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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2047 of 2015

and

MP No.1 of 2015

The Branch Manager,
Royal Sundaram Alliance
Insurance Company Limited,
B.O.5, R.J. Plaza,
II Floor,
Katpadi Main Road,
Virudampet,
Vellore.

... Appellant/2nd Respondent

Versus

1. Suseela
2. Minor Aruna
3. Minor Aravindan
4. Minor Sivasathya

Minors 2 to 4 are the children of Mahalingam,
Minors represented by their next friend
mother Suseela

5. Kannammal

6. Anumuthu

7. Jaishankar

...Respondents/Petitioners & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow this Civil Miscellaneous Appeal against the decree and judgment dated 17th day of February, 2014, made in M.C.O.P. No.203 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur.

For Appellant : Mr.K.Vinod
for Mr.S.Manohar

For Respondents : Mr.K.Silambarasan for R1 to R6
M/s.S.Dhanasekaran for R7

JUDGMENT

This appeal has been filed by the Insurance company challenging the award dated 17.02.2014 passed by the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur in MCOP No.203 of 2013.



award primarily on the ground that the contributory negligence fixed on the part of the deceased at 25% by the Tribunal is not correct as according to them, the entire negligence is on the part of the deceased, who was the rider of the motor cycle which dashed against the insured lorry from behind. Even though the appellant has also raised grounds questioning the quantum of compensation awarded by the Tribunal to the claimants, the same has not been seriously disputed by the learned counsel for the appellant.

3. Heard Mr.K.Vinod, learned counsel for the appellant and Mr.K.Silambarasan, learned counsel for the respondents 1 to 6 and Mr.S.Dhanasekaran, learned counsel for the 7th respondent.

4. The case of the respondents 1 to 6/claimants as seen from their claim petition filed before the Tribunal is that the deceased, who was the rider of the motor cycle bearing Registration No.TN-23-U-2547, hit the lorry bearing registration TN-23-AB-6881 (insured) on its back side, which was negligently parked in the middle of the road without any parking light indication.

5.However, according to the appellant /Insurance Company, the insured lorry was parked on the extreme left side of the road leaving sufficient space to other vehicles to move. According to them, the deceased Mahalingam was driving his TVS Moped in an uncontrollable speed and hit the back side of the lorry. It is also their case that the deceased Mahalingam did not possess the valid Driving Licence to drive the Moped and further, the TVS Moped was not insured with the Insurance Company. The Tribunal has taken into consideration the respective contentions.

6. Before the Tribunal, the respondents 1 to 6 / claimants have filed nine documents, which were marked as Exs.P1 to Ex.P9 and two witnesses were examined on their side viz., the wife of the deceased Suseela as PW1, and an eye witness to the accident viz., Ulagaraj as PW2. On the side of the appellant / Insurance Company, three documents were marked as Exs.R1 to R3 and one witness was examined viz., their official Srinivasan as RW1.

7. The Eye witness to the accident Ulagaraj (PW2) has deposed before the Tribunal that the insured lorry was carrying cement bags and was parked in tar (bituman) road and the driver was sleeping in the lorry and it was foggy weather and the visibility was poor at the time of the accident. He has also deposed that there was no parking indication for the lorry. According to him, only due to the negligent parking of the lorry in the no parking area, the TVS Moped in which the deceased Mahalingam was the rider dashed against the lorry.



RW1 has deposed that only due to the rash and negligent driving by the deceased Mahalingam, who was the rider of the Two wheeler, the accident had happened, which resulted in the Two wheeler colliding with the insured lorry.

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9. The Tribunal after considering the oral and documentary evidence has rightly come to the conclusion that there was contributory negligence on the part of the deceased (Mahalingam) and fixed his Contributory negligence at 25% and has fixed the Contributory negligence of the driver of the insured lorry at 75%.

10. This Court after giving due consideration to the materials and evidence available on record is of the considered view that the Tribunal has rightly fixed the contributory negligence of the insured lorry as well as the deceased in the ratio of 75% : 25 % and the assessment made by the Tribunal is confirmed.

11. With regard to the quantum of compensation, the Tribunal has awarded the total compensation of Rs.8,50,000/- and the liability of the appellant /Insurance Company is Rs.6,37,500/-. As there is no scope for interference with regard to the compensation awarded by the Tribunal under various heads viz., Rs.7,56,000/- towards loss of dependency; Rs.10,000/- towards loss of estate; Rs.24,000/- towards loss of consortium to the 1st respondent; Rs.50,000/- towards loss of love and affection to respondents 2 to 6 (Rs.10,000/- each) and Rs.10,000/- towards funeral and transportation are concerned, since the same is a just compensation and is not excessive in the considered view of this Court.

12. For the foregoing reasons, this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. The appellant / Insurance Company is directed to deposit the entire award (75%) amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.203 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court), Tirupattur, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1,5 and 6 / major claimants through RTGS, within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Insofar as the share of the 2, 3 and 4 respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till they attain the age of majority and the interest



accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the second respondent / minor claimant has attained the age of majority, it is open to her to file formal petition before the Tribunal to get her share of apportionment.

Sd/-

Deputy Registrar (AD-II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Motor Accident Claims Tribunal
(Special Sub Court), Tirupattur.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 24964

C.M.A.No.2047 of 2015

NK(CO)
GN(20/10/2021)