IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.1917 of 2020 and 2694 of 2021
and
CMP Nos.14174 of 2020 and 12860 of 2021

CMA No.1917 of 2020

United India Insurance Company Ltd.,
1st Floor, LMC Compound,
Nehruji Road, Villupuram. .. Appellant/2nd respondent

Vs.

1. U.Muthulakshmi
2. U.Veeramuthu
3. U.Venkatalakshmi
4. U.Uthayakumari
5. V.Lakshmikantham .. Respondents/claim petitioners
6. S.Anusha .. Respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 23.07.2019 passed in MCOP No.86 of 2017 on the file of the Motor Accident Claims Tribunal [Special District Court], Villupuram.

For Appellant : Mr. D.Bhaskaran

For Respondents : Mr.C.Munusamy (for R1 to R5)
No appearance (for R6)

CMA No.2694 of 2021

1. U.Muthulakshmi
2. U.Veeramuthu
3. U.Venkatalakshmi
4. U.Uthayakumari
5. V.Lakshmikantham .. Appellants/claim petitioners

Vs.

1. S.Anusha

2. United India Insurance Company Ltd.,
1st Floor, LMC Compound,
Nehruji Road, Villupuram. .. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 23.07.2019 passed in MCOP No.86 of 2017 on the file of the Motor Accident Claims Tribunal [Special District Court], Villupuram.

For Appellants : Mr. C.Munusamy

For Respondents : Mr.D.Bhaskaran (for R2)
No appearance (for R1)

COMMON JUDGMENT

Challenging the award of the Motor Accident Claims Tribunal (Special District Judge), Villupuram, vide judgment and decree dated 23.07.2019 in MCOP No.86 of 2017, both on the point of quantum as well as on negligence, the 2nd respondent-Insurance company has filed CMA No.1917 of 2020, while, the claim petitioners, have filed CMA No.2694 of 2021, seeking enhancement of the compensation awarded.

2. By consent, both Civil Miscellaneous Appeals are taken up together and disposed of by the following common judgment.

3. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

4. The factum of the accident is being admitted.

5. Before the claims tribunal, the legal representatives of the deceased Udhaya Kumar, who died in the accident on 06.12.2016, filed the

claim petition and it is the specific evidence of PW1 that while the deceased Udhayakumar was seated as one of the pillion rider, in the two wheeler bearing Regn.No.PY01AM7177, at that time, a Maruthi Esteem Car bearing Regn.No.TN01 AA9754, owned by the 1st respondent and insured with the 2nd respondent, driven in a rash and negligent manner, tried to overtake the two wheeler, dashed against the same and resulted in the accident. At the time of accident, the deceased was working as a Junior Bailiff in Villupuram District Court and earning a sum of Rs.27,375/- per month.

6. In the counter statement filed by the insurance company, a specific plea was taken that since three persons were travelling in the two wheeler, they have contributed to the accident.

7. During the trial, PW1 and PW2 were examined. Ex.P1 to Ex.P25 were marked. RW1 was examined. Ex.R1 and Ex.R2 were marked.

8. On consideration of both oral and documentary evidence, the tribunal has rendered a finding that the accident has taken place due to the rash and negligent driving of the driver of the car and also held that since

three persons were travelling in a two-wheeler, at the time of the accident, 20% contributory negligence was fixed upon the rider of the two wheeler and also assessed the compensation and awarded Rs.28,75,000/- and directed the Insurance company to pay a sum of Rs.23,00,000/- to the claim petitioners.

9. Learned counsel for the claim petitioners could contend that the 20% contributory negligence fixed upon the driver of the two wheeler is unsustainable in law and relied upon the decision of the Hon'ble Supreme Court in ***Mohammed Siddique & Another Vs. National Insurance Company Ltd. & Others***, reported in **2020 (1) TNMAC 161 (SC)**, wherein it is held as follows:

> "13.....Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim....

..... What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

10. It remains to be stated that though the respondent-insurance company contended that the accident has taken place due to the contributory

negligence of the rider of the two wheeler, for the reasons unknown, the driver of the offending vehicle viz., Maruthi Esteem car, insured with the insurance company was not examined and hence, based upon the evidence of PW2 and Ex.P1, Ex.P2 and Ex.P3, the tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the car. However, since three persons were travelling in the two-wheeler, the tribunal has fixed 20% contributory negligence on the rider of the two wheeler. The said finding of the tribunal is under challenge in this appeal.

