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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.3531 OF 2019
AND
C.M.P.NO.20627 OF 2019

SBI General Insurance Company Ltd.,
Branch Office, 2nd Floor, Ward No.A1,
Door No.104, Excellence Building,
Race Course, Coimbatore.

...Appellant/R3

Versus

1.Mrs.I.Rasheetha
2.M.Ismail
3.Minor I.Saleema
rep. by her mother Rasheetha

...Respondents 1 to 3/Petitioners

4.K.Loganathan

...4th Respondent/R1

5.N.Sundaram

...5th Respondent/R2

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree in M.C.O.P.No.823 of 2016 dated 20.12.2018 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court) Coimbatore.

For Appellant : Mr.K.Vinod

For Respondents - 1 to 3 : Mr.M.Sivakumar

Respondents - 4 & 5 : Ex-parte



JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.,)

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company questioning the quantum of compensation awarded by the learned IV Additional District Judge, Coimbatore, passed in M.C.O.P.No.823 of 2016 dated 20.12.2018.

2. The brief facts of the case reads as follows:

On 07.02.2016 at about 20.00 hours, one Mr.I.Sahkul (deceased in the present Appeal) was riding a bike bearing Registration No.TN 99C 6365 on Kovai to Pollachi Main Road, Sundarapuram, near City Union Bank. At that time, a bus bearing Registration No.TN 66B 1230 came in a rash and negligent manner dashed against the bike of the deceased. As a result of which the said Sahkul sustained head injuries and died on the spot. Hence, the respondents 1 to 3 herein viz., mother, father and sister of the deceased Sahkul had filed a Claim Petition in M.C.O.P.No.823 of 2016 against the respondents 4 & 5 and appellant/Insurance Company, claiming a sum of Rs.30,00,000/- as compensation for the death of said Sahkul.

3. The respondents 4 & 5 were remained ex parte before the Tribunal.

4. The appellant/Insurance Company filed a counter statement, wherein, they denied the averments made by the respondents 1 to 3 in the Claim Petition.

5. When the matter came up before the Tribunal on 20.12.2018, on the side of the claimants, 3 witnesses were examined viz., P.W.1 to P.W.3 and 8 documents were marked as exhibits viz., Ex.P1 to Ex.P8 and on the side of the respondents 4 & 5 and appellant/Insurance Company, neither any witness was examined nor any documents were produced.

6. On appreciation of the oral and documentary evidence produced before it on the side of the claimants, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the first respondent. By arriving at such a conclusion, the Tribunal directed the respondents 4 &



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5 and the appellant/Insurance Company to pay a sum of Rs.24,49,200/- as compensation to the respondents 1 to 3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has filed the present Appeal.

7. The learned counsel on both sides submitted in unison that the parties have arrived at a settlement, in and by which, the claimants agreed to receive a sum of Rs.19,00,000/- (Rupees Nineteen Lakhs) in full quit. They have also filed a Joint Memo for Recording Settlement dated 26.03.2021, entered into between the parties, before this Court. Hence, they prayed that the said Joint Memo for Recording Settlement filed by them may be recorded and the present Appeal may be disposed of in terms of the same.

8. The said Joint Memo For Recording Settlement reads as follows:

"1.The appeal has been filed by the appellant/Insurance Company. The above MCOP has been filed by the respondents 1 to 3/claimants claiming compensation for the death of one I.Sahkul, son of the 1st and 2nd respondent and brother of the third respondent, in an accident which occurred on 07.02.2016 involving the vehicle bearing Registration No.TN 66 B 1230, insured with this appellant.

2. The tribunal passed an award dated 20.12.2018 for a sum of Rs.24,49,200/- along with interest and costs. Aggrieved by this order, the appellant preferred the above appeal and the appellant deposited 75% of award amount as per the conditional order passed by this Hon'ble Court vide order dated 23.09.2019 in C.M.P.No.20627 of 2019.

3. Now the respondents 1 to 3/claimants and the appellant insurance company have negotiated for settlement and arrived at a sum of Rs.19,00,000/- (Rupees Nineteen Lakhs only) in full quit.

4. It is therefore prayed that this Hon'ble Court may be pleased to record this Memo of Compromise and pass an award for a sum of



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Rs.19,00,000/- (Rupees Nineteen Lakhs) in full quit in favour of the respondents 1 to 3/claimants payable by the appellant to the credit of the above MCOP. This Hon'ble Court may be pleased to apportion the award as Rs.10,00,000/-, Rs.5,00,000/- and Rs.4,00,000/- in favour of the respondents 1 to 3/claimants 1 to 3 respectively and also permit them to withdraw their respective share amount. As per the interim order of this Hon'ble Court, the appellant already deposited Rs.23,64,638/- and hence this Hon'ble Court may be pleased to direct the tribunal to return the balance excess amount of Rs.4,64,638/- to the appellant with accrued interest thereon. This Hon'ble Court may be pleased to order refund of court fee paid by the appellant."

9. Considering the submissions made by the learned counsel on both sides, this Court is inclined to dispose of the present Appeal in terms of the said Joint Memo for Recording Settlement. Accordingly, this Civil Miscellaneous Appeal is disposed of in terms of the Joint Memo for Recording Settlement dated 26.03.2021 filed by the respective counsel on both sides. It is needless to state that the Court fee paid shall be refunded to the appellant in the manner provided under the Court Fees Act, 1870 as provided for under Sub Section 1 of Section 21 r/w 25 of LSA Act 1987 as amended in 1994, read with Section 69A of Tamil Nadu Court Fee and Suit Valuation Act, 1955 (as amended by Act VI of 2017).

10. The terms of the above Joint Memo for Recording Settlement are recorded and the same shall form part of the decree. No costs. Consequently, connected Miscellaneous Petition is closed.

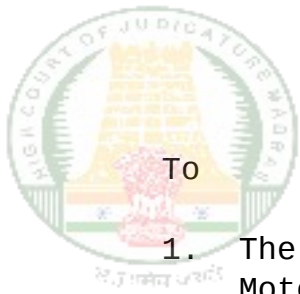
* Herein Enclosed the Xerox Copy of the Joint Memo of Settlement.

Sd/-
Assistant Registrar(JJ Act)

// True Copy //

Sub Assistant Registrar

mrr



To

1. The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

2. The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.K.Vinod, Advocate, S.R.No.26046

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.26052

C.M.A.No.3531 of 2019

EV(CO)
RLP(18/11/2021)