

NATIONAL INSURANCE COMPANY LTD.

A

v.

CHAMUNDESWARI & ORS.

(Civil Appeal No. 6151 of 2021)

OCTOBER 01, 2021

B

[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Motor Vehicles Act, 1988: s.166 – Fatal accident – The victim-deceased aged 35 years was working as Manager in Private Company – Claimants are wife and minor son – One the fateful day, he was driving car – At that time, the offending vehicle (Eicher van) was in front of the car of the deceased – It was case of claimants that all of sudden, the driver of Eicher van turned towards right without giving any signal or indicator which resulted in accident – The victim died and other passengers in the car i.e first respondent-wife, respondent-minor son and sister of first respondent suffered injuries – Respondents claimed Rs. 3 crores – Tribunal allowed the claim partly and awarded compensation of Rs. 10,40,500/- with a finding that there was contributory negligence – High Court held that the accident occurred only due to negligence of the driver of Eicher van and taking annual income of deceased as Rs. 12.29,949/- – awarded total compensation of Rs. 1.85 crores – On insurance company's appeal, held: Evidence of PW-1 as well as PW-3 was that the Eicher van which was going in front of the car, took a sudden right turn without giving any signal or indicator – The evidence of PW-1 & PW-3 was categorical and in absence of any rebuttal evidence by the driver of Eicher van, High Court rightly held that the accident occurred only due to the negligence of the driver of Eicher van – PW-1 herself travelled in the very car and PW-3, who gave statement before the police, was examined as eye-witness – In view of such evidence on record, there was no reason to give weightage to the contents of the FIR – The accident occurred on 14.10.2013, the High Court correctly took into account the salary of the deceased in Form-16 for the Financial Year 2012-2013 – Though, it was the claim of the respondents-claimants that the deceased was earning Rs.1,33,070/- per month, the same was not accepted and the High Court itself assessed the income of the deceased at Rs.12,29,949/- per annum – As the deceased was in

C

D

E

F

G

H

- A *permanent job and having regard to age of the deceased on the date of the accident, the future prospects and the multiplier were correctly applied by the High Court – Even the amount of compensation on other conventional heads is awarded correctly by the High Court.*
- B **Dismissing the appeal, the Court**
- HELD:** 1. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in
- C absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In
- D view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. [Para 8][615-E-H]
- E 2. The accident occurred on 14.10.2013, the High Court has correctly taken into account the salary disclosed by the deceased in Form-16 for the Financial Year 2012-2013 and income of the deceased is taken as Rs.12,29,949/- per annum for the purpose of determination of loss of dependency. Though, it was
- F the claim of the respondents-claimants that the deceased was earning Rs.1,33,070/- per month, the same was not accepted and the High Court itself assessed the income of the deceased at Rs.12,29,949/- per annum. As the deceased was in permanent job and having regard to age of the deceased on the date of the accident, the future prospects and the multiplier were correctly
- G applied by the High Court in conformity with the judgment of this Court in the Case of *Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another* and also in the case of *National Insurance Company Limited v. Pranay Sethi and Others*. Even the
- H

amount of compensation on other conventional heads is awarded A correctly by the High Court. [Para 9][616-D-G]

Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another 2009 (6) SCC 121: [2009] 5 SCR 1098; National Insurance Company Limited v. Pranay Sethi and Others 2017 (16) SCC 680:[2017] 13 SCR 100 – relied on.

Oriental Insurance Company Limited v. Premlata Shukla and Others 2007 (13) SCC 476 : [2007] 6 SCR 780; Nishan Singh and Others v. Oriental Insurance Company Limited 2018 (6) SCC 765: [2018] 6 SCR 795 – held inapplicable.

Case Law Reference

[2007] 6 SCR 780	held inapplicable	para 6	
[2018] 6 SCR 795	held inapplicable	para 6	D
[2009] 5 SCR 1098	relied on	para 9	
[2017] 13 SCR 100	relied on	para 9	

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6151 of 2021

From the Judgment and Order dated 03.08.2018 of the High Court of Judicature at Madras, in CMA No.1204 of 2018.

K. K. Bhat, Ranjan Kumar Pandey, Advs. for the Appellant.

V. Balaji, Rakesh K. Sharma, Shantha Raman, Selvi George, Garvesh Kabra, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

2. This appeal is filed by National Insurance Company Ltd. (3rd Respondent before the High Court), aggrieved by the judgment and order dated 03.08.2018, passed by the High Court of Judicature at Madras in CMA No.1204 of 2018. By the aforesaid order, the High Court has partly allowed the Civil Miscellaneous Appeal filed by the Respondent Nos. 1 and 2, by enhancing compensation to Rs.1,85,08,832/-.

