IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.03.2024	Pronounced on: 08 .04.2024

Coram

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2688, 2697 and 2720 of 2021
and C.M.P.Nos.15450, 15505 and 15632 of 2021

C.M.A.No.2688 of 2021

The Branch Manager,
United India Insurance Company Limited,
No.460/20, First Floor, 8th B Main Road,
Next to Jain Temple, 4th Block,
Jayanagar, Bangalore – 560 011.
C/o.The Divisional Manager,
United India Insurance Company Limited,
Durga Bhavani Square, Opp. Railway Station,
Denkanikottai Road, Hosur – 63109. ...Appellant

vs

1. Alraj
S/o.Late Mariyappan
2. Ranjitha
W/o.Late Mani
3. Minor Bavya Shree
D/o.Late Mani
4. Minor Gokul
S/o.Late Mani
5. Darshan N
S/o.Umesh ...Respondents

C.M.A.No.2697 of 2021

The Branch Manager,
United India Insurance Company Limited,
No.460/20, First Floor, 8th B Main Road,
Next to Jain Temple, 4th Block,
Jayanagar, Bangalore – 560 011.
C/o.The Divisional Manager,
United India Insurance Company Limited,
Durga Bhavani Square, Opp. Railway Station,
Denkanikottai Road, Hosur – 63109. ...Appellant

vs

1. Marimuthu,
   S/o.Subramani
2. Darshar. N.
   S/o.Umesh ... Respondents

C.M.A.No.2720 of 2021

The Branch Manager,
United India Insurance Company Limited,
No.460/20, First Floor, 8th B Main Road,
Next to Jain Temple, 4th Block,
Jayanagar, Bangalore – 560 011.
C/o.The Divisional Manager,
United India Insurance Company Limited,
Durga Bhavani Square, Opp. Railway Station,
Denkanikottai Road, Hosur – 63109. ...Appellant

vs

1. Malliga,
   W/o.Late Ramesh
2. Minor Dhanalakshmi
   D/o.Late Ramesh

3. Minor Geetha,
   S/o.Late Ramesh
4. Minor Moulis
   S/o.Late Ramesh
5. Minor Lokesh
   S/o.Late Ramesh
6. Darshan N.
   S/o.Umesh ... Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.Nos.292, 295 and 295 of 2018 dated 04.12.2019 on the file of the learned Motor Accident Claims Tribunal (Additional District Court), Hosur and be pleased to dismiss the above claim.

For Appellant [in all C.M.As.]	:	Mr.J.Chandran
For Respondents [R1 to R4 in C.M.A.No.2688 of 2021] [R1 in C.M.A.No.2697 of 2021] [R1 to R5 in C.M.A.No.2720 of 2021]	:	Mr.Prabakaran
For R5 in C.M.A.No.2688/2021, For R2 in C.M.A.No.2697/2021 and For R6 in C.M.A.No.2720/2021	:	No appearance

COMMON JUDGMENT

All the three appeals are filed by the Insurance Company challenging the common award passed in MCOP.Nos.292, 295 and 298 of 2018. The Insurance Company challenging the award on the point of negligence and quantum as well.

2. These three MCOP Nos.292, 295 and 298 of 2018 are filed by three set of people, who had travelling in a Hero Splendor Pro Motorcycle bearing registration No.TN-29-AQ-9471. All the three persons are stone poker by profession and were employed under Mahendran, Senthil Nagar, Hosur. In the road accident taken on 13.08.2017 between the tempo traveller ambulance van bearing registration No.KA-21-B-4247, which belongs to the first respondent in the MCOP.No.292 of 2018 insured with the second respondent in MCOP.No.292 of 2018, the appellant herein and the Hero Splendor Pro Motorcycle bearing registration No.TN-29-AQ-9471.

3. In the said accident, two persons have died and one person is injured. MCOP.Nos.292 and 298 of 2018 are relating to fatal, while MCOP.No.295 of 2018 relating to injury. C.M.A.No.2688 of

2021(MCOP.No.298 of 2018), C.M.A.No.2697 of 2021 (MCOP.No.295 of 2018) and C.M.A.No.2720 of 2021 (MCOP.No.292/2018).

4. It is the common case of the claimants/petitioners before the Tribunal that on 13.08.2017, in the morning, the deceased (Mani) had gone to Senthil Nagar to receive weekly payment from his employer. Thereafter, the deceased was returning to Sanasandram Village by Hero Splender Pro Motorcycle bearing Registration No. TN-29-AQ-9471 along with fellow workers Late Ramesh and Marimuthu. Late Ramesh was riding the Motorcycle, the deceased (Mani) was seated in the middle and Marimuthu was seated behind the deceased as pillion riders. They were being followed by other fellow workers Kumar and Venkatesh by Splendor Pro Motorcycle bearing registration No.TN-70-T-0247. The rider of the motorcycle i.e., Ramesh (deceased) was riding the motorcycle on the left side of the road, slowly and cautiously by observing all the traffic rules and regulations. When they were thus proceeding towards Hosur on the Rayakottai – Hosur Road, near Karapalli, Senthil Nagar, on 13.08.2017 at 8.00 A.M, the driver of the Tempo Traveller Ambulance Van bearing registration No.KA-21-B-

