BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.01.2017**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A.[MD].No.232 of 2016
and
C.M.P.(MD).No.3187 of 2016

Reliance General Insurance Company Ltd.,
Through its Branch Manager,
First Floor, Gaajav Arcade,
R.S.Puram, Coimbatore 641 002. : Appellant/2nd Respondent

Vs.

1.Thangamariammal
2.T.Periyasamy
3.Minor Ramalakshmi
(Rep.by her next friend and guardian
her mother, 1st Respondent : Respondents/Petitioners
4.S.Sureshbabu
5.United India Insurance Co., Ltd.,
Through its Branch Manager,
No.81-C, WGC Road,
Tuticorin 628 002. : Respondents/Respondents 1 & 3

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 13.08.2010, made in M.C.O.P.No.233 of 2007, on the file of the Motor Accident Claims Tribunal, [Additional District Judge/Fast Track court-I], Tuticorin and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents 1 to 3 : Mr.A.Joseph Jawahar

For Respondent No.4 : No Appearance

For Respondent No.5 : Mr.N.Sivakumar

JUDGMENT

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[Judgment of the Court was made by **R.SUBBIAH, J.]**

This Civil Miscellaneous Appeal has been filed by the appellant - Insurance Company as against the Award dated 13.08.2010, made in M.C.O.P.No.233 of 2007, passed by the Motor Accident Claims Tribunal, [Additional District Judge/Fast Track court-I], Tuticorin, questioning the findings rendered by the Tribunal in respect of rash and negligent aspect as well as the quantum of compensation awarded by the Tribunal.

2. The case of the claimants, viz., the wife, the son and the minor daughter of the deceased is that at the time of accident, the deceased was working as a Mazdoor in Tuticorin Port Trust Cargo Handling Labour Pool and earning a sum of Rs.21,679/-. On 02.04.2007, when the deceased was proceeding in his Two Wheeler bearing Registration No.TN-69-L-2967 from Thoothukudi Harbour to Muhiahpuram from east to west, a lorry bearing Registration No.TN-37-AK-6710, owned by the fourth respondent herein and insured with the appellant Insurance Company, came from the same direction in a rash and negligent manner and overtook the two wheeler driven by the deceased and suddenly halted without giving any signal. On account of the same, the deceased dashed behind the rear portion of the lorry and sustained grievous injuries. The deceased was taken to the Government Hospital, Thoothukudi and thereafter, he was taken to the Meenakshi Mission Hospital, Madurai, where the deceased succumbed to the injuries on 01.05.2007. The claimants 1 to 4 made a claim before the Tribunal for a sum of Rs.20,00,000/- as compensation for the death of the deceased.

3. The said Claim Petition was resisted by the appellant - Insurance Company, by filing a counter statement, stating that the deceased was under the influence of alcohol at the time of accident and it is the deceased, who came in a rash and negligent manner and dashed behind the rear portion of the lorry. On account of the same, he had lost the balance, fell down, sustained grievous injuries and succumbed to the injures. Therefore, the appellant - Insurance Company is not liable to pay compensation.

4. In order to prove the claim, on the side of the claimants, the first claimant was examined as PW-1 and 14 documents were marked as EX-P1 to EX-P14. On the side of the appellant - Insurance Company, one Dr.Thangamani was examined as RW-1 and no documents were marked. Having considered the above materials, the Tribunal has come to the conclusion and fixed 25% contributory negligence on the part of the deceased and 75% negligence on the part of the appellant - Insurance Company and awarded a sum of Rs.15,92,400/- as compensation together with interest at the rate

of 7.5% per annum payable by the appellant - Insurance Company. Challenging the same, the appellant - Insurance Company has come up with the present Civil Miscellaneous Appeal.

5. We have heard the learned counsel appearing for the appellant - Insurance Company and the learned counsel appearing for the claimants and we have also perused the records carefully.

