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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.04.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.712 of 2020
and
C.M.P.No.4344 of 2020

Royal Sundaram Alliance Insurance Co. Ltd.,
Represented by its Branch Manager,
No.186/5, 3rd Floor,
"Royal Tower", New Bus Stand Road,
Meyyanur, Salem-636 004.

.. Appellant/2nd Respondent

Vs.

1.Sangeetha, W/o Basuvan
2.Minor Abisanth, S/o Basuvan
3.Minor Arjun, S/o Basuvan
(Minors rep. by Mother Sangeetha)
4.Bakiyam, W/o Muniyappan

.. Respondents 1 to 4/Petitioners

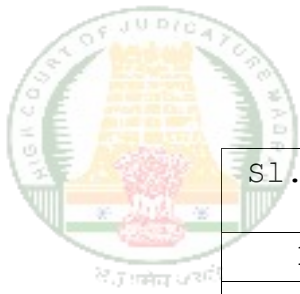
5.R.Anandhan, S/o Radhakrishnan

.. 5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 06.08.2019 passed in M.C.O.P.No.93 of 2018 on the file of the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For appellant : Mr.G.Vasudevan

For respondents : Mr.C.Prabakaran for RR-1 to 4
R-5 set ex-parte before the Tribunal



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Sl.No.	Heads under which the amounts are awarded by the Tribunal	Amounts awarded (in Rs).
1	Loss of dependency	22,17,600
2	Loss of consortium	25,000
3	Loss of estate	20,000
4	Funeral expenses	15,000
5	Love and affection	25,000
6	Transportation charges	40,919
	Total	23,43,719

The above compensation amount was awarded with interest @ 7.5% p.a. from the date of claim petition till the date of deposit. Challenging the same, the Insurance Company has preferred this appeal.

6. Now, the present appeal has been filed by the Insurance Company contending that the accident had occurred only due to the own negligence of the driver of the insured /deceased who was driving the lorry. Though it has been stated in the Claim Petition that the accident had occurred due to the negligent act committed by the unknown vehicle which was going in front of the lorry, which was driven by the deceased, except the evidence of P.W.2 who was stated to be the eye-witness to the accident, who had also travelled in the lorry, no other independent witness was examined. In the absence of any other witness to corroborate the evidence of PW2, the Tribunal ought not to have relied on the testimony of PW2. Thus, the learned counsel for the appellant/Insurance Company submitted that the accident had occurred due to the own negligence on the part of the deceased. Moreover, the driver of the lorry is not third party to the insured vehicle. Therefore, the Insurance Company is not liable to pay the compensation amount and the learned counsel prayed for setting aside the impugned Award passed by the Tribunal.

7. Per contra, the learned counsel appearing for the claimants made his submissions supporting the impugned Award passed by the Tribunal.

8. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

9. We find that it is the specific case of the appellant/Insurance Company that when the deceased was driving his lorry in the slope region, he had moved the vehicle to his left side in order to avoid hitting of unknown vehicle which was



moving in front of the lorry driven by the deceased and in that process, the accident had occurred resulting in the death of the deceased. From the manner of the accident as could be projected by the appellant, it can be easily inferred that there is negligence on the part of the deceased also. Further, the accident had occurred due to the own negligence of the deceased himself. At the same time, we are of the opinion that the accident had occurred during the course of employment of the deceased. Therefore, instead of awarding compensation to the claimants under the Motor Vehicles Act, compensation has to be awarded by treating it as an accidental death during the course of employment of the deceased. Accordingly, the award passed by the Tribunal is modified and compensation could be awarded as per the provisions of the Employees' Compensation Act (formerly, Workmen's Compensation Act). If calculation is so made as per the Employees' Compensation Act, the compensation is worked out as follows:

Age of the deceased at the time of accident:	31 years
Income	:Rs.8,000/- per month
Factor	
	: 205.95
sub-total (8000 x 205.95 x 50%)	
(personal expenses deducted at 50%)	: Rs.8,23,800/-
Funeral expenses (added)	: Rs.5,000/-

Total compensation	: Rs.8,28,800/-

with interest @ 12% p.a. from the date of accident till the date of deposit.

10. Therefore, we are of the opinion that the claimants are eligible only for compensation of Rs.8,28,800/- calculated as per the provisions of the Employees' Compensation Act.

11. Accordingly, the amount of compensation calculated by the Tribunal by applying the provisions of the Motor Vehicles Act, is set aside and the compensation is now awarded as above as per the Employees' Compensation Act at Rs.8,28,800/- with interest @ 12% p.a. from the date of accident till the date of deposit.

12. The appellant/Insurance Company is directed to deposit the compensation amount which we have determined in this appeal within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting the amount already deposited by them and the excess amount, if any lying in deposit, shall be refunded to the appellant/Insurance Company. On such deposit by



the appellant/Insurance Company, the respondents 1 and 4/claimants 1 and 4 are entitled to withdraw their respective shares before the Tribunal in accordance with law. As far as the share of the minor claimants 2 and 3 (respondents 2 and 3 herein) are concerned, their share shall be deposited in any fixed deposit scheme till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months.

13. With the above calculation so made under the Employees' Compensation Act and the directions issued, the appeal is partly allowed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

CS

To

1.The Motor Accidents Claims Tribunal,
(Special District Court for Motor Accident Claims Cases),
Krishnagiri.

+lcc to Mr.C.Prabakaran, Advocate Sr No.24640
+lcc to Mr.G.Vasudevan, Advocate Sr No.25276

C.M.A.No.712 of 2020

RSI (CO)
PR (08/10/2021)