4247, which belongs to the 1st respondent in MCOP.No.292 of 2018 insured with the second respondent in MCOP.No.292 of 2018 came in the same direction from Rayakottai side at high speed, in a rash and reckless manner and dashed to the deceased's Motorcycle from behind. Due to the impact the deceased's Motorcycle tossed up in the air and fell in the road side ditch. Consequently the deceased (Mani), the rider Ramesh and another pillion rider Marimuthu sustained serious injuries.

6. The appellant Insurance company filed counter before the Tribunal alleging that, on 13.08.2017, at about 8.00 a.m., the driver of the Tempo traveler Ambulance Van bearing registration No.KA-21-B-4247 was proceeding Rayakotta to Hosur Road towards Hosur side driven by its driver very slowly, cautiously, observing the road traffic rules, keeping the vehicle left side of the road, with sounding horn, showing the signal lights and while the said vehicle was proceeding near Karupalli, Senthil Nagar, at that time the deceased (Ramesh) was riding in a motor cycle bearing registration No.TN-29-AQ-9471 along with two pillion riders namely deceased (Mani) and Marimuthu, who were going in front of the said vehicle, in a rash and

negligent manner, without following the road traffic rules, without sounding horn, without showing any signal lights and suddenly stopped the vehicle in the middle of the road and due to impact the driver of the said Tempo traveler van touched behind the deceased (Mani) motorcycle and caused the accident. The accident was occurred only due to the rash and negligent riding of the deceased(Ramesh). The deceased (Ramesh) solely responsible for the accident. There is no fault on the part of the driver of the tempo traveler man.

7. In short, as per Insurance Company, the accident was occurred only due to rash and negligent driving of the motorcycle and suddenly stopped the vehicle in the middle of the road without sounding horn and without showing any signal lights.

8. During the trial, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P21 were marked. On the side of the respondents no witnesses were examined and Ex.R1 is marked.

9. Based upon oral and documentary evidence adduced before the

Tribunal, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the Ambulance van and as the insurance is in force on the date of the accident as per Ex.P3 and the vehicle has necessary permit as per Ex.P4 and hence, on an combined reading of Ex.P2, the Registration Certificate, Ex.P3, Insurance Policy, Ex.P4, Permit and Ex.P5, driving license of the ambulance driver has rightly come to the conclusion that the driving of the offending vehicle is rash and negligent and in view of the valid insurance policy, the appellant Insurance company is liable to pay the compensation and awarded the compensation under various heads and the same is under challenge.

10. After perusing the reasoning given by the learned Judge and also the specific stand taken by the Insurance company that the ambulance and the two wheeler came in the same direction and when the two wheeler stopped in the middle of the road, the driver of the ambulance driven the vehicle in a rash and negligent manner and hit behind the two wheeler.

11. Mr.J.Chandran, learned counsel for the appellant Insurance

Company would contend that since three persons were travelled in the two wheeler that is a reason for accident. This Court is unable to accept the said contention for more than one reason.

12. The non-examination of the driver of the ambulance is fatal to the insurance company since the manner of the accident was not projected by the insurance company before the trial Court.

13. On the contrary, the claimant witness viz., P.W.2, who is the injured/claim petitioner in MCOP.No.295 of 2018 has categorically stated that the manner of the accident coupled with Ex.P1 and also admitted the position that the case has been registered against the driver of the offending vehicle. In the absence of positive evidence, this Court has no other reason, but to reject the submission of the learned counsel for appellant Insurance company and hence, the rash and negligence fixed by the Tribunal is hereby confirmed.

C.M.A.No.2688 of 2021 (MCOP.No.298 of 2018)

14. On the point of quantum of compensation in C.M.A.No.2688 of 2021 (MCOP.No.298 of 2018) that on the date of the accident, the deceased Mani was aged about 25 and therefore, the Trial Court has rightly fixed 40% as future prospects and has fixed the notional income at Rs.10,000/- and deduction of 1/4th was adopted. Taking the age of the deceased, correct multiplier of 18 was awarded and the Trial Court has awarded the following compensation under various heads:

S.No.	***Particulars***	***Award of Tribunal***	
1.	Loss of Dependency	Rs.	16,20,000/-
2.	Loss of love and affection	Rs.	40,000/-
3.	Transportation	Rs.	10,000/-
4.	Funeral Expenses	Rs.	15,000/-
5.	Loss of estate	Rs.	15,000/-
6.	Loss of Consortium	Rs.	40,000/-
7.	Future Prospects	Rs.	6,48,000/-
	Total	**Rs.**	**23,88,000/-**

15. Hence, this Court finds that the notional income, deduction, multiplier and other heads of compensation arrived at by the Tribunal is just and fair and hence, the same is hereby confirmed. Accordingly, C.M.A.No.2688 of 2021 is dismissed.

