IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.743 of 2021
and CMP.No.4427 of 2021

M/s.Reliance General Insurance Company Limited,
No.570, Rectifier House,
Naigaun Cross road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai - 400 031.
..Appellant/3rd Respondent

Vs.

1.M.Angammal @ Angalammal

2.M.Shivakumar

3.M.Sangeetha ..Respondents 1to3/Petitioners

4.A.Murugan ..4th Respondent/1st Respondent

5.P.Yuvaraja ..5th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.06.2020 made in M.C.O.P.No.7718 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 12.06.2020 made in M.C.O.P.No.7718 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

2.The appellant is the 3rd respondent in M.C.O.P.No.7718 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.74,00,000/- as compensation for the death of one Mani who died in the accident that took place on 31.10.2014.

3.According to the respondents 1 to 3, on the date of accident, when the said Mani was crossing G.N.T. by-pass road to return to his house, after work at Karanodai Bazaar, the 5th respondent, driver of a Tata Indica Car bearing Registration No.TN-18-L-4966 belonging to the 4th respondent drove the vehicle in a rash and negligent manner from Red hills to Janappan Chatram and hit against the said Mani and caused the accident. In the accident, the said Mani sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by the 5th respondent, driver of the Car. Hence, the respondents 1 to 3 filed claim petition, claiming compensation against the respondents 4 and 5 as owner, driver and appellant as insurer of the Car respectively.

4.The respondents 4 and 5, owner and insurer of the Car, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition, including the manner of accident. According to the appellant, at the time of accident, the 5th respondent, driver of the Car did not possess valid driving license to ply the vehicle and the 4th respondent did not possess vehicular records. Hence, for violation of policy conditions, the appellant is not liable to indemnify the 4th respondent. The respondents 1 to 3 have to prove that the accident occurred only due to the negligence of the 5th respondent, driver of the Car. The respondents 1 to 3 have to prove that they are the dependents of the deceased and also the age, avocation and income of the deceased, to claim compensation. In any event, the total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one C.Suresh, eye witness as P.W.2 and marked 12 documents as Exs.P1 to P12. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 5th respondent, driver of the Car belonging to the 4th respondent and directed the appellant as insurer of the said vehicle to pay a sum of

Rs.22,60,000/- as compensation to the respondents 1 to 3.

8.To set aside the said award of the Tribunal dated 12.06.2020 made in M.C.O.P.No.7718 of 2015, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to the negligent act of the deceased who crossed the road during heavy traffic. The respondents 1 to 3 failed to prove the age, avocation and income of the deceased. The Tribunal erroneously fixed the excess amount of Rs.15,000/- per month as notional income, applied the multiplier '14' and granted excessive amount as compensation and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

11.It is the case of the respondents 1 to 3 that on 31.10.2014, while the deceased Mani was crossing G.N.T. by-pass road, the 5$^{th}$ respondent/driver of the Car, owned by the 4$^{th}$ respondent and insured with the appellant drove the vehicle in a rash and negligent manner, hit against the deceased and caused the accident. In the accident, the said Mani sustained injuries and died. To prove their case, they examined the 1$^{st}$ respondent as P.W.1 and one C.Suresh, eye-witness as P.W.2 and marked documents. The appellant filed counter statement and denied the manner of accident. The appellant did not let in any oral and documentary evidence. In the grounds of appeal, the appellant has contended that the accident occurred due to unmindful act of the deceased in crossing the road during heavy vehicular traffic. Such a plea was not raised before the Tribunal and no evidence was let in to prove the same. In the absence of any contra evidence, the Tribunal accepted the evidence of P.W.1, P.W.2 and held that the accident has occurred only due to rash and negligent driving by 5$^{th}$ respondent, driver of the Car insured with the appellant. There is no error in the award of the Tribunal warranting interference by this Court.

12.As far as the quantum of compensation is concerned, the respondents 1 to 3 contended that at the time of accident, the deceased who was aged 44 years, was working as a Mason and doing Building Contract work and earning a sum of Rs.50,000/- per month. They did not file any document to prove their contention. In the absence of materials, the Tribunal fixed the notional income of the deceased Mani as Rs.15,000/- per month. The accident is of the year 2014. The monthly income fixed by the Tribunal is not excessive. The Tribunal, considering the age of the deceased, following the judgments of the Hon'ble Apex Court rightly granted 25% enhancement towards future prospects, applied multiplier '14', deducted 1/3rd towards personal expenses and granted compensation for loss of dependency. The total compensation granted by the Tribunal is also not excessive, warranting interference by this Court.

13.For the above reason, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.22,60,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.7718 of 2015. On such deposit, the respondents 1 to 3 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The V Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate Sr No.16403

C.M.A.No.743 of 2021
and
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BR (CO)
PR (08/10/2021)