6. The first and foremost contention of the learned counsel for the appellant - Insurance Company is that at the time of accident, the deceased was under the influence of alcohol and drove the two wheeler in a rash and negligent manner and dashed behind the rear portion of the lorry. On account of the same, he had lost the balance, fell down, sustained grievous injuries and succumbed to the injures. Thus, according to the learned counsel for the appellant, the Tribunal ought to have fixed 50% contributory negligence on the part of the deceased.

7. Per contra, the learned counsel appearing for the respondents/claimants made his submissions supporting the award passed by the Tribunal. According to him, it was the driver of the lorry, who came from the same direction in a rash and negligent manner and overtook the two wheeler driven by the deceased and suddenly halted without giving any signal. Therefore, the deceased dashed behind the rear portion of the lorry and sustained grievous injuries. The Tribunal, according to him, has awarded a very reasonable compensation, which does not require any interference at the hands of this Court.

8. Keeping the above submissions made on either side, we have gone through the materials available on record. From the records, it is seen that on the side of the appellant - Insurance Company no eye-witness was examined to prove the manner in which the accident, had occurred. However, the appellant - Insurance Company established before the Tribunal by examining the doctor as RW-1 to state that the deceased was under the influence of alcohol at the time of accident. Thus, taking into consideration of the above, the Tribunal has fixed 25% contributory negligence on the part of the deceased. However, there is no evidence to prove that the deceased was driving his two wheeler in a rash and negligent manner. The said conclusion was arrived at by the Tribunal, by taking into consideration of the Judgment rendered by the Hon'ble Supreme Court in the case of **T.O.Antony Vs. Karvarnan,** reported in **2008 (2) MLJ 1124 SC.** Thus, we do not find any infirmity in the said finding arrived at by the Tribunal, more particularly, when the appellant Insurance Company has not chosen to examine any eye-witness to prove the manner of the accident.

9. Insofar as the quantum of compensation is concerned, in order to prove the income of the deceased, EX-P10, salary certificate of the deceased was marked. The deceased, at the time of accident, was

earning a sum of Rs.17,510/- and applying multiplier '15' for the purpose of calculating the loss of income to the family of the claimants and after 1/3 deduction towards his personal expenditure, the Tribunal has awarded a sum of Rs.21,01,200/-, towards loss of income.

10. Apart from the above, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, a sum of Rs.2,000/- towards loss of estate and a sum of Rs.15,000/- towards loss of consortium. Thus, totally, the Tribunal has awarded a sum of Rs.21,23,200/- as compensation for the death of the deceased. After arriving at the above calculation, the Tribunal has rightly come to the conclusion and awarded a sum of Rs.15,92,400/-, by fixing 25% contributory negligence on the part of the deceased, as the deceased was under the influence of alcohol at the time of accident. It is to be noted that the Tribunal has not awarded any amount under the conventional heads. Thus, the said award, in our considered view, at no stretch of imagination, could be stated on the higher side. The award amount of the Tribunal, in fact, is just and very reasonable.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 13.08.2010, made in M.C.O.P.No.233 of 2007, on the file of the Motor Accident Claims Tribunal, [Additional District Judge/Fast Track court-I], Tuticorin, is confirmed. The appellant - Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this Judgment, if it is not deposited so far. On such deposit, the claimants 1 and 2 are entitled to withdraw their shares, as apportioned by the Tribunal and the share of the minor claimant shall be deposited in any one of the nationalized banks, till the minor claimant attains majority and the guardian of the minor claimant, the first respondent/the first claimant is permitted to withdraw the interest once in three months directly from the bank. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

NB
To
The Additional District Judge/Fast Track court-I
The Motor Accident Claims Tribunal, Tuticorin.

+1CC to Mr.S.Srinivasaraghavan, Advocate Sr.No.4646

GJM/SV/MMS/17.2.17-4p-4C

JUDGMENT MADE IN
C.M.A.[MD].No.232 of 2016
25.01.2017