31-BV-0274, in which his deceased wife Lalitha was travelled as a pillion rider on the Salem to Virudhachalam main road from west to east direction. While they reached near K.K.G. Farm, a TATA Venture van bearing Registration No.TN-31-BV-0274, driven by its driver in a rash and negligent manner, dashed against the two wheeler ridden by the first claimant, thereby causing grievous injuries to both of them and immediately, they were taken to Virudhachalam Government Hospital and



subsequently, to Cuddalore Government Hospital for major treatment. The first claimant's wife Lalitha has succumbed to injuries on the very same day.

The brother of the claimant Radhakrishnan has lodged a FIR in Cr.No.73/2015 U/s.279 and 304(A) of IPC stating that an unknown goods van has caused the accident, the Police have also investigated the case and identified that the goods vehicle involved in the accident. For the loss of deceased Lalitha the claimant have filed claim petition seeking compensation for a sum of Rs.20,00,000/- and for injuries sustained, the first claimant has filed a separate claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166(1) of the Motor Vehicles Act, 1988.

4. The first respondent, who is the driver cum owner of the said TATA Venture van has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the said goods vehicle has filed a counter and contended that the vehicle has been falsely implicated, since in the FIR, it is mentioned as unknown Goods Vehicle has involved in the accident, hence there is a possibility of false implication of the goods vehicle. The first respondent has also not come



forward to produce any documents regarding the driver and vehicle particulars, hence contended that the insurance company is not liable to pay the compensation.

5. Before the Tribunal, in M.C.O.P. No.530 of 2015, on the side of the claimants P.W.1 was examined and Exs.P.1 to P.11 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R.1 to R.3 were marked. In M.C.O.P. No.539 of 2015, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.13 and Ex.X.1 - disability certificate were marked, on the side of the respondents, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in two separate proceedings has held that the rash and negligence on the part of the first respondent is responsible for the accident and the second respondent – insurance company is liable to pay compensation to the claimants. The Tribunal has also separately quantified and granted compensation for a sum of Rs.17,12,800/- for the death of deceased Lalitha and Rs.8,04,495/- for the injuries sustained by the claimant Radhakrishnan along with interest @



7.5% per annum from the date of filing of petition till the date of realization.

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7. Aggrieved over the liability fixed on the second respondent – insurance company to pay the compensation and also for the quantum of compensation, the insurance company has come forward with these appeals.

8. The learned counsel for the insurance company submitted that vehicle of the first respondent was implicated in the case after a delay of 5 days and even there was no evidence to support the case of the claimants that the first respondent vehicle is involved in the accident. The vehicle was seized after five months and subjected to Motor Vehicles Inspection, and this is sufficient to show that the first respondent vehicle was falsely implicated. She also further submitted while quantifying the compensation for the injured is concerned, the Tribunal has not properly assessed the disability in terms of the principle laid down in the judgment of Hon'ble Apex Court in *Raj Kumar vs. Ajay Kumar [2011 ACJ 1]* and the compensation awarded for the injury sustained by the claimant therein has to be reduced and she has not disputed the quantum of compensation awarded to the death of the deceased Lalitha.



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9. The learned counsel for the claimants submitted that based on the evidence placed on record, the Tribunal has rightly concluded that the first respondent has negligently driven the vehicle and caused the accident, which resulted in death of the deceased Lalitha and injuries to the claimant namely Radhakrishnan and the quantum of compensation awarded in both the cases are also on the lower side, hence prays to enhance the same, even though, they have not preferred any appeal for enhancement of compensation.

