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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA.No.241 of 2012

United India Insurance Co.Ltd.,
39, Greams Road, Silinghi Building,
Chennai - 600006.

... Appellant / 2nd Respondent

..VS..

1.K.Usharani

2.P.S.Kuganesan (Died)

3.K.Subramanian

4.S.K.Mukesh

5.S.K.Harish Kanna (Minor)

(Minor Rep. by his mother and
natural guardian K.Usha Rani)

6.S.Pattammal

.. Respondents 1 & 2 / Petitioners

...Respondents 3 to 6 / 1st Respondent
and Legal heirs of the 2nd Petitioner

(Respondents 4 to 6 brought on record as
LRs of the deceased R2 viz., P.S.Kuganesan
vide order of this Court dated 17.02.2021
and made in CMP.No.2/2012 in CMA 241/2012.)

Appeals is filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 20.11.2008 in M.C.O.P.No.4034 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr. S.Arun Kumar

For Respondent

No.1, 4 & 5 : Mr. G.Balaji Prasad

Respondent No.2 : Died

Respondent No.6 : No appearance



JUDGMENT

The matter is heard through "Physical hearing".

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This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and dated 20.11.2008 in M.C.O.P.No.4034 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellant is the 2nd respondent before the tribunal . The respondents 1 & 2 have filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death occurred in the road accident that took place on 10.04.2006.

3. It is the case of the respondents 1 & 2/claimants that on 10.04.2006 at about 1.15 hrs the deceased was riding motor cycle bearing Reg.No.TN04-M-2972. While proceeding from AVIT College, Payanur towards Mamallapuram on E.C.R. Road, at that time a bus bearing Reg.No.TN 21-S-9339 which was proceeding ahead of him, applied sudden break to avoid hitting a stray dog, the deceased/rider was taken back and swerved the motorcycle his left and inspite of his best efforts collided with the said bus, resulting in his death on the way to the hospital. The said accident had occurred due to rash and negligent driving on the part of the driver of the said bus. Hence, the legal heirs of the deceased filed claim petition, claiming a sum of Rs.15,00000/- as compensation. The tribunal on considering the oral and documentary evidence has fixed the negligence on the part of the driver of the bus and being insurer of the vehicle, insurance company/appellant herein was directed to pay compensation of Rs.6,80,000/- to the claimants.

4. Challenging the liability and quantum the appellant / Insurance Company has come out with the present appeal.

5. Before the Tribunal, on the side of the claimants 4 witnesses were examined as P.W.1 to & PW4 and marked documents Exp1 to P13. On side of the respondents RW1 was examined and marked two documents RW1 & RW2.

6. The learned counsel for the appellant/insurance



company has submitted that the FIR was registered on the basis of the complaint given by the eye witness/pillion rider of the motorcycle involved in the accident. In spite of the available evidence, the tribunal, without any basis had accepted the version of the claimants, who are not an eye witness to the accident, fastened the liability on the insurance company. The learned counsel further submitted that the bus was stationed at Pooncheri bus stop, the deceased rider of the motorcycle hit the stationed bus immediately on his applying sudden brake would only go to show that he was driven the vehicle in a rash and negligent manner without keeping reasonable distance at controllable speed.

7. The learned counsel for the appellant/Insurance company further submitted that the tribunal erred in fixing monthly income at Rs.15,000/- and annual income of the deceased at Rs.2,00,000/- by considering the fact that the deceased was a student of electronics and communication engineering. The compensation awarded by the tribunal under other heads are also very excessive and liable to be interfered with.

8. On the other hand, the learned counsel appearing for the claimants/respondents 1 & 2 and 4 to 6 has submitted that based on the oral and documentary evidence, the tribunal has rightly determined the compensation and fixed the negligence. Therefore, the award passed by the tribunal is reasonable and fair and does not require any interference by this Court.

9. The Miscellaneous Petition filed by the claimants to implead the legal heirs of the deceased R2 is allowed. The Legal Heirs of the deceased are impleaded as respondents 4 to 6 in the present appeal.

10. Heard, the learned counsel for the appellant/insurance company and the learned counsel appearing for the respondents 1, 4 & 5 and perused the document available on record.

11. It is seen from the award that the FIR was admittedly not given by the driver of the bus, it was given by the pillion rider of the motorcycle/3rd party. RW1 in his evidence has stated that he heard some noise from behind and he got down and found rider and pillion rider of two wheeler who got injured and he informed the police and police removed the vehicle. He was not



show as defacto complainant in EX.R2/FIR. Hat it been true that RW1 immediately informed the police, the police would have just registered a case on the basis of such information received from him. But in the counter statement it is stated that on the back side of the bus, was totally damaged. In view of the same, the tribunal had disbelieved the evidence of RW1 and fixed the negligence on the part of the driver of the bus and directed the insurance company to pay the compensation. Therefore, the ground raised by the appellant in respect of negligence is liable to be rejected.

12. As far as quantum of compensation is concerned, the deceased was aged about 21 years at the time of the accident and was doing final year B.E in Electronic and Communication Engineering in Aarupadai Veedu Institute of Technology, Kelambakkam. He was selected in the campus recruitment conducted by Slash Support Indian Private Limited as Trainee Support Engineer. The claimants also produced the job offer letter, mentioning his future salary in the said job as Rs.15,000/-. To substantiate the same, the claimants have marked documents Exs.P7 /Campus recruitment records of the deceased and Ex.P11/Campus recruitment records of PW3.

13. By considering the evidence of PW1,PW3 and PW4 and the documents marked as Ex.P7 & P11, the tribunal has fixed Rs.2,00,000/- as annual income of the deceased and after deducting reasonable amount towards income tax purpose and deducting 1/3 towards personal expenses, has fixed at Rs.1,10,000/- as annual income of the deceased. On considering the age of the deceased and his parents, applied 12 years multiplier as per second schedule and calculated loss of income to the dependants at Rs.13,20,000/-. The sum awarded under the conventional heads, transport to hospital and funeral expenses at Rs.10,000/- and for Loss of love affection to the claimants 1 & 2 at Rs.15,000/- each is fair. From the total compensation of Rs.13,60,000/-, the tribunal has awarded 50% of the same, which comes to Rs.6,80,000/- along with interest at 9% per annum. According to this Court, the said compensation of Rs.6,80,000/- awarded to the parents of the deceased is fair and reasonable and the same is confirmed.

14. The learned counsel for the appellant/insurance company has submitted that the entire compensation amount along



with interest was already deposited before the tribunal. At this stage, the learned counsel for the claimants/respondents 1,4 & 5 has submitted that since the 2nd claimant/father of the deceased died, the mother of the deceased/1st claimant has withdrawn the entire compensation amount deposited by the insurance company. In view of the above submissions, it is open to the Legal Heirs/respondents 4 & 5 to approach the tribunal for their apportionment by filing appropriate application in the manner known to law.

15. In the result, the Civil Miscellaneous Appeal is dismissed. The judgment and decree dated 20.11.2008 passed by the tribunal in M.C.O.P.No.4034 of 2006 is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No.9793

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.9763

CMA.No.241 of 2012

RLD(CO)
SB(10/11/2021)