BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| Date of Reservation | 22.03.2021 |
| Date of Judgment | 24.06.2021 |

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**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.611 of 2014
and
MP(MD)No.1 of 2014

Royal Sundaram Alliance Insurance
Company Limited,
Rep. through its Manager,
No.8, Mangalam Building,
Omalur Main Road,
Porur Road, Salem District. : Appellant/4th Respondent

Vs.

1.J.Selvaraj
2.Tmt.S.Chandra
3.S.Solomon Rajesh : Respondents 1,2and 3/Petitioners

4.Suseela Ponnusamy : 4th Respondent/1st Respondent

5.United India Insurance Company Limited,
No.14/1-77B, Branch Office,
Salem Main Road,
Pochampalli, Mettur Dam,
Salem District.

6.Pathra Reddy : R5 and R6/R2 and 3

**PRAYER:-** Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award, dated 04.10.2013 made in MCOP NO.19 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Periyakulam.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R2 : Mr.Sivasubramanian
for M/s.Siva Ayyappan
Associates
For R4 and R6 : No appearance
For 5th Respondent : Mr.N.Dilip Kumar

# J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award, dated 04.10.2013 made in MCOP No.19 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Periyakulam.

2.The short facts of the case is that on 30.08.2011, the deceased David Ravishankar was travelling from Dharmapuri to Chennai in the Bus TN-52-Z-5478 and on 31.08.2011 at 3.00 am, when the Bus was proceeding on Krishnagiri-Vaniyambadi Highways, near Natrampallli, the driver of the Bus drove it in a rash and negligent manner and hit against the Lorry (TN-70-7004), which was parked on the road side. In that accident, the driver of the Bus and a passenger namely Saraswathi died on the spot, while the deceased David Ravishankar sustained grievous injuries and he was taken to Vaniyambadi Government Hospital, but on the way to the hospital, he died. The legal heirs of the deceased David Ravishankar filed a claim petition seeking compensation of Rs.25,00,000/- for the death of the deceased.

3.The claimants have stated that at the time of accident, the deceased was 25 years and he is working as a Sales Officer in Evereday Industries Limited, Chennai and he was earning Rs.21,143/- per month.

4.In the counter filed by the appellant Insurance Company and the 5th respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 8 documents. On the side of the Insurance Companies, 2 witnesses were examined and 3 documents were marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the drivers of the bus and the lorry were equally responsible for the accident and awarded compensation of Rs.21,00,000/- together with interest @ 7.5% p.a, directing the 2nd respondent Insurance Company and the 4th respondent Insurance Company in the claim petition to pay the compensation amount at the ratio of 50:50.

7.The learned counsel appearing for the appellant/4th respondent argued that there was no negligence on the part of the driver of the Lorry owned by the 6th respondent/3rd respondent and there was no liability for the appellant/4th respondent Insurance Company to pay compensation to the claimants and the Bus owned by the 4th respondent/1st respondent dashed against the stationed Lorry owned by the 6th respondent/7th respondent, which was insured with the appellant/4th respondent and there was no such negligence on the part of the driver of the 6th respondent/3rd respondent and lodging of the complaint against one of the colliding vehicle would not be itself determined the issue of negligence, independently and the accident occurred due to the rash and negligent driving of the bus owned by the 4th respondent/1st respondent and there was no negligence on the part of the driver of the 6th respondent/7th respondent and prays that the Civil Miscellaneous Appeal has to be allowed.

