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C.M.A.Nos.2717 and 2718 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.Nos.2717 and 2718 of 2024
and C.M.P.Nos.21600, 21603 and 21601 of 2024

The Manager,
The Oriental Insurance Company-Limited,
No.13-D, Opp. to New Town Police Station,
Bharathi Road, Cuddalore.

..Appellant/2nd Respondent
in both C.M.As.

Vs.

1. R. Shagila
2. Minor R.Mahath Sree Sai
S/o.Raguvaran,
Minor Rep. by his mother and guardian the 1st respondent R.Shagila
3. J. Ramalingam
4. R. Revathi

.... Respondent Nos. 1 to 4/
Claimants

5. South India Corporation Pvt.Ltd.,
C/o.Chettinad Cements Corporation Limited,
No.7, RCC 206/261, S.G.Mutt Road,
Chamrajpet, Bangalore - 560018.

....Respondent No. 5/
1st Respondent

in C.M.A.No.2717 of 2024

1. Vinothini
W/o.Ajai Karthic



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2. Minor. Jashwath

S/o.Ajai Karthic

Rep. by his mother and guardian 1st respondent
Vinothini

3. N.Jayabalan

S/o.Natarajan

4. Amsam

W/o. Jayabalan

.... Respondent Nos. 1 to 4/
Claimants

5. South India Corporation Pvt.Ltd.,

C/o.Chettinad Cements Corporation Limited,

No.7, RCC 206/261, S.G.Mutt Road,

Chamrajpet, Bangalore - 560018.

....Respondent No. 5/
1st Respondent
in C.M.A.No.2718 of 2024

Prayer in C.M.A.No.2717 of 2024: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988 to set aside the decree and judgment passed by the Motor Accident Claims Tribunal/Principal District Court, Cuddalore, in M.C.O.P.No.388 of 2021 dated 21.03.2023.

Prayer in C.M.A.No.2718 of 2024: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988 to set aside the decree and judgment passed by the Motor Accident Claims Tribunal/Principal District Court, Cuddalore, in M.C.O.P.No.728 of 2021 dated 21.03.2023.

For Appellant : Mr.R.Premchander
in both C.M.As.

For Respondents : Mr.S.P.Yuvaraj



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in both C.M.As.

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COMMON JUDGMENT

*(Judgment of the Court was delivered by **J.NISHA BANU, J**)*

Both these appeals are filed by the Insurance Company against the common judgment dated 21.03.2023 passed in M.C.O.P.Nos.388 of 2021 and 728 of 2021 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

2. C.M.A.No.2717 of 2024 arises as against the judgment dated 21.03.2023 passed in M.C.O.P.No.388 of 2021. M.C.O.P.No.388 of 2021 was filed by the wife, minor son and parents of the deceased Raguvaran. According to the claimants, on the fateful day, the deceased Raguvaran along with two others was travelling in the Car bearing Registration No.TN-59-BA-1185 (Maruthi Suzuki RITZ VKI). The car was driven by one Ajai Karthic (deceased in M.C.O.P.No.728 of 2021). When the car was proceeding near a place called Seplanatham Siva Hotel on the Cuddalore to Virudhachalam National Highway 532 at about 00.10 hours on 11.02.2021, the lorry driven by the driver of the first respondent bearing Registration No.KA-01-AE-3534 was driven in a rash and negligent driving and hit the car. In the impact, the



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deceased Raguvaran and Ajai Karthic (deceased in M.C.O.P.No.728 of 2021)

have died on the spot while another person by name Rangarajan suffered severe injuries. In this context, one Ragadevan had given a complaint to the jurisdictional police station. Based on which, a case was registered on 11.02.2021. According to the claimants, the deceased Raguvaran was working as Junior Assistant in Lakshmi Vilas Bank Limited, Neyveli, and drawing a sum of Rs.40,000/- per month. For the death of the deceased Raguvaran, M.C.O.P.No.388 of 2021 was filed claiming a compensation of Rs.1,00,00,000/-.

3. C.M.A.No.2718 of 2024 was filed by the Insurance Company as against the judgment dated 21.03.2023 passed in M.C.O.P.No.728 of 2021. M.C.O.P.No.728 of 2021 was filed by the wife, minor son and parents of the deceased Ajai Karthic, who drove the Maruthi Car on the fateful day. As mentioned above, the deceased Ajai Karthic died on the spot and therefore, his legal heirs have filed the claim petition in M.C.O.P.No.728 of 2021. According to the claimants, the deceased Ajai Karthic was working as a Cashier in Lakshmi Vilas Bank Limited, Neyveli, and was drawing a sum of Rs.50,000/- per month. For the death of the deceased, the claimants have filed the claim petition claiming a total compensation of Rs.2,00,00,000/-.



