IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.62 of 2018
and
C.M.P.Nos.11952 & 934 of 2018

The Oriental Insurance Co.Ltd.,
At Lakshmi complex, Thillai Nagar,
Trichy. ... Appellant/3rd Respondent

Vs

1.Anandh Paul
2.A.Christabel
3.Robert
4.Kutharathulla
5.ICICI Lombard General Insurance,
Mumbai. ...Respondents 1 to 5

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 09.06.2017 made in M.C.O.P.No.1006 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.A.Arumugam for
Mr.E.D.Sethupathi for R1 & R2.
Mrs.R.Sreevidhya for R5.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance company who is the insurer of the lorry as against fastening of 100% liability regarding the accident which occurred on 18.02.2013 in which one Mr.Jiju Anand, 26 years, Financial Associate III in Hewlett Packard Co., earning about Rs.28,000/- per month, died while he was travelling in his friend's car driven by his friend Kumaresh, the owner of the car and hit against a lorry parked without any light or signal on the National Highways.

2.Heard Mr.S.Arunkumar, learned Counsel for the appellant and Mr.A.Arumugam, learned Counsel for the respondents 1 and 2 and Mrs.R.Sreevidhya, learned Counsel for 5th respondent viz., insurer of the car.

3.The only grievance of the learned Counsel for the appellant is that entire liability has been fastened on the part of the driver of the lorry which was insured with the appellant/insurance company and he would submit that there should be contributory negligence on the part of the driver of the car who hit against the parked lorry. Therefore, he seeks to set aside the finding of the Tribunal regarding fixation of entire negligence on the part of the driver of the insured lorry.

4.However, Mrs.R.Sreevidhya, learned Counsel for the insurer of the car / 5th respondent submitted that the Tribunal only based on evidence has fixed the liability entirely on the driver of the lorry. Mr.A.Arumugam, learned Counsel for the claimants would submit that the parents have to be compensated suitably irrespective of the negligence fixed on both sides.

5.A perusal of the records would show that the car was driven by one Mr.Kumaresh from Coimbatore to Chennai. On the way near Irukudiliyur Aerikarai bus stop at 02.30 a.m., the car dashed on the rear side of the lorry which was parked on the National Highways Road. PW2, who was travelling in the car as an occupier categorically stated that the lorry was parked in the middle of the road without any parking signal or indicator and therefore, the accident occurred as the car rammed against the lorry.

6.The Tribunal after thoroughly analyzing the evidence of PW1 and other witnesses fixed the liability of 100% on the part of the driver of the lorry. Even if the lorry had been parked on the main road, the driver of the car could have avoided the accident by driving the car slowly, after seeing the lorry parked on the road. Though there is no contrary evidence on the side of the appellant/insurance company, equally there is also no contrary evidence on the side of the 5th respondent. If the car had been driven properly and slowly, in all probabilities, the accident could have been avoided and therefore, it is appropriate to fix 25% negligence on the part of the driver of the car. Therefore, this Court sets aside the finding of the Tribunal fastening entire negligence on the driver of the lorry and redetermines the liability at 75% on the driver of the lorry and 25% on the driver of the car.

7.The Tribunal based on Ex.P.12 viz., statement of salary account determined the monthly income of the deceased at Rs.28,587/-. However, Mr.S.Arunkumar, learned Counsel for the insurance company would point out that a sum of Rs.5,661/- viz., leave encashment has been given along with the salary and the same has to be deducted. A perusal of Ex.P.12 would show that the deceased was totally paid a sum of Rs.29,397/- and if Rs.5,661/- paid towards leave encashment is deducted, the monthly income would be Rs.23,736/- and therefore, this Court redetermines the monthly income at Rs.23,736/- instead of Rs.28,587/-.

8.The Tribunal rightly added 50% towards Future Prospects and if 50% is added, the loss of income would be Rs.23,736/- + 50% = Rs.35,604/-. Thus, the yearly income of the deceased would be Rs.427248/-. An amount of Rs.22725/- has to be deducted towards income tax norms and hence, the loss of income would be Rs.4,27,248 - 22,625/- = Rs.4,04,523/-. The Tribunal has righlty adopted '17' multiplier since the age of the deceased was 26 years and hence, the loss of income would be Rs.4,04,523/- x 17 = 68,76,891/-. Since the deceased was a bachelor 50% has to be deducted towards personal expenses and if 50% is deducted, the loss of income would be Rs.68,76,891 (-) 50% = Rs.34,38,445/-.

9.Rs.2,00,000/- has been awarded by the Tribunal towards Loss of Love and Affection and this Court redetermines the said amount to Rs.1,00,000/-. Rs.25,000/- awarded towards Funeral Expenses is reduced to Rs.15,000/- and Rs.5,000/- awarded towards Loss of Estate is enhanced to Rs.15,000/-. No amount has been awarded towards Transportation and hence, a sum of Rs.15,000/- is awarded in this head. Therefore, the sum of Rs.46,03,760/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	34,38,445/-
2.	Loss of Love and affection	1,00,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of estate	15,000/-
5.	Transportation	15,000/-
	Total	35,83,445/-

9.Hence, the compensation of Rs.46,03,760/- is reduced to Rs.35,83,445/-. The interest awarded by the Tribunal at the rate of 7.5% is confirmed.

10.The appellant/Insurance company and 5th respondent/insurance company are directed to deposit 75% and 25% of the award amount respectively as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the shares of the claimants to their accounts through RTGS within a period of one week.

11. In the result, the appeal filed by the insurance company is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.46,03,760/- to Rs.35,83,445/-. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Coimbatore.

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.71546

+1cc to Mr.E.D.Sethupathi, Advocate SR.No.70727

C.M.A.No.62 of 2018
and
C.M.P.Nos.11952 & 934 of 2018

RK(CO)
GMY(14/10/2019)