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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.323 of 2018

and

C.M.P.No.3272 of 2018

[Video Conferencing]

Royal Sundaram Alliance Insurance Company Limited,
Chennai - 600 014.

... Appellant/5th Respondent

Vs.

1.Sanju (Minor)

2.Harish (Minor)

...Respondents 1 & 2/Petitioners

(Minor respondents 1 & 2 are represented by
their Grand mother and NF Nallammai)

3.Raghu

4.Balasubramaniam

5.HDFC Ergo General Insurance Company Limited,
Chennai.

6.Mehroonnisha ... Respondents 3 to 6/Respondents 1 to 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, set aside the Judgment and Decree dated 30.04.2015 made in M.C.O.P.No.23 of 2014, on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan

For R1 & R2 : Mr.A.Illayaperumal

For R5 : Mr.J.Michael Visuvasam

For R3, R4 & R6 : Not ready in notice



J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted by the Tribunal in the award dated 30.04.2015 made in M.C.O.P.No.23 of 2014, on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

2.The appellant is the 5th respondent in M.C.O.P.No.23 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Sornambika, who died in the accident that took place on 03.04.2010.

3.According to the respondents 1 & 2, on 03.04.2010, the deceased Sornambika along with her friends travelled in the TATA SUMO, bearing Registration No.TN 39 W 3669 belonging to the 3rd respondent and insured with 5th respondent by the 4th respondent as the previous owner of the TATA SUMO at about 23.15 hours, while they were proceeding to SKS Hospital, Salem, on Dharmapuri to Salem National High ways road, near Sani Santhai near Palayampudur, the driver of TATA SUMO overtook a bus in the left side which was going ahead of them. At that time, the lorry bearing Registration No.KA 01 C 6109 belonging to 6th respondent and insured with the appellant herein was parked in the High Ways Road without any stones, leaves, trees or fire to show that the lorry is a parked vehicle. Therefore the driver of the TATA SUMO was driving the same has not anticipated with the lorry was parked and had applied sudden brake but inspite of best efforts taken by him the car embraced the lorry and caused the accident. In the accident, the said deceased Sornambika sustained fatal injuries and died on the spot. Therefore, her children represented by their grand mother filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to 6th respondent and directed the appellant - Insurance Company to pay a sum of Rs.5,43,000/- as compensation to the respondents 1 and 2.

5.Challenging the quantum of compensation granted by the Tribunal in the award dated 30.04.2015 in M.C.O.P.No.23 of 2014, the Insurance Company has come out with the present appeal.



6.The learned counsel for the appellant - Insurance Company contended that monthly income fixed by the Tribunal of the deceased is excessive. The Tribunal has erroneously granted future prospects and multiplier '17' fixed by the Tribunal is not correct. A sum of Rs.5,43,000/- awarded by the Tribunal as compensation is highly excessive and prayed for setting aside the order of the Tribunal.

7.The learned counsel for R1, R2 & R5 made a submission that the Tribunal after considering the materials has rightly passed the award and sought for dismissal of the appeal filed by the appellant - Insurance Company.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1, 2 & 5 and perused all the materials available on record.

9.It is the claim of the respondents 1 & 2 that at the time of accident, the deceased was aged about 29 years working as a teacher and has also taking tuition and was earning a sum of Rs.7,500/- per month. Except oral evidence, they have not let in any documentary proof to prove the avocation and income of the deceased. In the absence of any documentary proof, to prove the avocation and income of the deceased, the Tribunal considering the age, education qualification of the deceased and year of the accident, fixed a sum of Rs.4,000/- per month as notional income of the deceased. The accident is of the year 2010 and monthly income fixed by the Tribunal is not meagre. The deceased was aged about 29 years as per Ex.P21 and the multiplier '17' applied by the Tribunal is correct 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].

10.Though the Tribunal has not awarded any compensation towards future prospects, considering the amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are on the higher side, this Court is inclined to confirm the award passed by the Tribunal and does not warrant any interference by this Court.

11.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st and 2nd



respondents are permitted to withdraw their share of the award amount as per the ratio of apportionment fixed by the tribunal, with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The share of the minor respondents 1 and 2 is directed to be deposited in any one of the Nationalised Bank till they attains majority. The said NF Nallammai, who is the guardian of the minor respondents 1 and 2 is permitted to withdraw the interest, once in three months for the welfare of the minor respondents 1 and 2. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Special District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

Copy to

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

+1cc to Mr.A.Ilayaperumal, Advocate Sr.64456
+1cc to Mr.T.Michael Visuvasam, Advocate Sr.64944

C.M.A.No.323 of 2018

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srg 25/03/2022