IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3096 of 2017 & Cross Obj.No.25 of 2023
and
CMP.Nos.19013 of 2019 & 18852 of 2017

CMA.No.3096 of 2017:

Tata AIG General Insurance Company Ltd.,
A 501, Fifth Floor, Building No.4, Infinity Park,
Dindoshi, Malad (E), Mumbai – 400 097,
Maharashtra. ...Appellant

Vs.

1. Krishnappan
2. Maheswari
3. Jothi
4. P.Sampath
5. A.Velu
6. Cholamandalam General Insurance Company Ltd.,
Second Floor, Dare House,
No.2, NSC Bose Road, Chennai – 600 001. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the decree and judgment dated

20.07.2017 made in MCOP.No.1997 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Court), Dharmapuri.

For Appellant : Mr.K.Vinod

For Respondents : Mr.G.Jeremiah, for R1 to R3
: Ms.Harini
for M/s.M.B.Gopalan Associates, for R6
: No Appearance, for R4 & R5

Cross Obj.No.25 of 2023:

1. Krishnappan
2. Maheswari
3. Jothi ...Appellants

Vs.

1. Tata AIG General Insurance Company Ltd.,
A 501, Fifth Floor, Building No.4, Infinity Park,
Dindoshi, Malad (E), Mumbai – 97, Maharashtra.
2. P.Sampath
3. A.Velu
4. Cholamandalam,
General Insurance Company Ltd.,
Second Floor, Dare House,
No.2, NSC Bose Road, Chennai – 1. ...Respondents

Cross Objection filed under Order 41 Rule 22 of CPC, against the award of the Learned Motor Accident Tribunal, Special District Court, Dharmapuri dated 20.07.2017 made in MCOP.No.1997 of 2014.

For Appellants : Mr.G.Jeremiah

For Respondents : Mr.K.Vinod, for R1
: Ms.Harini
for M/s.M.B.Gopalan Associates, for R4
: Notice not ready, for R2 & R3

COMMON JUDGMENT

Though the miscellaneous petition in CMP.No.19013 of 2019 filed seeking to permit the petitioners to withdraw the amount deposited to the credit of MCOP.No.1997 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court), Dharmapuri, however, in view of the consent expressed by the learned counsel on either side, the main appeal itself is taken up for final disposal.

2. Since both the appeal and the Cross objection are arising out of the very same claim petition, they are disposed of by way of this common judgment.

3. Challenging the judgment and decree dated 20.07.2017 made in MCOP.No.1997 of 2014 on the file of the Motor Accident Claims

Tribunal, (Special District Court), Dharmapuri, the insurance company has come up with the appeal in CMA.No.3096 of 2017 and the claimants have come up with the Cross Obj.No.25 of 2023.

4. For the sake of convenience, the parties are referred to as per their array in CMA.No.3096 of 2017.

5. It is the case of the respondents 1 to 3/claimants that, on 27.08.2013 at about 10.30 p.m., when the deceased Rajkumar was proceeding in a Mahendra pick-up van bearing Regn.No.TN-29-AK-6216 owned by the 5th respondent insured with the 6th respondent from Hosur to Dharmapuri after delivering the parcels and when he was nearing the Nattanmaikottai Junction road, Kaveripattinam, at that time, as a Tata Jumbo four wheeler bearing Regn.No.TN-32-AV-6435 owned by the 4th respondent insured with the appellant-insurance company was negligently parked in the middle of the road without any flashing parking lights, in spite of the efforts taken by the deceased Rajkumar to avert the accident, the van driven by the deceased Rajkumar dashed behind the appellant insured vehicle, due to which, the said Rajkumar sustained

grievous injuries and succumbed to the same. Thereby, the respondents 1 to 3/claimants filed a claim petition claiming a compensation of Rs.50,00,000/-. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked exhibits P.1 to P.27 and on the side of the respondents in the claim petition, two witnesses viz. R.W.1 and R.W.2 were examined and Final report was marked as exhibit R.1. After trial, the Tribunal, on appreciation of oral and documentary evidence held that the above accident had happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle and awarded a sum of Rs.13,35,000/- towards compensation for the death of the deceased Rajkumar, payable by the appellant-insurer. Aggrieved by the same, the appellant/insurance company has come up with the above appeal. However, not satisfied with the compensation awarded by the tribunal, the claimants have come up with the cross objection.

6. Learned counsel for the appellant/Insurance company submitted that the accident happened solely due to the rash and negligent driving of the deceased, which is evident from the FIR registered against the

deceased and, therefore, fixing the entire negligence on the driver of the appellant insured vehicle, is grossly erroneous as the deceased had also contributed to the accident. It is the further submission of the learned counsel that the compensation awarded by the tribunal under the various heads are also excessive and, therefore, the same requires to be reduced.

7. Per contra, the learned counsel appearing for the respondents 1 to 3 submitted that, inspite of specific material, the Tribunal has awarded lesser compensation, which is not just and reasonable and, therefore, the same requires to be enhanced. It is the further submission of the learned counsel that the fact that the vehicle was parked in the middle of the road without any proper parking lights having been established, necessarily the negligence fixed on the vehicle insured with the appellant cannot be questioned and rightly the court below has passed the said order and, therefore, the same does not require any interference.

