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CMA NOS.3048 OF 2023 & 691 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NOS.3048 OF 2023 AND 691 OF 2024
AND
CMP NO.6365 OF 2024 IN CMA NO.691 OF 2024**

CMA NO.3048 OF 2023

Mrs.Kasthuri

... Appellant /
Petitioner

Vs.

1.T.Kumaran

2.Reliance General Insurance Company Ltd.,
No.6, IV Floor, Haddow's Road,
Chennai – 600 006.

... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated July 31, 2023 passed in M.C.O.P.No.640 of 2018 on the file of the Court of the Special Sub Judge No.II (Motor Accidents Claims Tribunal) Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja
For Respondent-1 : Left
For Respondent-2 : Mr.G.Vasudevan



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CMA NO.691 OF 2024

Reliance General Insurance Company Ltd.,
No.6, 4th Floor, Haddows Road,
Nungambakkam,
Chennai – 600 006.

... Appellant /
2nd Respondent

Vs.

1.Mrs.Kasthuri

... 1st Respondent /
Petitioner

2.T.Kumaran

... 2nd Respondent /
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated July 31, 2023 passed in M.C.O.P.No.640 of 2018 on the file of the Court of the Special Sub Judge No.II (Motor Accidents Claims Tribunal) Court of Small Causes, Chennai.

For Appellant : Mr.G.Vasudevan
For Respondent-1 : Mr.F.Terry Chella Raja
For Respondent-2 : Left

COMMON JUDGMENT

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

These two Civil Miscellaneous Appeals are arising out of the
'Award dated July 31, 2023, passed in M.C.O.P.No.640 of 2018'
['impugned Award' for short] by the 'Special Sub Judge – II (Motor
Accidents Claims Tribunal), Court of Small Causes, Chennai' ['Tribunal']



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for short]. The petitioner in the aforesaid Original Petition has filed C.M.A.No.3048 of 2023 seeking enhancement of compensation. The second respondent / Insurance Company has filed C.M.A.No.691 of 2024 praying to set aside the impugned Award. This Common Judgment will now dispose of both these Civil Miscellaneous Appeals.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONER'S CASE

3. The petitioner is the mother of the deceased – Sathish Kumar. On December 18, 2017 at about 07.00 hours, when the deceased Sathish Kumar was riding a motorcycle bearing Registration No.TN-02-AL-4434 on Park Road, Soundarya Colony, 7th Avenue Road Junction, Thirumangalam, a ‘motorcycle bearing Registration No.TN-23-BA-1125’ [‘alleged offending motorcycle’ for clarity] proceeding from opposite direction in a rash and negligent manner, dashed against the deceased’s motorcycle, due to which, the deceased was thrown out and sustained head injury. Immediately, he was taken to Anna Nagar Apollo Hospital and treated as in-patient from December 18, 2017 to December 22, 2017 and on December 22, 2017 he succumbed to the injuries. The first respondent



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being the owner of the alleged offending motorcycle and the second respondent, being its insurer, are liable to pay compensation to the petitioner. Accordingly, the petitioner filed a Claim Petition before the Tribunal claiming compensation of a sum of Rs.50,00,000/- with interest and costs.

FIRST RESPONDENT'S CASE

4. The first respondent, being the owner of the alleged offending motorcycle filed counter. He denied the allegations made by the petitioner in the claim petition and prayed to dismiss the claim petition.

SECOND RESPONDENT'S CASE

5. The second respondent – Insurance Company filed a counter denying the averments made in the claim petition and contending that the petitioner is put to strict proof of the same. Further, Insurance Company stoutly opposed the petitioner's claim amount as highly excessive and sought to dismiss the petition.

TRIBUNAL



6. On the side of the petitioner, petitioner was examined as P.W.1 and four other witnesses were examined as P.W.2 to P.W.5. Through P.W.1, Ex-P.1 to Ex-P.12 were marked; through P.W.2, Ex-P.13 and Ex-P.14 were marked; through P.W.3, Ex-P.15 was marked; through P.W.4, Ex-P.16 to Ex-P.19 were marked and through P.W.5, Ex-P.20 to Ex-P.22 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

7. The Tribunal, relying on the evidence of P.W.1, Ex-P.1 – First Information Report (FIR) as well as Ex-P.3 – Charge Sheet, concluded that the accident occurred due to the rash and negligent riding of the 1st respondent. Further, relying on the evidence of Ex-P.18, which are income related documents of the deceased, the Tribunal fixed notional income at Rs.19,500/- per month. Considering the age of the deceased at the time of accident, the Tribunal, relying on the Judgment of the Hon'ble Supreme Court in *Sarla Verma -vs- Delhi Transport Corporation* reported in **(2009) 6 SCC 121**, adopted the multiplier of 16. Further, in accordance with the guidelines laid down by the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi* reported in **(2017) 16 SCC 680**, the Tribunal fixed future prospects at 40% and



awarded compensation under various heads with interest at the rate of 7.5% per annum from the date of presentation of the petition till the date of realization. Split up figure is as tabulated hereunder:

