IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM :

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2060 of 2021
and C.M.P.No.11114 of 2021

Reliance General Insurance Company Ltd.,
15-A PLA Kanagu Towers, 11th Cross Main Road,
Thillai Nagar, Trichy-18. ... Appellant/II Respondent

Vs

Soundarrajan(died)

1.Vijayeswari
2.Minor Ranjith Kumar
(Rep. by mother N.G.Vijayeswari)
3.Valliyammal ...1 to 3 Respondents/2 to 4 Petitioners
4.Krishna Kumar ..4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.01.2021 passed in M.C.O.P.No.573 of 2014 by the Special Motor Accident Claims Tribunal, at Thiruppur.

For Appellant : M/s.C.Bhuvanasundari
For Respondents : No appearance

J U D G M E N T
(Judgment of the Court was delivered by T.V.THAMILSELVI, J.)

The appellant has filed this appeal challenging the award passed in MCOP No.573 of 2014 by the Special Motor Accident Claims Tribunal, Tiruppur awarding compensation to the legal heirs of the deceased Soundarrajan / respondents 1 to 3 herein.

2.The fact reveals that the husband of the 1st respondent, namely Soundarrajan met with an accident on 26.03.2014, and while he was driving the two wheeler along with one Aruchamy driven in Palladam to Trichy road, near Swathy Milk farm, the car belonging to the 4th respondent, driven by its driver in a rash and negligent manner, hit against the two wheeler, thereby the said Soundarrajan sustained grievous injuries. Inspite of the treatment, he died on 04.12.2015. Due to the negligent driving of the car by its driver, the said accident happened and the vehicle was insured with the appellant / Insurance Company herein. Considering all the oral and documentary evidence, the Tribunal fixed the negligence on the part of the car driver and fastened the liability upon the appellant / Insurance Company with whom the said car was insured. Aggrieved by the said order, the Insurance Company has preferred the appeal.

3.Heard M/s.C.Bhuvanasundari, learned Counsel appearing for the appellant.

4.The question of law that arises for consideration in this appeal is as to whether the Tribunal erroneously fixed the monthly income of the deceased without considering any proper evidence?

5.At the time of arguments, the learned counsel for the appellant / Insurance Company argued that there was no documentary proof with regard to the source of income of the deceased, without which the Tribunal, erroneously fixed Rs.11,000/- as monthly income. But, on seeing the case, it is seen that the deceased Soundarrajan was owner -cum-driver at the time of the accident. This fact is not denied by the appellant by adducing any contra evidence before the Tribunal. Before this forum, first time, the appellant / Insurance Company raised such an objection, which is not maintainable in law, for the reason that the grounds on which they relied as their defence, should be specifically pleaded and evidence should be adduced, without which, such objection cannot be raised at the appellate stage.

6.But the claimants proved the source of income of the deceased, through the evidence of P.W.3 and Ex.P7, based upon which, the Tribunal fixed Rs.11,000/- as the monthly income, which is sustainable in law. Another objection raised by the appellant / Insurance Company is that the claimants have not proved that death had occurred due to the injuries sustained in the accident, nor they produced the Post Moterm certificate. Without considering this aspect, the Tribunal erroneously passed the award as if the said Soundarrajan died due to the injuries sustained in the said accident.

7.As discussed above, there was no evidence on the side of the Insurance Company, before the Tribunal, to this effect. On the other hand, the claimants produced the medical records marked as Ex.P2 and P3. The facts also reveal that the deceased Soundarrajan was bed-ridden due to the grievous injuries sustained in the said accident, but he was discharged at Coma stage due to the head injury and the same was also proved through discharge summary, which is sufficient to conclude that due to the injuries sustained in the said accident, the said Soundarrajan died.

8.Hence, the Tribunal rightly awarded compensation in favour of the claimants which needs no interference by this Court. Hence the award passed by the Tribunal is confirmed. However, liberty is granted to the claimants to prefer an appeal, if they want any enhancement.

9.The Tribunal awarded 7.5 % interest from the date of petition dated 03.06.2014 till the date of deposit and the same is hereby confirmed. Therefore, the award amount of Rs.59,66,956/- with 7.5% interest is a very reasonable and just compensation and the same does not require any interference by this Court. Hence, the appeal fails and the same is liable to be dismissed.

10.The appellant is directed to deposit the entire award amount as per the award of the Tribunal, along with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of the Respondents through RTGS within a period of one week, except the share of the 2nd Respondent/minor, which shall be deposited in any one of the Nationalized Banks in an interest bearing Fixed Deposit till they attain majority and the interest accrued in the Fixed Deposit Scheme shall be withdrawn by the 1st respondent (Mother). The proportion of allocation of shares adopted by the Tribunal, shall stand confirmed.

11. Accordingly the Civil Miscellaneous Appeal is dismissed and the award passed by the Special Motor Accident Claims Tribunal, Tiruppur in MCOP.No.573 of 2014 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.Call the matter after four weeks to file an affidavit by the appellant / Insurance Company for having complied with the order passed by this Court, failing which Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer of the appellant / Insurance Company shall appear before this Court.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Motor Accident Claims Tribunal,
Thiruppur.

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

Copy to:
1.The Chairman cum-Managing Director,
Reliance General Insurance Company Ltd.,
15-A, PLA Kanagu Towers, 11th cross Main Road,
Thillai Nagar, Trichy-18.

2.The Chief Financial Officer-
cum-Chief Accounts Officer
Reliance General Insurance Company Ltd.,
15-A, PLA Kanagu Towers, 11th cross Main Road,
Thillai Nagar, Trichy-18.

Copy to:
The Section Officer,
Judicial Department,
High Court, Madras.

C.M.A.No.2060 of 2021
and
C.M.P.No.11114 of 2021

PMK(CO)
CB(27/09/2021)