11. Following the decision of the Hon'ble Supreme Court in ***Mohammed Siddique's*** case (cited supra) and also taking note of the fact that there is no positive evidence being let in by the Insurance Company or in the absence of any answer elicited during the cross-examination of the P.W.2 that the accident had occurred only because more than 3 persons travelled in the two wheeler. The finding rendered by the Tribunal fixing contributory negligence of 20% on the part of the rider of the two wheeler, is unsustainable in law. ***Accordingly, the said finding is hereby vacated.***

12. In view of the discussions in the preceding paragraph, this Court holds that the accident had taken place due to the rash and negligent driving of the car alone, which is insured with the insurance company and accordingly, the entire award amount of Rs.28,75,000/- along with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation, awarded by the tribunal, has to be paid by the respondents 1 and 2, jointly or severally, to the claim petitioners.

13. The learned counsel appearing for the Insurance Company could contend that after the death of the said person-Udayakumar, one of his family members got compassionate appointment in the District Court and therefore, the family has not suffered any pecuniary loss.

14. I am unable to uphold the said contention for more than one reason. A mere raising of the plea that a compassionate appointment has been given to one of the L.R's of the deceased person, does not mean that they did not suffer any pecuniary loss. Based upon the service conditions and subject to the availability of vacancy, such occasions might have arisen. Moreover, in the instant case, mere raising of a plea, will not satisfy the

point for consideration. The plea raised by the Insurance Company is not substantiated by any evidence and hence, in the absence of any document being filed before the Court, I have no hesitation to reject the said contention.

15. The next point for consideration is on the point of quantum of compensation. The learned counsel appearing for the Insurance Company could contend that split multiplier method has to be adopted, since the deceased was aged about 52 years at the time of accident and till the date of retirement, one multiplier has to be adopted and after the date of retirement, another multiplier is to be adopted.

16. Whether split multiplier method has to be adopted or not, is no longer *res integra,* in view of the judgment of the Hon'ble Supreme Court reported in (2022) 5 Supreme Court Cases 107 (***R.Valli and others Vs.Tamil Nadu State Transport Corporation***) wherein applying split multiplier i.e., one multiplier upto date of retirement and another multiplier after the retirement of deceased, is held to be impermissible and hence, the second contention raised by the appellant-Insurance Company, also stands

rejected and the multiplier adopted by the Tribunal is held to be valid in law. Further, the compensation awarded by the claims tribunal on other heads, is also in accordance with law and hence, I do not find any error warranting interference by this Court at the appellate stage.

17. Accordingly, it is ordered as follows:

(i) The judgment and decree dated 23.07.2019, made in MCOP No.86 of 2017 on the file of the Motor Accident Claims Tribunal [Special District Court], Villupuram, stands modified.

(ii) The finding of the claims tribunal fixing 20% contributory negligence on the deceased-rider of the two-wheeler, is set aside.

(iii) Entire negligence is fixed on the driver of the Maruthi Esteem Car and liability is fastened jointly and severally on the 1st respondent/owner of the car and the insurer/2nd respondent-United India Insurance Company, Villupuram.

(iv) Out of the compensation amount i.e. Rs.28,75,000/-, the 1st claim petitioner/wife of the deceased is entitled to Rs.8,75,000/-; 2nd & 5th claim petitioners/son and mother of the deceased are entitled to Rs.4,00,000/- each and the 3rd and 4th claim petitioners/daughters of the deceased, are entitled to Rs.6,00,000/- each.

(v) Additional Court fee, if any, to be paid by the claim petitioners within a period of four weeks and decree to be drafted after the payment of Court fee.

(vi) Except the above modification, the award of the tribunal is kept intact.

(vii) The United India Insurance Company Ltd., Villupuram, is directed to deposit the entire award amount of Rs.28,75,000/- with proportionate interest and costs to the credit of MCOP No.86 of 2017 on the file of the Motor Accident Claims Tribunal [Special District Court], Villupuram, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.

(viii) On such deposit, the claim petitioners, are permitted to withdraw the award, as apportioned now, less the amount if any already withdrawn, on making necessary applications.

18. Accordingly, CMA No.1917 of 2020, filed by the Insurance company is dismissed while, CMA No.2694 of 2021 filed by the claim petitioners is partly allowed to the extent indicated above. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

20.04.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
ars/nvi

To

The Special District Court,
Motor Accident Claims Tribunal,
Villupuram.

RMT.TEEKAA RAMAN,J.,

ars/nvi

Pre-delivery Judgment in
CMA Nos.1917 of 2020 and 2694 of 2021

20.04.2023