<i>Head</i>	<i>Amount Awarded</i>
Loss of Dependency	Rs.26,20,800.00
Loss of Consortium	Rs.40,000.00
Loss of Estate	Rs.15,000.00
Funeral Expenses	Rs.15,000.00
Medical Bills	Rs.3,40,000.00
Total	Rs.30,30,800.00

8. Feeling aggrieved by the quantum of compensation, the petitioner has preferred CMA No.3048 of 2023. On the other hand, challenging the quantum of compensation to be excessive, the 2nd respondent/Insurance Company has preferred CMA No.691 of 2024.

ARGUMENTS

9. Mr.F.Terry Chella Raja, learned Counsel for the claimant / petitioner submits that the Tribunal failed to consider the age, occupation and income of the deceased. At the time of accident, the deceased was aged about 33 years old and was engaged in the business of supplying milk under the name and style of 'Arjuna Milk Distributors' Chennai' and earned about Rs.30,000/- per month. To prove the same, Ex-P.18 has been



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marked. The Tribunal failed to take into consideration Ex-P.22 – Statement of Income and IT Computation, while fixing notional income of the deceased. Though one Bank Official was examined as P.W.2 and Mr.Gnanavel, the Milk Vending Agent was examined as P.W3 and the income and avocation of the deceased were proved, the Tribunal fixed the deceased's monthly income at Rs.19,500/, which is on the lower side. Further, the Tribunal ought to have awarded more compensation under the heads 'loss of dependency', 'loss of consortium', 'loss of estate', 'funeral expenses' and 'medical expenses'. The Tribunal failed to award just compensation for the death of the deceased. Accordingly, he sought to allow the appeal in CMA No.3048 of 2023, dismiss the appeal in CMA No.691 of 2024 and enhance the compensation.

10. Mr.G.Vasudevan, learned Counsel for the Insurance Company submits that the petitioner has not proved the deceased's income. Further, it is a case of own negligence and hence, the insurance company is not liable to pay any compensation. It is the deceased who came at over speed without observing the ongoing vehicles in front and dashed against them and thus, he also contributed to the accident. Ex-P.1 to Ex-P.4 will disclose the manner of accident that the deceased was solely



responsible for the accident. In any event, the Tribunal ought to have held that it is a case of contributory negligence of the deceased and the first respondent. The Tribunal failed to consider the above said facts and evidence in the right perspective and fixed negligence on the part of first respondent. Further submits that the compensation under conventional heads are not in line with *Pranay Sethi's Case (supra)*. Accordingly, he prays to allow the appeal in CMA No.691 of 2024 and dismiss the appeal in CMA No.3048 of 2023.

DISCUSSION

11. This Court has heard the learned Counsels on either side and perused the typed sets of papers and the impugned Award.

12. The evidence of P.W.1 and P.W.2 coupled with Ex-P.1 – FIR, would clearly show that the accident occurred only due to the rash and negligent riding of the first respondent. The learned counsel for the insurance company would contend that the Tribunal ought to have apportioned certain amount towards contributory negligence and also claimed that the compensation awarded is on the higher side. This Court is unable to accept the submissions of the learned counsel. Contributory negligence is a question of fact and has to be decided only on the evidence



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available. This Court finds that there is no evidence on the side of the Insurance Company. Ex.P1 / First Information Report stands uncontroverted. There is no other evidence regarding the manner in which the accident occurred. Therefore, the Tribunal was justified in placing reliance on the evidence of P.W.1, P.W.2. and Ex-P.1 - First Information Report to conclude that the accident occurred due to the rash and negligent riding of the 1st respondent.

13. Though it is stated that the deceased was engaged in Milk Vending business, petitioner has not produced any document to prove the monthly income of the deceased. Further, Ex-P.16 to Ex-P.19 shows that the deceased could have easily earned a sum of Rs.30,000/- per month. The Tribunal, based on Ex-P.18 – income related documents of the deceased, arrived at a very fair amount as notional income. At the time of accident, the deceased was 33 years old and hence, the Tribunal was right in applying multiplier method. The Award of the Tribunal is in line with *Pranay Sethi's Case* and *Sarla Verma's Case* (cited *supra*). This Court does not find any reason to interfere with the Award passed by the Tribunal.



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CONCLUSION

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14. In view of the foregoing narrative, both these Civil Miscellaneous Appeals do not have any merit and therefore, are hereby dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J]

[R.S.V., J.]

04.12.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The Special Sub Judge No.II
(Motor Accidents Claims Tribunal)
Court of Small Causes
Chennai.



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