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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.02.2023

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.367 of 2022

and

C.M.P(MD)No.3310 of 2022

M/s.United India Insurance Company Limited,
Through its Branch Manager,
Office at No.127/A, 2nd Floor,
Trunk Road, Poonthamallee,
Chennai-600 056.

... Appellant/ 2nd Respondent

Vs

1.Mookaiah Nadar
2.Lakshmithai
3.Sivasakthi
4.Anitha

...1st Respondent/1st Petitioner
...2nd Respondent/2nd Petitioner
...3rd Respondent/3rd Petitioner
...4th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the award/judgment dated 30.04.2021 made in M.C.O.P.No.113/2016 on the file of the Motor Accident Claims Tribunal, Tirunelveli (Special Sub Court dealing with MCOP cases, Tirunelveli).



For Appellant : Mr.C.Karthick
For R1 to R3 : Mr.T.Selvakumaran
For R4 : No Appearance

JUDGMENT

The appeal is filed by the Insurance company challenging the judgment and decree dated 30.04.2021 of the Motor Accident Claims Tribunal, Tirunelveli (Special Sub Court dealing with MCOP cases, Tirunelveli) in M.C.O.P.No.113 of 2016.

2. On 17.11.2021 at about 11.00 am, the deceased was travelling in a container lorry bearing Registration No.TN-12-DD-6635 along with the another driver in order to repair leakage in the container as per the instructions given by the owner. The driver of the lorry, one Damotharan parked the lorry on Poonthamallee bye pass road in a rash and negligent manner under the over head live high tension wire. The driver Damotharan directed the deceased to climb the roof of the container lorry to show the leakage spot to the workshop mechanic. On the instructions of Damotharan, the deceased climbed the roof of the container lorry and accidentally touched the live wire passing over head. The deceased was electrocuted, thrown away and fell on the ground and subsequently succumbed to the injuries due to the



electrocution. The parents and sisters of the deceased therefore filed a claim petition claiming a sum of Rs.25,00,000/- as compensation.

3. The first respondent, the owner of the vehicle remained *ex parte*, the second respondent filed a counter denying all the contentions raised in the claim petition.

4. It was the specific case of the second respondent Insurance Company that it was the deceased's own negligence which resulted in the accident as the deceased failed to exercise caution while climbing the roof top of the lorry and accidentally touched the live high tension wire. It was the further contention of the second respondent that the claimants did not have any right to claim compensation against it and that the compensation, if any, could be claimed only against the electricity department. It was further stated that as the electricity department was not impleaded as a party, the claim petition deserved to be dismissed.

5. Before the Tribunal, the claimants marked Exhibits P.1 to P.7 and examined two witnesses. The second respondent insurance company filed one document (ie) the insurance policy of the container lorry and examined two witnesses on its behalf.



6. The tribunal on an appreciation of the entire evidence on record found that the Driver of the container lorry was negligent in parking the lorry under the high tension wire and further held that only on the instructions of the driver of the lorry, the deceased climbed the roof top of the container lorry, accidentally touched the live high tension wire, got electrocuted and succumbed to the injuries. Therefore, the Tribunal on the said findings awarded Rs.17,43,600/- along with 7.5% interest as compensation.

7. Aggrieved by the judgment and decree of the Tribunal, the insurance company has filed the above appeal.

8. The learned counsel for the insurance company submitted that the only issue to be tested in the appeal was the finding of the Tribunal on negligence. According to the learned counsel, the Tribunal failed to note that it was the deceased's own negligence that resulted in the accident. According to the learned counsel, from the evidence on record it was clear that it was the deceased who drove the vehicle and parked the same negligently under the over head high tension wire. The learned counsel further submitted that had the deceased exercised reasonable caution while climbing the roof top of the lorry to show the leakage to the welder, the accident could have been averted.



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9. On the other hand, the learned counsel for the respondents submitted that the lorry was driven by Damotharan, R.W.1 and it was his negligence in parking the lorry under the over head high tension wire that resulted in the accident. If the driver, Damotharan had not parked the vehicle under the high tension wire, the accident would not have occurred. The learned counsel further submitted that the Tribunal failed to award any compensation under the head loss of consortium and this Court should enhance the compensation as it is trite in law that the claimants are entitled to just and reasonable compensation.

