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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.751 of 2022
and
CMP.No.5474 of 2022

The Oriental Insurance Co. Ltd.,
T.P.HUB, No.32/312, Vijayalakshmi Complex,
13th Street, Phase II, Sathuvachari,
Vellore, Vellore District.

...Appellant/3rd Respondent

Vs.

1. P.Yamunanathi ...1st Respondent/1st Petitioner
2. Minor R.Diya
3. Minor R.Suruthiya Rukmani
4. Minor R.Rusank Yadhav
Minors 2 to 4 rep. by their mother P.Yamunanathi
... 2nd to 4th Respondents/2nd to 4th Petitioner
5. B.Rukmani ... 5th Respondent/5th Respondent
6. K.Sivanesan ... 6th Respondent/1st Respondent
7. T.Santhamani ...7th Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree in MCOP.No.122 of 2019 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), at Ranipet, dated 06.09.2021.

For appellant : Mr.M.Krishnamoorthy

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

This appeal has been filed by the Insurance Company, challenging the award passed by the Motor Accidents Claims



Tribunal (II Additional District Judge), at Ranipet, in MCOP.No.122 of 2019.

2. The claim petition was filed by the wife, 3 minor children and mother of the deceased, viz., B.Radhakrishnan. The case of the claimants before the Tribunal was that on 17.01.2019 at 2.00 a.m., when the deceased was sleeping in front of their house, the Tipper Lorry bearing Registration No.TN-21-H-7551, driven by its driver in a rash and negligent manner, dashed against electric post and the compound wall of the house of the deceased. Due to which, the compound wall fell on the deceased, thereby, he sustained multiple injuries all over the body. Immediately, the deceased was taken to the Government Hospital, Walajapet, from where, he was referred to C.M.C. Hospital, Vellore for better treatment. However, unfortunately, he died on the same day.

3. They further stated that the deceased was 35 years old at the time of the accident and he was earning Rs.24,000/- per month by working as Ice Cream Master in Anbazagan Fruit Stall & Ice Cream Parlaour, Mambalam, T.Nagar, Chennai. Since the accident had occurred due to the negligence of the driver of the Tipper Lorry, the sixth respondent, who is the owner of the Lorry as well as the Insurance Company, are liable to pay the compensation of Rs.30,00,000/-.

4. The claim petition was resisted by the appellant/Insurance Company specifically contending that the cheque issued for payment of premium was dishonoured and the same was intimated to the insurer. Since, on the date of accident, the policy was not in force, liability cannot be fastened on the Insurance Company.

5. During the trial, though the appellant was able to produce the dishonoured cheque and the letter of intimation dishonouring the cheque, but they were not able show that the letter was served on the insurer. Hence, the Tribunal directed the appellant/Insurance Company to satisfy the award amount and thereafter, recover the same from the owner of the vehicle for the only reason that the claimants are third parties.

6. The learned counsel appearing for the appellant Mr.M.Krishnamoorthy would argue that when the appellant proved the fact that the cheque issued for payment of premium was dishonoured, therefore, the direction issued by the Tribunal to pay compensation at first instance and thereafter, recover from the owner cannot be sustained.

7. We are unable to agree with the submissions of the learned counsel for the appellant. In the instant case, as



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observed by the Tribunal, the appellant had only produced the dishonoured cheque and the letter, but no material was produced to show that the insured was intimated about the dishonoured cheque. Hence, the direction issued by the Tribunal is hereby confirmed.

8. With regard to negligence, the claimant examined PW2, who is the witness to the accident and produced FIR to show that the criminal case was registered against the driver of the Lorry. It is an admitted fact that the offending vehicle first dashed against the electric post and then, the compound wall of the house of the deceased, in which, he sustained fatal injuries. Hence, we find no reason to interfere with the finding of the Tribunal that the driver of the Lorry was responsible for the accident.

9. With regard to quantum, Postmortem Certificate Ex.P12 shows that the deceased was 37 year old at the relevant point of time. PW1, wife of the deceased, in her evidence, had categorically stated that her husband (deceased) was working as Ice Cream Master in Anbazagan Fruit Stall and drawing Rs.24,000/- per month. But the Tribunal, by fixing the notional income as Rs.12,000/- per month and adding 40% for future prospects, arrived Rs.16,800/- as the monthly income of the deceased. Then, by rightly applying multiplier 16, the Tribunal awarded Rs.24,19,200/- towards Loss of Income. In addition to that, the Tribunal awarded Rs.10,000/- for Transportation; Rs.16,500/- for Funeral Expenses; Rs.2,20,000/- towards Loss of Consortium; Rs.16,500/- towards Loss of Estate. In total, the Tribunal awarded Rs.26,82,200/- along with interest at 7.5% p.a. from the date of filing of this petition till the date of realization.

10. Considering the fact that the wife and 3 minor children of the deceased are the claimants, we are of the opinion that the award appears to be reasonable and it cannot be stated as excessive. Hence, the award is confirmed. For the afore stated reasons, the appeal fails and the same stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

pvs



To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Ranipet

C.M.A. No.751 of 2022

AJB (CO)
SU(18/05/2022)