IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1497 of 2020
and C.M.P.No.11112 of 2020

M/s.Iffco-Tokio General
Insurance Company Limited,
Near IDBI Bank,
Kancheepuram,
Tamilnadu – 631 501. .. Appellant/2nd Respondent

Vs.

1.Sekhar

2.Sankar

3.Anbalagan

4.Ranganathan ...1 to 4 Respondents/
1 to 4 Petitioners

5.G.Manimozhi ..5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 13.11.2019 made in M.C.O.P.No.88 of 2019, on the file of the Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Ariyalur.

For Appellant	:	Mr.J.Michael Visuvasam
For Respondents	:	No Appearance (For R1 to R5) sd-NA

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 13.11.2019 made in M.C.O.P.No.88 of 2019, on the file of the Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Ariyalur.

2.The appellant is the 2nd respondent in M.C.O.P. No.88 of 2019, on the file of the Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Ariyalur. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Ramasamy who died in the accident that took place on 20.06.2015.

3.According to the respondents 1 to 4, on the date of accident, when the deceased Ramasamy was walking in the Jeyankondam - Chidhambaram Road, from West to East along with his son/1st respondent herein, the driver of Car bearing Registration No.PY-01-X-9096 owned by the 5th respondent drove the vehicle from opposite direction with great speed in a rash and negligent manner, without minding the road traffic rules and dashed on the deceased Ramasamy and caused the accident. In the accident, the said Ramasamy was thrown away, sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by driver of the Car owned by the 5th respondent. Hence, the respondents 1 to 4 filed the claim petition claiming compensation for the death of Ramasamy against the 5th respondent as owner and appellant as as insurer of the offending vehicle respectively.

4.The 5th respondent, owner of the Car, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the 5th respondent, the accident did not occur due to the negligence of the driver of the Car. In any event, the Car was insured with the appellant/Insurance company at the time of accident. Hence, if any liability is fastened on the 5th respondent, only the appellant-Insurance Company is liable to pay the compensation and prayed for dismissal of the claim petition against the 5th respondent.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, on the date of accident, the driver of the Car who was driving the vehicle slowly and carefully, observing all the traffic rules and regulations, on seeing the deceased Ramasamy crossing the road negligently to reach the other side, blowed horn and applied break. In spite of the same, the deceased Ramasamy dashed on the Car and invited the accident. The accident occurred only due to the negligent act of the deceased Ramasamy. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. In any event, the respondents 1 to 4 have to prove their legal heirship, age, avocation and income of the deceased Ramasamy, to claim compensation. The total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 9 documents as Exs.P1 to P9. The appellant examined their Official as R.W.1 and marked 2 documents as Exs.R1 & R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence of the driver of the Car owned by the 5th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.6,04,600/- as compensation to the respondents 1 to 4.

8.Questioning the entire negligence fixed on the driver of the Car and liability fastened on them by the award dated 13.11.2019 made in M.C.O.P.No.88 of 2019, 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 negligence of the deceased Ramasamy as he crossed the road unmindful of the on coming vehicle. P.W.1 admitted that the accident occurred in the middle of the road and that accident would have been avoided had the deceased crossed the road carefully. The Tribunal ought to have considered the evidence of the 1st respondent as P.W.1/son of the deceased Ramasamy, who deposed in cross examination about the failure on the part of deceased Ramasamy to exercise caution by looking at both sides before trying to cross the busy road. In any event, the Tribunal ought to have fixed contributory negligence on the deceased. The Tribunal erred in fixing the age of the deceased as 60 years, without considering Exs.R1 and R2 – Ration Card and Voter ID of the deceased respectively and Ex.P4 – legal heirship certificate, wherein the age of the 1st respondent/son is shown as 46 years, which would imply that the deceased Ramasamy would have been aged 14 years when the 1st respondent was born to him. In view of the same, the age of the deceased fixed as 60 years by the Tribunal is not correct. In the absence of any documents by the respondents 1 to 4 to prove the avocation and income of the deceased, the monthly income fixed by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 to 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

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

12.It is the case of the respondents 1 to 4 that while the deceased Ramasamy was walking in the Jeyankondam - Chidhambaram Road from West to East along with his son/1st respondent herein, the driver of the Car owned by the 5th respondent drove the same in a rash and negligent manner, dashed on the deceased and caused the accident. Due to the injuries sustained in the accident, the deceased Ramasamy died. To prove the same, the 1st respondent who is the eye-witness to the accident, examined himself as P.W.1 and marked the FIR as Ex.P1. On the other hand, it is the case of the appellant that the accident occurred only due to the negligent act of the deceased. The appellant relied on the admission of P.W.1 that accident occurred only in the middle of the road and further, admission of P.W.1 that accident would not have occurred had the deceased been careful in crossing the road. From the award of the Tribunal, it is seen that the Tribunal has not properly appreciated the evidence of P.W.1 who is an eye witness and fixed entire negligence on the driver of the Car. Considering the admission of P.W.1 and place of accident, this Court is of the considered view that the deceased also contributed to the accident and 25% negligence is fixed on the part of the deceased and 75% on the part of the driver of the Car. The appellant as insurer of the said Car is liable to pay only 75% of the compensation.

13.As far as the contention of the learned counsel appearing for the appellant with regard to age of the deceased is concerned, it is the case of the respondents 1 to 4 that the deceased was aged 55 years at the time of accident. On the other hand, it is the case of the appellant that the deceased was aged more than 76 years at the time of accident. The appellant relied on Exs.R1 and R2 - Ration Card and Voter ID of the deceased respectively and contended that in Ex.R1 - Ration Card issued in the year 2005, the age of the deceased is mentioned as 66 years and 4th respondent's age was shown as 24 years. In Ex.P4 - legal heirship certificate issued in the year 2015, the 4th respondent's age was shown as 35 years. If 4th respondent is 24 years in the year 2005 and 35 years in the year 2015, the deceased also would have been aged 76 years in the year 2015.

14.From the award of the Tribunal, it is seen that the Tribunal has not considered Exs.R1 and R2 and without properly appreciating Ex.P4 - legal heirship certificate, erroneously fixed the age of the deceased as 60 years. From the Ration Card marked as Ex.R1, it is seen that the 4th respondent was living with the deceased and in the year 2005, the age of the deceased was mentioned as 66 years and 4th respondent's age was mentioned as 24 years. In the legal heirship certificate, the 1st respondent's age was shown as 46 years. In view of the same, the age of the deceased fixed by the Tribunal as 60 years is not correct. Considering the entire documents in its entirety, the age of the deceased is fixed as 76 years. The Tribunal fixing the age of the deceased as 60 years, applied the multiplier '9' and granted 10% enhancement towards future prospects. In view of this Court fixing the age of the deceased as 76 years, the respondents 1 to 4 are not entitled for any enhancement towards future prospects and the correct multiplier applicable is '5'. Hence, by fixing the monthly income of the deceased as Rs.6,000/-, applying multiplier '5' and deducting $1/4^{th}$ towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified as Rs.2,70,000/- [Rs.6,000/- x 12 x 5 x 3/4]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,34,600/-	2,70,000/-	Reduced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
	Total	6,04,600/-	3,40,000/-	Reduced by Rs.2,64,600/-

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,04,600/- is modified to Rs.3,40,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount, now determined by this Court, 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.88 of 2019. On such deposit, the respondents 1 to 4 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.88 of 2019, if any already deposited by them. It is made clear that if the respondents 1 to 4 have already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Ariyalur.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.17243

C.M.A.No.1497 of 2020
and
C.M.P.No.11112 of 2020

CA(CO)
CB(29/10/2021)