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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1211 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

ICICI Lombard General Insurance Company Ltd.,
Swamambigai Plaza,
Near New Bus Stand, Omalur Main Road,
Salem - 636 009.

... Appellant/2nd Respondent

Vs.

1.Jayanthi

...1st Respondent/Claimant

2.Thangammal

(set exparte in lower Court)

... 2nd Respondent/ 1st Respondent

3.A.Murugan

... 3rd Respondent/ 3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.06.2010 made in M.C.O.P.No.268 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional District Judge), at Salem.

For Appellant

: M/s.R.Sreevidhya

J U D G M E N T

The Insurance Company is the appellant in this Civil Miscellaneous Appeal. It is aggrieved by the impugned Judgment and Decree dated 25.06.2010 passed by the Motor Accident Claims Tribunal (I Additional District Judge), Salem in M.C.O.P.No.268 of 2008.



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2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,52,500/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit to the 1st respondent/claimant for the death of her minor child in a motor vehicle accident.

3. The brief facts of the are that on 12.11.2007 at about 9.45 a.m. the 1st respondent/claimant along with her minor child M.Surendran was going to take drinking water in front of Premier Vests Shop, near Sivambiga Petrol Bunk at Chinnaiyapuram,. While the child was standing on the left side of the road, a lorry bearing registration number TN-28-V-4458 belonging to the 2nd respondent insured with the appellant Insurance Company driven by its driver in a rash and negligent manner knocked down the minor child, as a result of which, the minor child sustained grievous injuries and died on the spot.

4. Therefore, the 1st respondent filed a claim petition for compensation of Rs.10,00,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.1,52,500/-. Aggrieved by the same, the Insurance Company has filed this Civil Miscellaneous Appeal to assail the impugned Judgment and Decree passed by the Tribunal on the following grounds:-

- i. The order of the learned Tribunal is contrary to the law weight of evidence and against all the probabilities of the case.
- ii. The learned Tribunal has failed to consider the legal defence taken by the appellant and the evidence adduced thereof and erred in not exonerating the appellant herein.
- iii. The learned Tribunal has failed to note that the driver of the commercial vehicle was not having a license to drive a vehicle and ought to have dismissed the claim petition as against the appellant herein.
- iv. The award of the learned Tribunal is liable to be set aside so far the appellant is concerned.

5. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company. I have perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

6. The case of the 1st respondent/claimant was that her minor child died on 12.11.2007 due to the accident caused by the driver of the lorry insured with appellant Insurance Company. Though the 1st respondent/claimant quantified the compensation as Rs.10,00,000/-, after considering the evidence



on record, the Tribunal has awarded the aforesaid compensation of Rs.1,52,500/- after deducting 50% contributory negligence on her part. The Tribunal has partly allowed the said claim petition with the following observations:-

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12. MCOP 268/08: While discussing point No.1 this court found that Jayanthi has contributed equally to the accident. Therefore, this court has to ascertain the compensation which Jayanthi is entitled for.

13. In this regard, in a recent judgment of our Hon'ble High Court rendered in CMA 634/2010 The National Insurance Co. Ltd., Salem - Vs.- Tmt. Sambu and two other, the Hon'ble High Court has gone at length referring earlier judgments of the Hon'ble Supreme Court and relying upon the judgments of Hon'ble Supreme Court rendered in R.K.Malik - vs- Kiran Pal (2009 (1) TN MAC 593 (SC), has stated that the Hon'ble Supreme Court in RK Malik case has approved the application of 15 multiplier for child of age group 10 to 15 and multiplier 16 for the age group 16-18 for computing dependency compensation. In the above mentioned case, the Hon'ble Supreme Court has approved the application of multiplier in case of non earning infants. The Hon'ble Supreme Court in R.K.Malik case has observed that,

"In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived."

Guided by the rulings of the Hon'ble Supreme Court and our Hon'ble High Court, a compensation of Rs.1,50,000/- for pecuniary loss, Rs.75,000/- for loss of future prospects and Rs.5,000/- for funeral expenses, totally a sum of Rs.3,05,000/- is fixed. Out of which, for the contributory negligence of the petitioner, 50% of the compensation has been deducted. Hence, the petitioner Jayanthi is entitled for a sum of Rs.1,52,500/- towards compensation. The point is answered accordingly.



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15. MCOP 268/08: In the result, the petition is partly allowed with proportionate cost. An award is passed for Rs.1,52,500/- payable by the respondents 1 and 2 jointly and severally to the petitioner Jayanthi along with future interest @ 7.5% p.a. from the date of this petition till realization. The respondents 1 and 2 shall deposit the amount within two months from this date. The award amount shall be invested in any Nationalised Bank for 3 years, and the petitioner is permitted to with the accrued interest on the award amount once in 3 months directly from the bank. The petitioner is entitled to the copy of the award on payment of court fee. Advocate's fee to be calculated as per Rules. This petition is dismissed against 3rd respondent.

7. In view of the above conclusion arrived by the Tribunal in the impugned Judgment, it appears to be a fair conclusion on facts. I therefore do not find any reasons to interfere with it. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8. Though the Tribunal has directed the appellant Insurance Company and the 2nd respondent to deposit the compensation jointly or severally, I am of the view that it is the appellant Insurance Company is liable to pay the compensation to the 1st respondent as the appellant Insurance Company has contracted a contract of insurance which is contract of indemnity to indemnify the 2nd respondent against any liability that may be fastened against the owner of the vehicle under the Motor Vehicles Act, 1988.

9. Therefore, the appellant Insurance Company is directed to deposit the amount of compensation of Rs.1,52,500/- awarded by the Tribunal together with interest at 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs as was ordered by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the 1st respondent is permitted to withdraw the same together with interest and proportionate costs, less any amount already withdrawn, by filing suitable applications before the Tribunal.



11. Accordingly, this Civil Miscellaneous Appeal is dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar((CS-VIII))

//True Copy//

Sub Assistant Registrar

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To

The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

C.M.A.No.1211 of 2011
and M.P.No.1 of 2011

RSV(CO)
GMY(25/08/2021)