



C.M.A.Nos.2287 & 2289 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal Nos.2287 & 2289 of 2021

C.M.A. No.2287 of 2021

The United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
No.134, Silingi Buildings,
4th floor, Greams Road, Chennai-6

... Appellant / 2nd respondent

Vs.

1. Kumar
2. Vasantha
3. Ammu
4. Jeya
5. Chitra
6. Powly

... Respondents / Petitioners

7. M/s.Veltech Multitech Dr.R.R.and
Dr.S.R.Engineering College,
No.42, Veltech Road,
Avadi Morai,
Thiruvallur District-600 071

... Respondent/Respondent

C.M.A. No.2289 of 2021

The United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
No.134, Silingi Buildings,
4th floor, Greams Road, Chennai-6

... Appellant / 2nd respondent



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1. Murugan
2. Ambika ... Respondents 1 & 2/ petitioners1 &2
3. M/s.Veltech Multitech Dr.R.R.and
Dr.S.R.Engineering College,
No.42, Veltech Road,
Avadi Morai,
Thiruvallur District-600 071 ... 3rd Respondent / 3rd Respondent

Common Prayer Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Common Award and Decree dated 07.07.2020 passed in M.C.O.P.Nos.3351 & 3353 of 2016 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants in both CMAs : Mr.K.Varadha Kamaraj

For R1 to R6
in CMA.No.2287 of 2021 : M/s.S.Kiruthika

For R7
in CMA.No.2287 of 2021 : No Appearance

For R1 & R2
in CMA.No.2289 of 2021 : M/s.S.Kiruthika

For R3 in
CMA.No.2289 of 2021 : No appearance

COMMON JUDGMENT

The Insurance Company has filed these Civil Miscellaneous Appeals challenging the liability as well as the quantum of compensation awarded in



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M.C.O.P. Nos.3351 & 3353 of 2016, dated 07.07.2020, on the file of the
Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

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

3. Both the appeals arising out of Common Award relating to one accident hence both appeals have taken up together for hearing. In the meantime, the claimants have also filed separate Cross Objection for enhancement of compensation.

4. On 09.04.2016 at about 5.30 a.m., the Deceased No.1, Arunkumar was riding his two wheeler bearing Registration No.TN 10 AM 8671 along with pillionare namely Raja (Deceased No.2) on the Sardar Patel Road at Kotturpuram and in the very same road, the first respondent's bus bearing Registration No.TN 12 C 6541 was parked in the dark area without proper precautions or parking lights. Due to the darkness, the rider of the two-wheeler hit on the rear side of the bus, which resulted in causing the accident and the rider of the two-wheeler died on the spot and the pillion



rider died at the hospital during treatment.

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5. Aggrieved over the loss of breadwinners of their family, the claimants have filed respective claim petitions seeking compensation for a sum of Rs.50,00,000/- and 80,00,000/- respectively by invoking under Section 166 of the motor Vehicles Act.

6. The first respondent, who is the owner of the vehicle has not contested the claim and the second respondent-Insurance Company has filed their counter and contended that there is no negligence on the part of the driver of the bus and that the bus was parked with due diligence with parking lights/illuminating parking lights. Only due to the rash and negligent driving of the rider of the two-wheeler, the accident had taken place and they have also disputed the income, age, occupation of the deceased and dependency of the claimants.

7. The Tribunal after considering the evidences placed on record has held that the bus was parked negligently in the middle of the road which resulted in the accident and in Point Nos.3 and 4 the Tribunal has quantified the compensation and awarded a sum of Rs.18,65,000/- in M.C.O.P.



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No.3553 of 2016 (For Deceased No.2) and a sum of Rs.27,60,000/- in

M.C.O.P. No.3357 of 2016 (For Deceased No.1).

8. Aggrieved over the negligence fixed on the part of the driver of the bus and also challenging the quantum of compensation more particularly, awarding consortium and love and affection, the Insurance Company has filed this appeal.