8.On the other hand, the learned counsel appearing for the 5th respondent/2nd respondent Insurance Company submitted that without any warning signal, the Lorry was parked in the middle of the road and hence, the accident occurred due to the negligence on the part of the stationed Lorry alone and the accident had not occurred due to the rash and negligent driving of the bus bus and their Insurance Company is not liable to pay the compensation.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.In this case, in respect of the accident, FIR was registered as against the driver of the Lorry. The contention of the claimants is that the driver of the Lorry parked his vehicle without warning signal and further, the driver of the bus, in which, the deceased travelled drove his vehicle in a rash and negligent manner and dashed against the parked Lorry. In this case, in respect of the accident, criminal case was registered as against the driver of the parked Lorry. In this case, RW1 deposed that the driver of the Bus also drove his vehicle in a rash and negligent manner and dashed against the stationed lorry without warning signal. No witness was examined on the side of the 5th respondent/2nd respondent Insurance Company to prove that the driver or the bus drove his vehicle as per the Motor Vehicles Rules. In this case, the driver of the 5th respondent/2nd respondent bus was not examined. Hence, no contra evidence was let in on the side of the 5th respondent/2nd respondent. On perusal of the evidence of PW2, RW1 and FIR, rough sketch, it reveals that the accident occurred due to the composite negligence of both the drivers of the parked Lorry and the Bus. In this case, the FIR was registered against the driver of the parked lorry. Hence, this court fixed the negligence at 60% on the part of the driver of the parked Lorry and 40% on the part of the driver of the bus.

11.The next contention of the appellant/4th respondent Insurance Company is that the compensation awarded by the tribunal is on the higher side and reasonable compensation may be awarded.

12.PW1 is the father of the deceased. PW1 deposed that at the time of accident, his son was working as “Sales Officer” in Evereday Industries, Krishnagiri and earned Rs.21,143/- as monthly salary. To prove it, the staff of the above concern was examined as PW2. PW2 stated that at the time of accident, the deceased was working as Sales Officer in the above concern and earned Rs.21,143/-. To prove it, PW2 filed the salary certificate and it was marked as Ex.P5. However, to prove Ex.P5, no relevant records were produced by PW2. Hence, considering the qualification and the fact of this case that the deceased would be earned Rs.10,000/- per month, this court fixed the monthly income of the deceased at Rs.10,000/-.

13.It is not in dispute that the deceased was working in a private company as a Sales Officer. It is not in dispute that the deceased died at the age of 25 years. It is admitted fact at the time of accident the deceased is a bachelor. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, considering the educational qualification and also considering the fact that the deceased would earn Rs.10,000/- per month, this court fixed the monthly income of the deceased at Rs.1,0000/-. But the tribunal, without any basis has fixed the monthly income of the deceased at Rs.20,000/-, which is not correct. By applying proper multiplier '18' and adding 40% towards future prospects and after deducting 50% from the salary of the deceased for his personal expenses, this court awards Rs.15,12,000/- (Rs.7,000/- X 12 x 18) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.80,000/- towards parental consortium to the claimants 1 and 2; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.16,22,000/-** together with interest @ 7.5% p.a. As this court fixed the negligence at the ratio of 60% on the part of the driver of the Lorry and 40% on the part of the driver of the Bus, they are liable to pay the compensation as per the ratio fixed by this court to the claimants. Accordingly, the appellant Insurance Company is liable to pay a sum of Rs.9,73,200/- and the 5th respondent Insurance Company is liable to pay a sum of Rs.6,48,800/- together with interest @ 7.5% p.a from the date of claim petition, till the date of deposit.

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is reduced to Rs.16,22,000/- from **Rs.21,00,000/-**. Both the appellant Insurance Company and the 5th respondent Insurance Company are directed to deposit the modified award amount, as per the negligence fixed by this court, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to get their share together with accrued interest and costs, as per the apportionment of the tribunal without filing any formal petition before the tribunal. The appellant Insurance Company and the 5th respondent Insurance Company are at liberty to get back the excess amount, if any, available from the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)



// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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**Note :**In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Motor Accident Claims Tribunal/
Sub Court,
Periyakulam, Theni District.

Copy to:
The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIP KUMAR, Advocate ( SR-20199[F] dated 25/06/2021 )

+1 CC to M/s.S.SRINIVASA RAGAVAN, Advocate ( SR-20201[F] dated 25/06/2021 )

C.M.A(MD)No.611 of 2014
24.06.2021

NSM(CO)
LR (09.08.2021) 5P 6C