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4. In both the claim petitions, the Insurance Company has filed a counter affidavit. In the counter affidavit, the Insurance Company denied the age, income and other particulars furnished in the claim petitions. In effect, it was contended on behalf of the insurance company that it is for the claimants to prove the averments made in the claim petitions and subject to proof and relevancy, the claim petitions have to be decided. It was also stated that at the time of accident, the driver of the lorry did not possess a valid driving license to drive the vehicle. It was also contended that it was the deceased Ajai Karthic, who drove the vehicle (Car) in a rash and negligent manner and it led to the accident. It was further contended that the owner of the Insurer of the Car has not been impleaded as party to the claim petitions and therefore, the claim petitions have to be dismissed.

5. Before the Tribunal, common evidence was let in in both the claim petitions. The wife of the respective deceased have been examined as P.W.1 and P.W.2. The injured Mr.Rangarajan, who is the brother of the deceased Raguvaran was examined as P.W.3. Mr.Samuel, Employer of the deceased was examined as P.W.4. Ex.P1 to Ex.P19 have been marked on behalf of the claimants. However, on behalf of the respondents in the claim petitions, neither



any witness was examined nor document was marked.

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6. The Tribunal, on perusal of the oral and documentary evidence, awarded compensation in favour of both the claimants in the manner as described below.

7. In M.C.O.P.No.388 of 2021 (C.M.A.No.2717 of 2024), the Tribunal, taking note of the documentary evidence filed on behalf of the claimants, concluded that the deceased Raguvaran was earning a total sum of Rs.38,029/- as monthly salary. After giving 10% deduction towards income tax and 1/4th deduction towards personal expenses, the Tribunal has arrived a sum of Rs.25,352.83 as the monthly contribution of the deceased Raguvaran to the family. By awarding 50% of his income towards future prospects Rs.12,676.415 was added to his monthly contribution taking the total monthly contribution as Rs.38,029/-. Thus, the annual contribution of the deceased was worked out at Rs.4,56,348/-. By applying multiplier 16, a total sum of Rs.49,28,560/- was arrived towards loss of income. That apart, a sum of Rs.15,000/- was awarded towards Funeral Expenses. For Love and Affection, a sum of Rs.40,000/- was awarded. For loss of Estate, a sum of Rs.15,000/- was awarded. Towards loss of consortium to the first claimant/wife, a sum of



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Rs.40,000/- was awarded. Thus, in all, a total compensation of Rs.50,38,560/-, rounded off to Rs.50,40,000/- was awarded as compensation to the claimants in M.C.O.P.No.388 of 2021.

8. In M.C.O.P.No.728 of 2021 (C.M.A.No.2718 of 2024), as far as the deceased Ajai Karthic is concerned, the Tribunal placed reliance on Ex.P16 marked through P.W.4 in which, his salary for the month of January, 2021, was indicated as Rs.35,534.95. By awarding 50% thereof towards future prospects a sum of Rs.17,767.475 was added taking a total monthly income as Rs.53,303/-. Out of this amount, the Tribunal deducted 20% towards income tax and 1/4th amount towards personal expenses of the deceased Ajai Karthic. Ultimately, a sum of Rs.3,83,782/- was arrived as the yearly contribution of the deceased. By applying multiplier 16, a total sum of Rs.61,40,512/- was awarded towards loss of income. That apart, a sum of Rs.15,000/- was awarded towards Funeral Expenses. For Love and Affection, a sum of Rs.40,000/- was awarded. For Loss of Estate, a sum of Rs.15,000/- was awarded. Towards loss of consortium to the first claimant/wife, a sum of Rs.40,000/- was awarded. Thus, in all, a total compensation of Rs.62,50,512/-, rounded off to Rs.62,50,000/- was awarded as compensation to the claimants in M.C.O.P.No.728 of 2021.



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9. The Tribunal, by the judgment dated 21.03.2023 passed in M.C.O.P.Nos.728 and 388 of 2021 has directed the respondents 1 and 2 to jointly and severally pay the compensation amount with interest at the rate of 8% per annum from the date of claim petitions till the date of disbursement. Aggrieved by the award passed by the Tribunal, the Insurance Company has come forward with these Civil Miscellaneous Appeals.