G

H

- A 3. The 1st Respondent is wife and the 2nd Respondent is minor son of the deceased Mr. Subhash Babu, who died in a road accident on 14.10.2013. The deceased Mr. Subhash Babu, aged about 35 years was working as Manager HR in a Private Limited Company. On the date of accident, he was driving Maruti car bearing No.DL-2C-P-5414 on NH-47 – main road from Perumanallur to Erode. At that time, the Eicher van bearing Registration No.TN-33-AZ-5868 was proceeding in front of the car driven by the deceased. It is the case of the respondents–claimants that all of a sudden, the driver of Eicher van has turned towards right side without giving any signal or indicator. In the said accident, driver of the Maruti car, Mr. Subhash Babu, died and other passengers in the car C i.e. 1st Respondent–wife, 2nd Respondent–minor son and sister of the 1st Respondent, suffered injuries.
- B 4. In the Claim Petition, filed by the Respondent Nos. 1 and 2 before the Motor Accident Claims Tribunal / Additional District Court, Tiruppur, respondents claimed compensation of Rs.3 crores. The
- D respondents pleaded negligence on the part of the driver of Eicher van as he has taken right turn without giving any signal or indicator, as such, accident occurred only due to negligence of driver of Eicher van. The appellant and others have appeared before the Claims Tribunal and opposed the claim. The Claims Tribunal vide order dated 11.12.2017 passed in M.C.O.P. No.842 of 2014 has allowed the claim partly and
- E awarded compensation of Rs.10,40,500/- with a finding that there was a contributory negligence on the part of drivers of both the vehicles in ratio of 75% and 25% on the part of the deceased and the driver of Eicher van respectively. On appeal, the High Court by recording a finding that accident occurred only due to the negligence of the driver of the
- F Eicher van and the annual income of the deceased was Rs.12,29,949/-, has awarded a total compensation of Rs.1,85,08,832/-, including the compensation on conventional heads. Aggrieved by the judgment and order of the High Court, the Insurance Company filed this Appeal before this Court.
- G 5. We have heard Mr. K. K. Bhat, learned counsel appearing for the Appellant–Insurance Company and Mr. V. Balaji, learned counsel appearing for the Respondents–Claimants.
- H 6. The submission of the learned counsel for the appellant is twofold. Firstly, it is submitted that though the Tribunal has correctly apportioned the negligence on the part of the deceased and the driver of Eicher van, the same was overturned by the High Court, contrary to the

evidence on record. Mainly it is contended that in the First Information Report, it was categorically mentioned that accident occurred only due to negligence by the deceased. In spite of the same, such important documentary evidence is ignored by the High Court. The learned counsel in support of his arguments placed reliance on the judgments of this Court in the case of *Oriental Insurance Company Limited v. Premlata Shukla and Others*¹ and in the case of *Nishan Singh and Others v. Oriental Insurance Company Limited*². It is, further, submitted by the learned counsel that the compensation awarded by the High Court is exorbitant in absence of any acceptable evidence on record to show income of the deceased, as pleaded in the Claim Petition.

7. On the other hand, Mr. V. Balaji, learned counsel for the respondents submitted that the accident occurred only due to the sheer negligence on the part of the driver of Eicher van. It is submitted that the deceased was driving Maruti car and ahead of them the Eicher van was proceeding and the driver of the said van turned towards right side without any signal or indicator and the said lapse resulted in the accident. It is, further, submitted that the deceased was working as Manager HR in a Private Limited Company and was earning a sum of Rs.1,33,070/- per month, in spite of the same, the High Court has taken income of the deceased at Rs.12,29,949/- per annum and awarded the compensation. It is submitted that in view of the oral and the documentary evidence on record, a just compensation is awarded by the High Court and there are no grounds to interfere with the same.

8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information

¹ 2007 (13) SCC 476

² 2018 (6) SCC 765

- A Report. In the judgment, relied on by the appellant's counsel in the case of *Oriental Insurance Company Limited v. Premlata Shukla and Others*¹ this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, *sine qua non* for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the judgment in the case of *Nishan Singh and Others v. Oriental Insurance Company Limited*², this Court has held, on facts, that the car of the appellant therein, which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case.
- D 9. Even with regard to quantum of compensation, it is clear from the judgment of the High Court that the accident occurred on 14.10.2013, the High Court has correctly taken into account the salary disclosed by the deceased in Form-16 for the Financial Year 2012-2013 and income of the deceased is taken as Rs.12,29,949/- per annum for the purpose of determination of loss of dependency. Though, it was the claim of the respondents-claimants that the deceased was earning Rs.1,33,070/- per month, the same was not accepted and the High Court itself assessed the income of the deceased at Rs.12,29,949/- per annum. As the deceased was in permanent job and having regard to age of the deceased on the date of the accident, the future prospects and the multiplier were correctly applied by the High Court, which is in conformity with the judgment of this Court in the Case of *Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another*³ and also in the case of *National Insurance Company Limited v. Pranay Sethi and Others*⁴. Even the amount of compensation on other conventional heads is awarded correctly by the High Court. For the aforesaid reasons, we do not find any merit in this Civil Appeal and the same is accordingly dismissed with no order as to costs.

³ 2009 (6) SCC 121

H ⁴ 2017 (16) SCC 680

10. While issuing notice, this Court vide order dated 18.02.2019 A
granted stay of enforcement of the impugned judgment, subject to
condition of depositing the lumpsum compensation of Rs.25 Lakhs before
the Tribunal with a direction to deposit the same in an interest earning
Fixed Deposit in a Nationalised bank. The said amount shall be paid to
the respondents—claimants with accrued interest. The balance amount
payable by the appellant—Insurance Company shall be paid within a period
of two months from today. B

Devika Gujral

Appeal dismissed.