9. The learned counsel for the Insurance Company has submitted that on their side, they have examined the driver of the bus as a witness and one another official who speak about the manner in which the accident had taken place and this was not at all considered by the Tribunal. The learned counsel further submitted that P.W.3 who was examined as eyewitness by the claimants is also not an eyewitness and his evidence contains various discrepancies more particularly, the place of accident. He further submits that the rider of the two-wheeler travelled with a convoy of 8 other two-wheelers and since they have travelled in a convoy, they rode the two-wheeler in high speed which resulted in accident. Hence, there was a contributory negligence on the part of the rider as well as the pillion rider hence prays to fix the contributory negligence on the deceased in this case.



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10. The learned counsel for the claimants submitted that the evidences placed on record to show that the bus was parked in darkness of the road, which resulted in accident. The driver of the bus has rightly held as a tortfeasor and there is no contributory negligence on the part of the deceased herein hence prays to confirm the negligence fixed on the driver of the bus. He further submitted that the compensation awarded to them more particularly, the notional income fixed is also not in accordance with the norms followed by this Court and even though there are evidences placed on record to show the income and the same was not properly appreciated by the Tribunal. Hence prays to enhance the compensation awarded.

11. I have considered the rival submissions made on both sides and also perused the records.

12. As far as the negligence is concerned, the claimants have examined P.W.3, who is a person, travelled in the road, had an occasion to witness to the occurrence. He has stated that the bus was parked on the left-hand side of the road and there was darkness. There was no parking lights



illuminating in the bus which resulted in the accident. In the cross examination, he further elaborated that the bus was parked in the big road 200 feet width and he has also asserted that there was no lighting in that area. The bus was parked just 60 feet opposite to the tea shop.

13. It is the evidence of R.W.1 that the driver of the bus has parked the bus on the left-hand side of the road and thereafter he went for drinking tea in the opposite tea shop. According to him, since the bus was a new bus, he had switched on the indicator and also the parking lights. He further stated that totally 9 bikes each carrying 2 persons was crossing the road and one bike was hit on the Iron Barrycade used as speed breaker, and another bike hit on the bus which resulted in accident.

14. This fact was stated for the first time before the Tribunal and it is not the case of the respondents that the convey was crossing the bus in which, one vehicle hit on the bus. In the cross-examination R.W.3 has stated that he had heard the fall of the bike and seen the second bike hitting on the bus. According to him, he starts the bus at about 5.00 p.m., and thereafter, stopped the bus at the tea shop for taking tea at that time.



15. The evidence of P.W.3 and reading of the First Information

Report shows that the accident had taken place in the early morning which is between 5.00 to 5.30 hours. There is no clear evidence whether there was sufficient light at the time of accident. It is also not clear whether the parking indicator of the bus was switched on or not. Even though, R.W.1 states that he switched on the parking lights whereas, the other witnesses claims that there were no indicator lights switched on.

16. As far as the standard of proof requires for proving the accident is concerned, the claimants have to prove their case on the standard of the preponderance of probabilities as held by the Apex Court in ***Bimla Devi and Others vs. Himachal Road Transport Corporation and Others*** [2009 (13) SCC 530 : MANU/SC/0577/2009] and reiterating also various subsequent Judgments. In this case, the evidence placed on record shows that the accident had taken place in the early morning. It was a parked vehicle, in the road. It is not the case of the respondent that the bus was parked in the safest place to avoid the accident. Admittedly, the bus was parked in the road and according to the eyewitness that since the occurrence had taken place in the road. Even it is accepted that the bus was parked after switching of parking indicators, the evidence of Driver of bus shows that,



there was Iron Barricade speed breaker and while negotiating the same, one of the convoy of bikes hit on the bus. This only probablise that, the place where speed breaker has put up, the bus was parked and while negotiating the speed breaker the accident had taken place. This Court is of the view that the evidence placed on record on behalf of the claimants has to be accepted since the same is more probable than the evidence of R.W.1. Accordingly, this Court accepts the case of the claimants that the bus was parked negligently in the road which resulted in accident.