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

11. Even though, the Tribunal has separately considered the claim petitions has held that the rash and negligence on the part of the first respondent is responsible for the accident and to arrive this conclusion, the Tribunal has relied on the evidence of P.W.1 - claimant - Radhakrishnan and according to him, he was riding the two wheeler along with his wife as a pillioner on the left hand side of the road from west to east direction, while



he reached near K.K.G. Farm, a TATA Venture van, driven by its driver in a rash and negligent manner, dashed against them, thereby causing grievous injuries to both of them and immediately, they were taken to Virudhachalam Government Hospital and subsequently, to Cuddalore Government Hospital for major treatment. His wife Lalitha has succumbed to injuries on the very same day and he has undergone treatment for the severe injuries sustained. In the cross examination, he has reiterated the very same facts and he has also stated that he identified the driver, who caused the accident in the test identification parade.

12. He has also denied the fact that the TATA Venture van was seized after five months and subjected to Motor Vehicle Inspection. To disprove his evidence, no eye witnesses or documentary evidences were adduced on the side of the Insurance company. However, they have chosen to examine the Motor Vehicle Inspector, who has accepted that the vehicle was inspected belatedly by one of his colleague namely K. Vimala. Similarly, R.W.2 - Insurance Official was examined in M.C.O.P. No.530/2015 (Fatal case), that they have sent notices to the first respondent for production of driving license and the same was not answered by the first



respondent. Except the evidence stated above, no other evidences were produced before the Tribunal to dispute the manner in which the accident has taken place.

13. The Tribunal relied on the recital on the FIR, even though it was registered against an unknown vehicle, and appreciated the evidence of P.W.1 and other material records held that the first respondent herein is responsible for the accident. The standard of proof required to be proved in the Motor Accident Claim cases, has been considered by the Apex Court in ***Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors.*** [2009AC J1725] and reiterated in ***Anita Sharma and Ors. vs. New India Assurance Co. Ltd.***, [2021 (1) TNMAC 321 (SC)] that "*Claimants to establish their case of occurrence of accident on the touchstone of preponderance of probability and not on standard of proof beyond reasonable doubt*". The Tribunal has properly appreciated the evidence of claimants and held that they have proved their case in preponderance of probability. Hence, this Court finds no infirmity in the above finding rendered by the Tribunal that the first respondent and his TATA Venture van have involved in the accident and the same is hereby confirmed.



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14. As far as the quantum of compensation awarded by the Tribunal is concerned, the insurance company has not disputed the awarded of compensation for the death of the deceased Lalitha, hence this Court is not inclined to question the quantum of compensation awarded in M.C.O.P. No.530/2015 (Fatal case), in the absence of any objection. Further, the claimants has also not seeking for enhancement of compensation. Hence, the compensation awarded in M.C.O.P. No.530/2015 is hereby confirmed.

15. The insurance company has raised objection for the quantum of compensation awarded in M.C.O.P. No.539/2015 for the injury sustained by the claimant therein. The insurance company has contended that the percentage of disability accepted by the Tribunal is on the higher side, since the disability percentage assessed is not for the whole body. On perusal of disability certificate marked as Ex.X.1 and Ex.P.9 - discharge summary shows that the claimant has sustained compound fractures on the shaft of the right leg, fractures on right fore arm and injury in the right middle finger and the Medical Board has assessed the disability as 51%. Considering all these injuries, the Tribunal has held that the claimant has sustained functional



disability and adopted multiplier method for granting compensation.

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16. In this case, the claimant claimed that he was a 'Chef' by profession and was earning Rs.25,000/- per month and to prove the same, the claimant has marked Ex.P.13 - Certificate issued by Tamil Nadu Food Safety Corporation, which shows that the claimant was running a Catering service in the name of 'Kolanjiappar'. The Tribunal even though accepted the avocation of the claimant but fixed monthly notional income of Rs.7,500/-, since no oral or documentary evidences were adduced by the claimant to prove his income and granted **Rs.6,88,000/-** (Rs.7,500/- X 12 X 15 (multiplier) X 51% (disability)) as compensation under the head Loss of earning capacity.

