IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2941 of 2021
and CMP.No.16816 of 2021

The Branch Manager,
Reliance General Insurance Company Limited,
Motor T.P.Claims, No.6, Haddows Road,
Opposite Sasthri Bhavan, Nungambakkam, Chennai 34.
...Appellant/2nd Respondent

Vs.

1. Mrs.Leelavathi
2. Minor S.Dinakaran
3. Minor S.Banu Prasad
(2 & 3 rep. by their mother and next friend Leelavathi)

4. Nagammal
5. Jayaraman ..Respondents 1 to 5/Claimants
6. Jayasuriya
...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the decree and judgment dated 27.11.2020 passed in MCOP.No.34 of 2019, by the Motor Accident Claims Tribunal, Special District Court MCOP Cases No.1, Tiruvallur.

For Appellant : Ms.C.Bhuvanasundari

J U D G M E N T
[Judgment of the Court was delivered V.SIVAGNANAM, J]

The appeal is heard through video conferencing.

2. This appeal arises out of the award passed by the Motor Accident Claims Tribunal, Special District Court MCOP Cases No.1, Tiruvallur in MCOP.No.34 of 2019.

3. The respondents 1 to 5/claimants are the legal heirs of the deceased Sudhakar. It is the case of the respondents 1 to 5/claimants that on 09.01.2019 at about 9.00 pm, the deceased Sudhakar was riding his Motor Cycle (Splendor) bearing Registration No.TN-20-BH-2938 on Tiruvallur-Tiruttani Main Road. When he was nearing Pandur Government Higher Secondary School at Tiruvallur, a Car bearing Registration No.TN-12-S-6997, belonging to the sixth respondent, driven by its driver in a rash and negligent manner, came in the opposite direction at a high speed and dashed against the Motor Cycle of the deceased. Due to the impact, the deceased sustained multiple injuries and died on the spot. Hence, the claimants laid a claim petition claiming a sum of Rs.75,00,000/- as compensation.

4.The Insurance Company resisted the claim petition by filing counter statement, in which, it is stated that the deceased was responsible for the accident and hence, the appellant is not liable to pay compensation. They also disputed the age, income and occupation of the deceased.

5. Before the Tribunal, on the side of the claimants, the first claimant gave evidence as PW1 and also examined 3 other witnesses as PWs.2 to 4 and Exs.P1 to P15 were marked. On the side of the respondents, no oral and document evidence was adduced.

6. The Tribunal, on an appreciation of the evidence produced by the claimants, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Car. By coming to such conclusion, the Tribunal passed an award for a compensation of Rs.25,09,200/- along with interest at 7.5% per annum and directed the appellant/Insurance Company to pay the above compensation. Questioning the award, the present appeal has been filed by the Insurance Company.

7. It is the contention of the learned counsel for the appellant/Insurance Company that the deceased drove his motorcycle at a high speed and tried to overtake a Lorry without seeing the Car coming in the opposite direction and while doing so, he dashed against the Car. The accident occurred only due to the rash driving of the deceased, hence, it is wrong to fix the entire negligence on the part of the driver of the Car. He further added that the monthly income of the deceased taken by the Tribunal is on the higher side and it has not followed the legal precedents of the Hon'ble Apex Court while arriving at the quantum.

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

9. The claimants, in order to prove their case, examined one Arunkumar PW2, who is the eyewitness of the accident and he had clearly deposed that the accident had occurred due to the rash and negligent driving of the driver of the Car. The appellant/Insurance Company neither disproved the evidence of PW2, nor produced any evidence to fix liability on the side of the deceased. Hence, this Court is of the view that the Tribunal rightly came to the conclusion that the driver of the Car is responsible for the accident and hence, it's insurer, viz., the appellant/Insurance Company is liable to pay the compensation.

10. With regard to the quantum, the claimants produced Ex.P15 a copy of Muster Roll Register and Ex.P14 a copy of Salary Certificate, to show that the deceased was working as a Quality Assistant and earning Rs.15,570/-. The Tribunal, after deducting, PF, ESI and Advance, had rightly fixed Rs.12,000/- as the monthly income of the deceased. Thus, the Tribunal by taking Rs.12,000/- as monthly income of the deceased and adding 40% towards future prospects, arrived Rs.16,800/- [12,000 + 4,800] towards loss of monthly income. Since the number of dependents of the deceased is 5, $1/4^{th}$ of the income was deducted towards personal expenses and thus the loss of dependency was arrived at Rs.12,600/- [16,800 - 4,200]. Then, by applying multiplier "16", the loss of annual income of the deceased was arrived at Rs.24,19,200/- [12,600 x 16 x 12]. In addition to that, the Tribunal awarded a sum of Rs.15,000/- towards Loss of Estate; Rs.40,000/- towards Loss of Consortium; Rs.15,000/- towards Funeral Expenses and Rs.20,000/- towards Transport Expenses. In total, the Tribunal has awarded a sum of Rs.25,09,200/- as compensation along with interest at 7.5% from the date of claim petition till the date of deposit. In our considered view, the award of the Tribunal is fair and reasonable, which does not warrant any interference by this Court. In fine, the award of the Tribunal is confirmed and the appeal is liable to be dismissed.

11.In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1, 4 and 5 are permitted to withdraw their share as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the minor claimants 2 & 3 are concerned, their respective shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother, once in three months. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-VI)

//True Copy//

Sub-Assistant Registrar

pvs
To
1. The Motor Accident Claims Tribunal,
   Special District Court MCOP Cases No.1, Tiruvallur

C.M.A. No.2941 of 2021

CP(CO)
SP(10/12/2021)