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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.610 of 2020

and

C.M.P.No.3739 of 2020

The Branch Manager,
HDFC ERGO General Insurance Company Limited,
No.559/528, 2nd Floor,
Anna Salai, Teynampet,
Chennai - 600 018.

... Appellant/2nd Respondent

Vs.

1.Muniyamma

2.Muniyappan

3.Pushpa

4.Saraswathi

5.Jothi

...Respondents 1 to 5/Petitioners 1 to 5

6.M/s.Jubilant Motor Works Private Limited,
No.636, Anna Salai,
Nandanam,
Chennai.

... 6th Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2019 made in M.C.O.P.No.760 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

For Appellant : Mr.N.Somasundar

For RR 1 to 5 : Mr.M.Selvam



J U D G M E N T

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

(Judgment of the Court was delivered by S.KANNAMMAL, J)

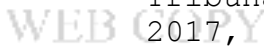
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This Civil Miscellaneous Appeal has been filed by the Insurance Company to set aside the award passed by the Tribunal dated 30.09.2019 made in M.C.O.P.No.760 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.760 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.75,00,000/- as compensation for the death of one Mariyappan, son of respondents 1 & 2 and brother of respondents 3 to 5, who died in the accident that took place on 29.06.2017.

3.According to respondents 1 to 5, on 29.06.2017 at about 12.30 hours, the said Mariyappan was waiting to cross the Krishnagiri - Hosur road near Puniyarasi Bus Stop with the scooty bearing Registration No.TN 24 AE 2252. At that time, the driver of the car bearing Registration No.TN 09 BZ 4577 belonging to 6th respondent and insured with appellant, who was driving the car from Krishnagiri, drove the same in a rash, careless and negligent manner, lost his control over the car and dashed against the scooty in which the said Mariyappan was waiting to cross the road and further dashed against a motorcycle bearing Registration No.TN 29 I 6829 and caused the accident. In the accident, the said Mariyappan sustained grievous injuries. Immediately after the accident, the said Mariyappan was taken to Government Head Quarters Hospital, Krishnagiri, where he was given first aid treatment and then he was shifted to GMKMC Hospital, Salem. Thereafter, he was taken to Sai Ambika Hospital, Bangalore and admitted as inpatient. Due to insufficient funds, the said Mariyappan was taken back to Government Hospital, Krishnagiri. The Duty Doctor from Government Hospital, Krishnagiri examined the said Mariyappan and reported that he died on the way to Hospital itself. Therefore, the respondents 1 to 5 filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation against the 6th respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

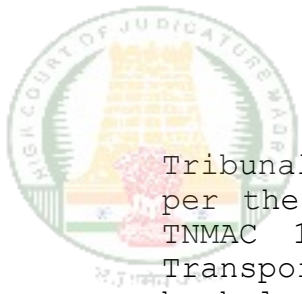
4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to 6th respondent and directed the 6th respondent and



5.Questioning the quantum of compensation awarded by the Tribunal in the award dated 30.09.2019 made in M.C.O.P.No.760 of 2017, the appellant-Insurance Company has come out with the present appeal.

7.Per contra, the learned counsel appearing for the respondents 1 to 5 contended that the respondents 1 to 5 examined one Kandhasamy, owner of M/s.Dharsan Dhaba as P.W.2 and proved the avocation and income of the deceased. But, the Tribunal has fixed a sum of Rs.15,000/- per month as notional income of the deceased and awarded compensation towards loss of income and the same is not excessive. The Tribunal failed to award any amount towards loss of estate and prayed for dismissal of the appeal.

9. From the materials available on record, it is seen that at the time of accident, the deceased was aged 26 years, working as Cooking Master in M/s.Dharsan Dhaba and was earning a sum of Rs.700/- per day. To prove the avocation and income of the deceased, the respondents 1 to 5 examined one Kandhasamy, owner of M/s.Dharsan Dhaba as P.W.2. Except examining one Kandhasamy, who is the owner of M/s.Dharsan Dhaba as P.W.2, the respondents 1 to 5 have not filed any document with regard to avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.15,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the notional income fixed by the Tribunal is not excessive. The deceased was aged 26 years at the time of accident and the multiplier '18' applied by the



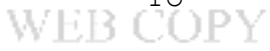
Tribunal is not correct. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], is '17'. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses from his monthly income and rightly granted 40% enhancement towards future prospects. The respondents 1 & 2 have lost their son and the respondents 3 to 5 have lost their brother at young age. In view of the same, the amounts awarded by the Tribunal towards loss of love and affection and transportation are meagre and the Tribunal has also not awarded any amount towards loss of estate. In view of the failure on the part of the Tribunal for not awarding any amount towards loss of estate and awarding meagre amounts as compensation towards loss of love and affection and transportation, the multiplier '18' applied by the Tribunal instead of applying multiplier '17' is not interfered with. The Tribunal considering the entire materials on record, has awarded a sum of Rs.23,18,000/- as compensation to the respondents 1 to 5, which is not excessive warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.23,18,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The 6th respondent and the appellant-Insurance Company are jointly and severally directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, 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.760 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar

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Sub Assistant Registrar



The Principal District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

C.M.A.No.610 of 2020

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