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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A (MD) No.677 of 2014

and

M.P. (MD) No.1 of 2014

and

CROS.OBJ (MD) No.1 of 2017

Royal Sundaram Alliance Insurance
Co., Ltd,
No.176-D-F, Trivandrum Road,
Vannarpettai,
Tirunelveli District.

... Appellant in CMA
and R1 in Cros Obj

Vs.

1.Murugeswari

2.Manimegalai

... Respondents 1 and 2 in CMA and
Cross objectors in Cors Obj.

3.M/s.Pandian Associates
No.5/160/1, SPIC Ancillary
Industrial Estate,
SPIC Nagar, Tuticorin-5.

... 3rd Respondent in CMA and 2nd
Respondent in Cross Obejction

Prayer : Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act and Cross Objection is filed under Order - XLI, Rule 22 r/w Sec-96(1) & (2) of Civil Procedure Code to allow the Civil Miscellaneous Appeal and to set aside the fair and decreetal order dated 30.10.2013 made in MCOP.No.29 of 2012 on the file of Motor Accident Claims Tribunal (Addl.District & Sessions Court), Theni at Periyakulam.

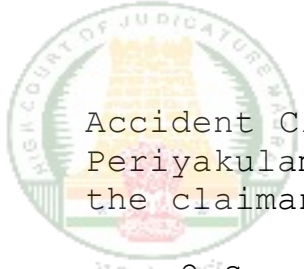
For Appellant : Mrs.K.R.Shiva Shankari

For Respondents : Mr.M.Saravanan for RR1 and 2
No appearance for R3

COMMON JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J)

CMA (MD) No.677 of 2014 has been filed by the Royal Sundaram Alliance Insurance Co., Ltd, challenging the award dated 30.10.2013 made in MCOP.No.29 of 2012 on the file of the Motor



Accident Claims Tribunal (Addl. District & Sessions Court), Theni at Periyakulam. Cross Objection (MD) No.1 of 2017 has been filed by the claimants.

2. Suresh, son of the first claimant and brother of the second claimant was riding his bike bearing Registration No. TN 69 W 7961 on 11.08.2011. When the accident involving the tipper lorry bearing Registration No. TN 69 L 7984 took place, the said Suresh was aged 24 years and died on the spot. He was working as Process Controller at Tuticorin Sterlite Industry and was earning Rs.27,876/- per month as salary.

3. The case of the claimants is that the accident took place only on account of the negligence of the lorry driver. Both the mother and the sister were depending on the deceased. Crime No.266/2011 was registered under Section 304 A IPC against the driver of the lorry on the file of the Sipcot Police Station, Tuticorin. The lorry was owned by one Pandian Associates and was insured with Royal Sundaram Alliance Insurance Company Limited. Therefore the lorry owner as well as the Insurance Company are jointly and severally liable to pay compensation to the claimants. They filed M.C.O.P.No.29 of 2012 on the file of the Motor Accident Claims (Addl. District & Sessions Court), Theni at Periyakulam seeking compensation to the tune of Rs.81,10,000/-. This claim was opposed by the Insurance Company on the ground that the accident had occurred due to the negligence of the deceased. The Tribunal passed an award dated 30.10.2013 directing the respondents in the MCOP to pay a sum of Rs.38,20,800/ with interest at the rate of 7.5% per annum from the date of application till date of payment. Aggrieved by the said award, the Insurance Company has filed this Civil Miscellaneous Appeal. The claimants also seek enhancement of the amount of compensation awarded to them by filing cross objection.

4. Heard the learned counsel for both parties.

6. The primary contention advanced by the learned counsel for the Insurance Company is that the Tribunal went wrong in fixing the negligence on the lorry driver. It could be seen that the accident took place on the middle of the road and that from this alone one can come to a finding that the deceased had also contributed to the accident. It was also submitted that the Tribunal went wrong in not taking note of the age of the mother of the deceased for fixing the appropriate multiplier. In the matter of deductions also, the Tribunal was in error.

7. On the other hand, the learned counsel appearing for the claimants would point out that the Tribunal correctly found that the deceased was at fault. However, grievance was expressed that 50% of future prospects was not awarded while computing the income of the deceased.



8. We are of the view that the Tribunal correctly found that the lorry driver was at fault. This finding was arrived at after a thorough analysis on the evidence on record. PW.2 Selvan is an eye witness to the occurrence. He was the pillion rider. He deposed that the lorry collided head on with the two wheeler and that the lorry driver did not lessen the speed of the vehicle. Another eye witness PW.4 had deposed that the lorry was driven in a rash and negligent manner. The occurrence had taken place at 1.30 p.m in the afternoon. It was a case of head on collision. The lorry driver could have easily avoided the accident, if he had come at a moderate speed. The lorry driver examined himself as RW.1. He claimed that upon seeing the two wheeler, he stopped the lorry. If that be so, the lorry would not have run over the head of the deceased. From this single circumstance, the Tribunal rightly came to the conclusion that the lorry driver was to be blamed. The inspection report of the Motor Vehicle Inspector is to the effect that there was no mechanical failure or fault. Only after consideration of the evidentiary material, the Tribunal came to the conclusion that the accident occurred on account of the negligence of the lorry driver.

9. We see no reason to take a different view. The finding as regards negligence is confirmed and the appeal filed by the Insurance Company is liable to be dismissed. The deceased was employed in a private company. He was not married when the accident took place. The claimants are the mother and sister of the deceased. This Court can easily come to a conclusion that the deceased would have assumed the responsibilities for the sister and mother. Thereafter, the Tribunal applied the multiplier by taking into account the age of the deceased and not that of the mother. The future prospects of the deceased was also taken into account. The Tribunal had also awarded compensation to the claimants under the other relevant heads.

10. This Court is of the view that the compensation finally quantified by the Tribunal as payable to the claimants has been correctly calculated. There is no reason to interfere with the same. In this view of the matter, finding no merit in this Civil Miscellaneous Appeal and cross objection filed by the Insurance Company as well as the claimants, this Court dismiss both the appeal and cross objection. The award passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To,

1. The Additional District & Sessions Court,
Motor Accident Claims Tribunal, Theni at Periyakulam.

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2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.75213

+1cc to Mr. R.Subramanian, Advocate Sr.No.75437

SKM/ARUL

VB/SKN/RSK/SAR4/12/12/2017/4P/5C

C.M.A (MD) No. 677 of 2014

and

M.P. (MD) No.1 of 2014

and

CROS.OBJ (MD) No.1 of 2017

29.08.2017