17. Considering the nature of injuries such as multiple fractures in the hand, forearm, leg and injury in the middle finger, this Court is of the view that the person, who is involved in cooking food; by profession requires good physique and capable to do all kinds of manual work. The nature of injuries sustained by him have prevented him from doing his earlier avocation, which resulted in loss of earning capacity. As per the



guidelines laid down in the judgment of Hon'ble Apex Court in ***Raj Kumar***

vs. Ajay Kumar [2011 ACJ 1], this Court is of the view that treating the disability of the claimant as a functional disability by the Tribunal is proper and the claimant is entitled to get compensation under the head loss of earning capacity.

18. However, the percentage of disability fixed by the Tribunal for granting compensation under the head loss of earning capacity is on the higher side since, the claimant has sustained fractures and this is not the case of amputation, hence this Court is of the view that fixing 20% disability for granting compensation under the head loss of earning capacity would be proper and this Court also finds that the notional income fixed by the Tribunal is on the lower side, considering the age of the claimant, this Court is inclined to modify the same to Rs.10,000/- per month. Accordingly, the loss of earning capacity is re-assessed as **Rs.3,60,000/-** (Rs.10,000/- X 12 X 15 X 20% (disability)).

19. The Tribunal has not awarded any future prospectus to the claimant, as per ***Erudhaya Priya vs. State Express Transport Corporation***



Ltd., [2020 SSCR 299 : 2020 ACJ 2159], the claimant is entitled to get future prospectus, as per Ex.P.8 - driving licence, the age of the claimant is 38 years, the future prospectus is fixed as 40%. Accordingly, the future prospectus is assessed as follows:

$$\text{Future Prospectus @ 40\%} = \text{Rs.3,60,000/-} \times 40\% = \text{Rs.1,44,000/-}$$

20. The Tribunal has awarded Rs.50,000/- under the head pain and suffering, which is on the higher side, hence the same is modified to Rs.30,000/-. The Tribunal has awarded Rs.10,000/- towards transportation expenses, the medical records shows that the claimant has undergone treatment in Chennai and he traveled from Virudhachalam regularly for his treatment, hence the compensation awarded under transportation expenses is on the lower side and the same is modified to Rs.15,000/-. The Tribunal has awarded Rs.20,000/- towards future medical expenses, however the Tribunal has not awarded any compensation under the head loss of amenities, hence this Court is inclined to enhance the future medical expenses to Rs.25,000/-. Whereas the other heads are concerned, the Tribunal has awarded a just compensation, hence the same are hereby confirmed.



21. Accordingly, the award passed by the Tribunal in M.C.O.P.

No.539 of 2015 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 earning capacity due to disability	6,88,000	3,60,000/-	Reduced
2.	Pain and sufferings	50,000/-	30,000/-	Reduced
3.	Extra Nourishments	10,000/-	10,000/-	Confirmed
4.	Attender charges	10,000/-	10,000/-	Confirmed
5.	Medical expenses	14,995/-	14,995/-	Confirmed
6.	Future Medical expenses	20,000/-	25,000/-	Enhanced
7.	Transportation expenses	10,000/-	15,000/-	Enhanced
8.	Damage to two wheeler	1,000/-	1,000/-	Confirmed
9.	Future prospectus	---	1,44,000/-	Granted
	Total Compensation	8,04,495/-	6,09,995/-	Reduced

22. In the result, these Civil Miscellaneous Appeals in C.M.A. No.2994 of 2021 is dismissed and in C.M.A. No.2995 of 2021 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P. No.539 of 2015 at Rs.8,04,495/- is hereby reduced to **Rs.6,09,995/- [Rupees Six Lakh Nine Thousand Nine Hundred and Ninety Five 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.

23. The appellant - Insurance company is directed to deposit the



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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.Nos.530 and 539 of 2015 on the file of the III Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore @ Virudhachalam. On such deposit, the first respondent/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Consequently, connected civil miscellaneous petitions stands closed. There shall be no order as to costs in the present appeals.

09.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

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To:

1. The III Additional District & Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore @ Virudhachalam.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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