10. I have heard both the counsels and perused the materials on record.

11. It is an undisputed fact that the container lorry was parked under the over head high tension wire. It is also undisputed that the vehicle was taken to the welding shop to repair the leakage. According to the appellant it was the deceased who drove the container lorry, parked it negligently under the over head high tension line and climbed the roof top of the lorry and accidentally touched the high tension wire and died. On the other hand, the respondent submits that it was Damotharan who drove the lorry and when the deceased climbed the roof top of the lorry to show the leakage in the roof of the



container lorry, on instructions of the driver Damotharan, the deceased without noticing the high tension wire accidentally came in contact with the same and succumbed to the injuries.

12. P.W.2, who is an eye witness to the accident deposed as follows:

“அதே ஓர்க்ஸாப்பில் வண்டியின் கூரையில் ஓட்டை விழுந்து மழைநீர் வடிகிறது என்று சொல்லிக்கொண்டே எனக்கு தெரிந்த டிரைவர் தாமோதரன் TN-12-F-6635 என்ற பதிவெண்ணுடைய பாடி கட்டிய லாரியை ஓர்க்ஸாப்பின் முன் இடம் இல்லாததால் சற்று தூரத்தில் வெட்ட வெளியில் உயர்தர அழுத்த கரண்டு போகும் லைன் கீழ் வண்டியை நிறுத்திவிட்டு வந்தார்.

இந்த விபத்து வண்டியின் ஓட்டுநர் பாதுகாப்பு விசயங்களை பார்க்காமல் உயர் அழுத்த மின் பாதையில் வாகனத்தை நிறுத்தியதோடு அல்லாமல் லாரியின் மேல் பகுதிக்கு ஜெயகிருஷ்ணனை அஜாக்கிரதையாக ஏறச்சொன்னதின் காரணமாகத்தான் இந்த விபத்து நடந்துள்ளது.□

13. From the evidence of P.W.2, who is an eye witness to the accident, it is clear that it is Damotharan, who drove the vehicle and it was his negligence in parking the vehicle negligently under the over head high tension wire that the accident happened.

14. The driver of the lorry, Damotharan examined himself as R.W.2 and deposed that it was the deceased Hari krishnan, who drove the vehicle and



parked it under the over head high tension wire and further deposed that it was the deceased, who failed to exercise caution and accidentally came in contact with the over head high tension wire. In the cross-examination, the driver/Damotharan denied the suggestion that to avoid criminal case he had manipulated the facts as if the deceased was driving the vehicle and was further negligent in parking the vehicle under the over head high tension wire.

15. I have gone through the evidence of R.W.2 and find that he is an interested witness. In my view there is no reason to disbelieve the evidence of P.W.2, who is admittedly an uninterested witness and also an eye witness to the accident. I am of the view that as against the evidence of R.W.2, who is an interested witness, the evidence of P.W.2, the eye witness is preferable. It is therefore clear that it was Damotharan who drove the lorry and parked the same negligently under the over head High Tension wire. The learned counsel for the appellant submitted that the deceased also contributed to the accident by not exercising caution while climbing the roof top. It is true that the driver, Damotharan was negligent in driving and parking the vehicle under the over head high tension wire, but at the same time it is also to be noted that if the deceased had exercised reasonable caution the accident could have been averted. Therefore, on a conspectus of the entire evidence on record, I am of the considered view that the deceased contributed to the accident by not



exercising caution while climbing the roof top of the lorry. Therefore, I am inclined to deduct 10% of the compensation amount towards the contributory negligence of the deceased.

16. The learned counsel for the respondents submits that in the light of judgment of the Hon'ble Supreme Court in the case of *pranay Sethi*, the claimants would be entitled to Rs.1,20,000/- towards loss of consortium. I am in agreement with the learned counsel for the respondents and I reject the contention of the appellant that the claimants have not filed an appeal and therefore they are not entitled to compensation of Rs.1,20,000/- towards loss of consortium. The Tribunal has awarded Rs.17,43,600/- and 10% has to be deducted towards contributory negligence of the deceased. The claimants as per *pranay sethi's* case are entitled to Rs.1,20,000/- towards loss of consortium. The award of the Tribunal is enhanced to Rs.18,63,600/- by adding Rs.1,20,000/- towards loss of consortium and out of Rs.18,63,600/- 10% is deducted towards the contributory negligence of the deceased. Therefore, the total compensation is assessed at Rs.16,77,240/- along with 7.5% interest. It is stated by the learned counsel for the appellant that 50% of the award amount along with interest is already deposited. The learned counsel for the appellant is directed to deposit the balance amount along with accrued interest and cost within a period six weeks from the date of receipt of copy of this order. On



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such deposit being made, the claimants/respondents shall be entitled to withdraw the said amount in the proportion directed by the Tribunal. The appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal, Tirunelveli
(Special Sub Court dealing with MCOP cases, Tirunelveli).
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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