17. As far as the quantum of compensation is concerned, the Tribunal has accepted that the Deceased No.1 namely Arun kumar was working as a cook as per his ID card-Ex.21. As far as the Deceased No.2 Raja is concerned Ex.P13-ID Card showing that he was working as a delivery boy. Both the ID card shows that they were working in a Private Bakery. Based on the same, their notional income was fixed at Rs.15,000/- for the deceased Arun Kumar and Rs.10,000/- for the deceased Raja. However, there was no income proof or any other evidence produced to show their avocation. Based on the nature of work carried on by them and age, the Tribunal has fixed the notional income. This Court is of the view that, notional income fixed by the Tribunal is proper and no need for



interference of this Court.

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18. The Tribunal while fixing the future prospects fixed 50% of the award which is not in accordance with the 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]* and eligible compensation under the head future prospects is only 40%. Accordingly, future prospects is modified. As per the Apex Court Judgment in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '18' by considering the age of the deceased at the time of the accident. Since the deceased is a bachelor 50% deducted towards his personal expenses. Accordingly, the following calculations have been made to calculate the loss of income for the deceased Arun Kumar is concerned: $[15,000 + 6000 (40\% \text{ of } 15000) \times 12 \times 18 \times 1/2 = \text{Rs.}22,68,000/-]$. Accordingly, the following calculations have been made to calculate the loss of income for the deceased Raja: $[10,000 + 4000 (40\% \text{ of } 10000) \times 12 \times 18 \times 1/2 = \text{Rs.}15,12,000/-]$.

19. Similarly, while awarding compensation under the head loss of love and affection and Filial Consortium is not in accordance with the



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Judgment of the Apex Court in *Magma General Insurance Co. Ltd., vs.*

Nanu Ram and Others [2018 (18 SCC 130 : MANU/SC/1012/2018)] and

United India Insurance Co., Limited vs. Satinder Kaur and Ors.

[MANU/SC/0500/2020 : (2021) 11 SCC 780]. Hence, the compensation

awarded under the head love and affection and Filial Consortium is modified

and each claimants are entitled for Rs.40,000/- under the head loss of

consortium. As far as the other conventional heads such as funeral and loss

of estate is concerned, the same are reasonable and the same are hereby

confirmed.

20. Accordingly, the Award passed by the Tribunal under various heads in C.M.A.No.2287 of 2021 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 dependency	Rs.24,30,000/-	Rs.22,68,000/-	Reduced
2.	Loss of love and affection	Rs.1,00,000/-	---	Modified
3.	Filial consortium/loss of consortium	Rs.2,00,000/-	Rs.2,40,000/-	Enhanced
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	Total Compensation	Rs.27,60,000/-	Rs.25,38,000/-	Reduced by Rs.2,22,000/-

21. Accordingly, the Award passed by the Tribunal under various heads in C.M.A.No.2289 of 2021 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 dependency	Rs.16,20,000/-	Rs.15,12,000/-	Reduced
2.	Filial consortium/loss of consortium	Rs.2,00,000/-	Rs.80,000/-	Modified
3.	Medical Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.18,65,000/-	Rs.16,37,000/-	Reduced by Rs.2,28,000/-

22. In the result,

(i) C.M.A.No.2287 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.27,60,800/- is hereby reduced to Rs.25,38,000/- [Rupees Twenty Five Lakhs and Thirty Eight Thousand only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period,



if any.

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(ii) C.M.A.No.2289 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.18,65,000/- is hereby reduced to Rs.16,37,000/- [Rupees Sixteen Lakhs and Thirty Seven Thousand only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(iii) The Appellant - Insurance Company is directed to deposit the amount now 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 respective M.C.O.P.Nos.3351 & 3353 of 2016 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit, the appellants are 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 claimant. The appellant-Insurance Company is permitted to withdraw the amount if any lying in the credit of respective M.C.O.P.Nos.3351 & 3353 of 2016 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai. There



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shall be no order as to costs in the present appeal.

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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 II Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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