10. The learned counsel appearing for the appellant submitted that the Tribunal failed to take note of the fact that there was a head on collision between two vehicles. In such circumstances, finding negligence on the part of the driver of the lorry and directing the entire compensation amount to be payable by the Insurance Company as well as the owner of the vehicle is unjust and arbitrary. The learned counsel for the appellant also submitted that the accident had taken place at 12.10 a.m, in the wee hours and therefore, the Tribunal ought to have held that the driver of the Car has also contributed to the accident. That apart, it was submitted that P.W.3 is an interested witness in this case, whose testimony should have been discarded by the Tribunal. In a



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case of this nature, it would be just and appropriate that the Tribunal ought to have fixed the liability on the part of the driver of the lorry as well as the driver of the car in equal proportion, failure to do so would result in miscarriage of justice. Above all, the learned counsel for the appellant submitted that as per the various decisions of the Hon'ble Apex Court, the Tribunal ought to have awarded interest only at the rate of 7.5% per annum and not at the rate of 8% per annum. Accordingly, the learned counsel for the appellant prayed for allowing these appeals.

11. Per contra, the learned counsel appearing for the respondents/claimants submitted that P.W.3 was examined as an eye-witness. During his cross examination, nothing credible has been pointed out on behalf of the Insurance Company to discredit the version of the claimants. Even though the Tribunal awarded a lesser amount as compensation, without taking note of the age and earning capability of the deceased, the claimants did not file any appeal. However, it is submitted that the Tribunal awarded a very meagre amount of compensation towards loss of love and affection and loss of estate. The deceased have left behind them a minor son for whom, no separate compensation has been awarded towards loss of love and affection. In any event, the Tribunal has awarded a just and fair compensation and it need not be



interfered with by this Court.

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12. We have heard the learned counsel appearing for the appellant as well as the respondents and perused the materials placed on record.

13. The learned counsel appearing for the Insurance Company mainly argued that when there is a head on collision, the negligence has to be fixed on both the vehicles, but, in this case, the entire negligence has been fixed on the part of the driver of the lorry.

14. On perusal of the entire materials placed, it is evident that P.W.3 in this case was one of the occupants of the Car. He is also lone survivor in the accident. In other words, the car was driven by Ajai Karthic (deceased in M.C.O.P.No.728 of 2021). There are two occupants in the car, who are Raguvaran (deceased in M.C.O.P.No.388 of 2021) and P.W.3. The accident took place at 00.10 hours. In such a situation, the version of P.W.3 have to be relied upon to conclude as to how the accident could have occurred. P.W.3 in his evidence, has stated that on the fateful day, when he was travelling in the car, the driver of the car was driving it slowly and cautiously, however, the driver of the lorry, who was coming in the opposite side had driven it in a rash



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and negligent manner and hit the car. In the impact, both driver (Ajai Karthic and Raguvaran) have died instantaneously and he was the only survivor in the accident. This testimony of P.W.3 assumes significance and there is nothing to discard his evidence. It is also to be mentioned that on behalf of the Insurance Company, even the driver of the lorry was not examined to suggest as to how the accident had taken place. Further more, the F.I.R was registered only as against the driver of the lorry. Taking these aspects cumulatively, the Tribunal has rightly fixed the entire negligence on the part of driver of the lorry and we do not find any reason to take a different view than the one taken by the Tribunal. Therefore, the arguments advanced by the learned counsel for the appellant/Insurance Company that the negligence has to be fixed equally on the lorry as well as the car cannot be accepted.

15. Admittedly, both the deceased are working in Lakshmi Vilas Bank Limited as Junior Assistant and Cashier respectively and the monthly income earned is proved by the pay certificates marked through P.W.4, Samuel. Based on the monthly income, by giving 1/4th deduction towards personal expenses as well as appropriate deduction towards income tax, the Tribunal has arrived at a just and fair compensation over which, we refused to interfere.



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16. At the same time, the argument advanced by the learned counsel for the appellant with respect to fixation of rate of interest cannot be ignored by us. At present, the interest rate being awarded is uniformly at the rate of 7.5% per annum and therefore, the interest awarded by the Tribunal at the rate of 8% per annum cannot be accepted. Therefore, this argument advanced by the learned counsel for the appellant has to be accepted. Accordingly, we hold that the award passed by the Tribunal with interest at the rate of 8% per annum is set aside instead the respondents 1 and 2 are directed to pay the compensation amount determined by the Tribunal at 7.5% per annum. Except this modification with respect to reduction of rate of interest from 8% per annum to 7.5% per annum, the award passed by the Tribunal are confirmed. Hence, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(J.N.B., J.) (R.K.M., J.)
26.09.2024

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To

The Motor Accident Claims Tribunal/
Principal District Court, Cuddalore.



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