8. On the above said contentions, heard learned counsel appearing on behalf of the 6th respondent and perused the material documents placed on record.

9. While the appellant-insurer claims that the compensation awarded is on the higher side and that the percentage of negligence fixed on the appellant insured vehicle is on the higher side, it is countered by the respondents 1 to 3 by submitting that the compensation awarded is on the lesser side and no negligence needed to be fixed on the deceased.

10. On the question of negligence, the Tribunal has considered the evidence of R.W.2 an eye witness to the occurrence and Ex.P-1, the first information report. The evidence of R.W.1, according to the Tribunal is self-contradicting and, therefore, it was held to be not safe to rely on the said evidence.

11. A perusal of the evidence of R.W.2 reveals that in chief and cross, the witness, who is alleged to have seen the occurrence had contradicted himself. While in Ex.P-1, there is no mention about the vehicle being parked on the left side of the road with signals switched on, R.W.2, the first informant had contradicted his own statement. R.W.2, was travelling in the vehicle and he has stated that he fainted on account of the accident and regained consciousness only three days later. When

there is very many contradictions in the evidence of R.W.2, rightly the Tribunal had not considered the said evidence. Therefore, the insurer cannot rely on the said evidence to canvass the plea that negligence should be fastened on the deceased. However, the mere fact that the driver of the appellant insured vehicle was not examined cannot be the basis to hold that the deceased had not contributed to the accident. The manner in which the accident had occurred coupled with the offending vehicle being stationary only leads to the conclusion that the deceased had driven his vehicle in a negligent manner and had also contributed to the accident. Had the deceased been careful in driving, he could have averted the accident, rather, atleast the case would not have been a fatal one. Therefore, the Tribunal was not right in not fastening any negligence on the deceased and this Court finds that fixing 20% negligence on the deceased would be just and reasonable. Therefore, this Court fixes negligence at 20% on the deceased.

12. Now coming to the quantum of compensation, the accident is of the year 2013. It was claimed by the respondents 1 to 3/claimants that, the deceased was earning a sum of Rs.15,000/- per month, however, the

Tribunal has fixed the monthly income at Rs.9,000/- per month. Further, the Tribunal has not awarded any future prospects. Hence, applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** and also considering the age of the deceased as also the claimant, fixing a notional income of Rs.13,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the income per month is quantified at Rs.18,200/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.9,100/- per month and the deceased being aged about 22 years, as evidenced from the records, adopting the multiplier of 17 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income/Pecuniary loss to the family is arrived at **Rs.9,100/- * 12 * 18 = Rs.19,65,600/-**.

13. Under the head 'loss of love and affection', a sum of Rs.1,50,000/- has been awarded, which is against the decision in *Pranay Sethi case.* This Court reduces the sum to Rs.1,20,000/- (Rs.40,000 * 3). Under the head funeral expenses, a sum of Rs.25,000/- is awarded and the same is confirmed. However, no compensation has been awarded under the head 'loss of estate' and this Court awards a sum of Rs.25,000/- under the said head. Medical Bills to the tune of Rs.1,63,000/- has been submitted in which there is no quarrel and the said amount is confirmed. No amount has been awarded towards transportation to the hospital and this Court awards a sum of Rs.25,000/- under the said head.

14. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Compensation for Pecuniary Loss	9,72,000/-	**19,65,600/-**
Loss of love and affection	1,50,000/-	**1,20,000/-**
Funeral Expenses	25,000/-	25,000/-
Transport expenses	25,000/-	25,000/-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Medical Bills	1,63,000/-	1,63,000/-
Loss of estate	-	**25,000/-**
Total	**13,35,000/-**	**23,23,600/-**

15. Of the sum of Rs.23,23,600/- awarded towards compensation, a sum equivalent to 20% is deducted on account of contributory negligence fixed by this Court on the deceased Rajkumar and the compensation payable to the claimants at 80%, which is to be paid by the appellant-insurer, is quantified at Rs.18,58,880/-.

16. Accordingly, both the appeal and the cross objection are allowed in part on the findings rendered above by fixing contributory negligence on the deceased, but enhancing the compensation payable to the claimants from **Rs.13,35,000/- to Rs.18,58,880/-**. The appellant-insurance company is directed to deposit the compensation arrived at by this Court to the credit of MCOP.No.1997 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of

deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. Of the sum of Rs.18,58,880/- arrived at by this Court, the 1st and 2nd respondents/1st and 2nd claimants would be entitled to a sum of Rs.8,50,000/- each and the 3rd respondent/3rd claimant is entitled to a sum of Rs.1,58,880/- with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount, as apportioned by this Court above, directly to the bank account of the respective respondents 1 to 3/respective claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the respondents 1 to 3/claimants are not entitled to any interest for the default period, if any. There shall be no order as to costs in this appeal and cross objection. Consequently, the connected Miscellaneous petitions are closed.

08.11.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Motor Accident Claims Tribunal,
   (Special District Court),
   Dharmapuri.

2. The Section officer,
   VR Section, High Court of Madras.

M.DHANDAPANI, J.

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CMA.No.3096 of 2017 & Cross Obj.No.25 of 2023
and
CMP.Nos.19013 of 2019 & 18852 of 2017

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