C.M.A.No.2720 of 2021 (MCOP.No.292 of 2018)

16. On the date of the accident, the deceased(Ramesh) was aged about

35 as per postmorterm certificate (Ex.P.6) and the notional income is fixed at Rs.11,000/-. Considering the number of defendants, deduction of 1/4th was adopted and future prospects for the deceased is fixed at 40% and compensation has been arrived by the Tribunal under the various heads are as follows:

S.No.	***Particulars***	***Award of Tribunal***	
1.	Loss of Dependency	Rs.	15,84,000/-
2.	Loss of love and affection	Rs.	50,000/-
3.	Transportation	Rs.	10,000/-
4.	Funeral Expenses	Rs.	15,000/-
5.	Loss of estate	Rs.	15,000/-
6.	Loss of Consortium	Rs.	40,000/-
7.	Future Prospects	Rs.	6,33,600/-
	Total	**Rs.**	**23,47,600/-**

17. Hence, this Court finds that the compensation awarded under various heads are just and fair and does not require any interference by this Court and accordingly, the same is hereby confirmed. Hence, C.M.A.No.2720 of 2021 is dismissed.

C.M.A.No.2697 of 2021 (MCOP.No.295 of 2018)

18. On the date of the accident as per Ex.P10(discharge summary), the injured claimant was aged about 28 years. To sustain the disability, he was

referred to medical board. As per Ex.P.21, the medical board fixed the disability of the injured claimant at 40%.

19. Taking into consideration that the nature and avocation of the injured claimant being stone poker by profession was employed under Mahendra, Senthil Nagar, Hosur, he cannot carry out the job as he used to be before the accident and accordingly, the Tribunal has rightly come to the conclusion that due to the injuries sustained in the accident, the loss of earning capacity is totally reduced and accordingly, held that the disability suffered by the injured claimant is a functional disability and fixed the disability at 40% and applying the multiplier of 17. After going through the injuries sustained by him and also taking note of the disability noticed in the disability certificate(Ex.P21), I am of the considered view that the same may be fixed at 25%. Even in the absence of proof of income, the Tribunal has rightly fixed the income of the injured claimant as Rs.10,000/-. For the purpose of fixing the future prospects considering the age of the injured and by applying the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)***, this Court fixes the future

prospects at 40% and accordingly, the monthly income is fixed at Rs.14,000/- and hence, the loss of earning capacity of the injured claimant would be calculated as 14,000*12*25/100*17 =Rs.7,14,000/- and the compensation awarded by the Tribunal under other heads are hereby confirmed. Hence, the compensation awarded by the Tribunal reassessed as follows:

S.No.	*Particulars*	*Award of Tribunal*	*Modified Amount*	
1.	Loss of Earning Power (14,000*12*25/100*17=	Rs. 8,16,000/-	Rs. 7,14,000/-	Reduced
2.	Medical Expenses	Rs. 69,675/-	Rs. 69,675/-	Confirmed
3.	Future Medical expenses	Rs. 20,000/-	Rs. 20,000/-	Confirmed
4.	Transportation charges	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5.	Nutrition Charges	Rs. 25,000/-	Rs. 25,000/-	Confirmed
6.	Attender charges	Rs. 20,000/-	Rs. 20,000/-	Confirmed
7.	Pain and suffering	Rs. 50,000/-	Rs. 50,000/-	Confirmed
8.	Discomfort, frustration and Social enjoyment	Rs. 25,000/-	Rs. 25,000/-	Confirmed
	Total	Rs. 10,40,675/-	Rs. 9,38,675/-	

20. Hence, the C.M.A.No.2697 of 2021 is partly allowed.

21. In the result, the civil miscellaneous appeal Nos.2688 of 2021, 2720 of 2021 are dismissed and Civil Miscellaneous Appeal No.2697 of 2021 is partly allowed and the award dated 04.12.2019 made in M.C.O.P.No.295 of 2018 is modified to the extent that the injured claimant

is entitled for Rs.9,38,675/- as compensation together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. In case, the award amount has already been deposited by the appellant / Insurance Company to the credit of M.C.O.P.No.295 of 2018, the amount in excess shall be withdrawn by the appellant / Insurance Company by filing proper application. After the Insurance Company withdrawn the excess award amount if any deposited before the Tribunal, the injured claimant shall withdraw the amount now awarded by this Court. No costs. Consequently, connected miscellaneous petitions are closed.

08.04.2024

Index:yes/no
Speaking Judgment/Non-Speaking Judgment
Neutral Citation:Yes/No

mp

To
1. The Motor Accident Claims Tribunal,
   Additional District Court, Hosur.

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

RMT.TEEKAA RAMAN, J.

mp

C.M.A.Nos.2688, 2697 and 2720 of 2021

08.04.2024