IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3316 of 2021
and
C.M.P No.18860 of 2021

National Insurance Company Limited
Branch Office, Nehru Street
Puducherry. ... Appellant

..Vs..

1.Prakash (died)
2.Babu
3.P.Dhanalakshmi
4.P.Iswariya
5.P.Arthi
6.P.Abarna
(Respondents 3 to 6 were brought on record as legal heirs of the deceased 1st respondent viz.,Prakash vide Court order dated 08.02.2024 made in CMP Nos.4972 to 4974 of2023 in CMA Nos.3316 of 2021) ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree made in M.C.O.P No.461 of 2019 on the file of the Motor Accidents Claims Tribunal (Special Sub

Court No.II at Villupuram dated 20.04.2021.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1- Died
M/s.V.S.Sivasundaram
for R3 to R6
R2- Notice dispensed with

J U D G M E N T

This appeal has been filed by the Insurance Company questioning the quantum of compensation awarded by the Tribunal and also questioning the non-fixation of contributory negligence on the part of the deceased.

2. The deceased had sustained the following injuries as a result of an accident caused by a vehicle insured with the appellant:

Right Temporal Bone with Right Temporal EDH & Contusion, Left Craniotomy Tracheostomy

3. As seen from the above injuries, the deceased had suffered grievous head injuries due to the accident caused by a vehicle insured with the appellant. The FIR was also registered only against the driver of the vehicle

insured with the appellant. Based on the evidence available on record, the Tribunal has held that the driver of the vehicle insured with the appellant is alone responsible for the cause of the accident and therefore, directed the appellant/Insurance Company to pay compensation to the 1st respondent/claimant.

4. The appellant/Insurance Company in this appeal has contended that since the deceased was not wearing a helmet at the time of the accident, contributory negligence ought to have been fixed by the Tribunal. But, the Tribunal under the impugned award had erroneously not fixed any contributory negligence on the part of the deceased. The contention of the appellant/Insurance Company as stated supra, has to be rejected by this Court for the following reasons:

a) In the counter submission filed by the appellant/Insurance Company before the Tribunal, a plea regarding non-wearing of helmet by the deceased was never taken.

b) The deceased himself while he was alive was not examined as a witness. The daughter of the deceased was examined as PW1. Only during the cross examination of PW1, the daughter who is not an eye witness to the accident has deposed that the deceased was not wearing a helmet at the time of the accident.

c) The appellant/Insurance Company has not examined any police official who was instrumental in registering the FIR for the purpose of proving that the deceased was not wearing a helmet at the time of the accident.

d) The 1st respondent/claimant (deceased) has not pleaded in the claim petition that he was not wearing a helmet at the time of the accident.

5. Only based on the preponderance of probability, the Tribunal has come to a right conclusion that no contributory negligence can be fixed on the deceased, as there is no evidence to show that the deceased was not wearing a helmet at the time of the accident. This Court does not find any

infirmity in the findings of the Tribunal with regard to the plea taken by the appellant/Insurance Company before this Court that the Tribunal ought to have fixed contributory negligence on the part of the deceased.

6. With regard to the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellant/Insurance Company would contend that the compensation awarded by the Tribunal under various other heads is excessive. He would also rely upon a judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd., v. Kahlon @ Jasmail Singh Kahlon (deceased) represented by his legal representative** reported in **2021 (2) TN MAC 305 (SC)** and would submit that the Tribunal erroneously, despite the deceased having died only subsequent to the passing of the impugned award, has awarded compensation towards pain and suffering and loss of amenities.

7. As seen from the impugned award as well as from the evidence available on record, ever since the date of the accident, the accident-victim was in a state of coma till the date of passing of the award. The Tribunal

has also in the impugned award has examined the deceased, when he was alive who was brought in an ambulance to the Tribunal and has come to the conclusion that he has suffered 100% permanent disability due to the injuries sustained by him, as a result of an accident caused by a vehicle insured with the appellant, though the Medical Board report which was marked as exhibit discloses that he has suffered only 75% permanent disability. The medical records have also been filed by the deceased 1st respondent/claimant before the Tribunal to prove that he was in a state of coma ever since the date of the accident till the date of passing of the award. No contra evidence has also been produced by the appellant/Insurance Company before the Tribunal to disprove the fact that the deceased was in a stage of coma right from the date of the accident till the date of his death. Therefore, the finding rendered by the Tribunal that the deceased was in a stage of coma continuously from the date of the accident has to be accepted by this Court. Having been in the stage of coma for more than 4 years continuously, the deceased while he was alive would have certainly undergone lot of pain and suffering due to the injuries sustained by him as a result of the accident. This Court does not find any infirmity in the assessment of the compensation towards pain and suffering at Rs.3,00,000/- and another sum of Rs.3,00,000/- towards loss of amenities.

8. Learned counsel for the appellant/Insurance Company had relied upon the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar vs Ajay Kumar & Another** reported in **2011 (1) SCC 343** to substantiate his contention that the deceased 1st respondent/claimant is not entitled for loss of amenities once multiplier method is adopted. However, the case on hand is a pathetic case involving an accident-victim who had sustained grievous head injuries and was continuously in a state of coma for almost 4 years and the injuries sustained by him had resulted in his death. Being a welfare legislation to protect the interest of the accident-victims, the case on hand has to be distinguished from the case before the Hon'ble Supreme Court in *Raj Kumar* case relied upon by the learned counsel for the appellant/Insurance Company. In the said decision, it was not a case involving a person who was in a state of coma continuously till the date of his death that too, for a long period of 4 years. While deciding the assessment of compensation under motor accident claims, any assessment

cannot be accurate and also it may vary from case to case depending upon the facts and circumstances of each case. Being an exceptional case, where the accident-victim had sustained grievous head injuries and was in a state of coma for more than 4 years, the compensation awarded by the Tribunal under the impugned award cannot be held to be excessive as claimed by the appellant. This Court does not find any infirmity in the findings of the Tribunal. Since the 1st respondent/claimant has died after filing this appeal, his legal representatives namely, the respondents 3 to 6 are entitled for the compensation awarded by the Tribunal and the total amount of compensation shall be shared by the respondents 3 to 6 herein equally.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Appellant/ Insurance Company is directed to deposit the Award amount together with interest at 7.5% per annum from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any, to the credit of MCOP.No.461 of 2019 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective

shares of award amount as per the ratio apportioned by this Court along with accrued interest to the bank account of the respondents 3 to 6, who are the legal heirs of the deceased Prakash (1st respondent/claimant) through RTGS within a period of two weeks thereafter. Consequently, connected Miscellaneous Petition is closed. No costs.

24.06.2024

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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To

1.Motor Accidents Claims Tribunal /Special Sub Court No.II at Villupuram

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

ABDUL QUDDHOSE, J.
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