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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM:

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

C.M.A.NO.651 OF 2022  
AND  
C.M.P.NO.4625 OF 2022

The Manager,  
Reliance General Ins. Co.Ltd.,  
Reliance House, 6<sup>th</sup> Floor, 6, Haddows Road,  
Nungambakkam,  
Chennai - 600 006.

... Appellant/  
2<sup>nd</sup> Respondent

Vs.

1. M.Dhanalakshmi, W/o. Late D.Murugan
2. M.Sarathi, Minor, S/o. Late D.Murugan
3. M.Vigneswaran (Minor) S/o.Late D.Murugan  
Minors 2 and 3 represented by their mother 1<sup>st</sup> petitioner  
as natural guardian and next friend.
4. D.Kamakshi  
W/o.Late Devalingam  
All are residing at  
No.218, 3<sup>rd</sup> Street, Pudhu Nallur,  
Sriperumpudhur Taluk,  
Kanchipuram District.

... Respondents 1 to 4/  
Petitioners

5. T.Pushparaj,  
No.21, Anna Street, Nehru Nagar, Cheyyar,  
Thiruvannamalai District.

... 5<sup>th</sup> Respondent/  
1<sup>st</sup> Respondent

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of



Motor Vehicles Act 1988 to set aside the Decree and Judgment dated 08.10.2021 made in M.C.O.P. No.4299 of 2018 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

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For Appellant : M/s. C.Bhuvanasundari

For Respondents : Mr.C.Richard Suresh Kumar for RR1 to 4

#### JUDGMENT

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

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, II Small Causes Court, Chennai in MCOP No.4299 of 2018 dated 08.10.2021.

2. This is the case of fatal accident. The case of the claimants is that on 11.05.2018 at about 8.00 PM, the deceased - D.Murugan was riding a Motor Cycle bearing Reg. No.TN-11-D-7175, from Kanchipuram to Tambaram and was diverted due to road work. When he was coming near Serapanacherry, a tipper lorry bearing registration No.TN-25-AU-1683 driven by its driver in a rash and negligent manner, hit the motorcycle from behind. In the impact, the deceased was thrown out from the motorcycle and he had sustained multiple grievous injuries all over his body. Immediately, he was taken to Chrompet Government Hospital and after first aid, he was admitted at Rajiv Gandhi Government General Hospital, where he died on 14.05.2018. The claimants are the legal heirs of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the 1<sup>st</sup> respondent/ Tipper Lorry, the claimants sought for compensation of Rs.1,00,00,000/-.

3. The appellant/Insurance Company resisted the claim and filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. Further, it has been contended that the driver of the 1<sup>st</sup> respondent drove the vehicle slowly, but the deceased rode his motorcycle in a rash and negligent manner and invited the accident. So no amount can be awarded to the claimants.

4. To substantiate the case, on the side of the claimants, Mrs.Kamakshi was examined as PW1, One Mr.Manikandan was examined as PW2 and Mr.Venkatesan was examined as PW3. Through them Exs.P1 to Ex.P.12 were marked. On the side of the appellant/the 2<sup>nd</sup> Respondent, no oral evidence let in and no exhibits marked.

5. The Tribunal, after considering the oral and documentary



evidence, held that the driver of the 1<sup>st</sup> respondent was responsible for the accident and awarded compensation of Rs.27,48,300/- with interest @ 7.5% from the date of claim petition, till the date of realization. Assailing the award, the appellant / The Manager, Reliance General Ins.Co.Ltd has filed the present appeal.

6. Heard Ms.C.Bhuvanasundari, learned counsel appearing for the appellant, Mr.C.Richard Suresh Kumar, learned counsel appearing for the respondent/claimants and perused the materials available on record.

7. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

8. In the instant case, according to the claimants, the deceased died at the age of 32 years, however Ex.P5 driving license of the deceased shows that he was born on 24.08.1987 and at the time of accident i.e., on 11.05.2018, he had completed 30 years. It is further case of the claimants that the deceased was working as a driver at Mahindra Logistics Limited at Chennai and he was paid Rs.30,000/- per month, but during the trial, they were not able to produce any documentary evidence. Hence, the Tribunal based on the decision of the Hon'ble Apex Court in the case of Syed Sadia Vs. United India Insurance Company [2014 (1) TNMAC 459] fixed notional income as Rs.13,285/- and added 40% towards future prospects and arrived at Rs.18,599/- as total income. Taking note of the fact that the deceased died leaving behind his wife, two minor children and his mother, 1/4th of the income was deducted for his personal expenses and by applying proper multiplier '16', awarded Rs.26,78,256/- towards loss of dependency. In addition, Rs.15,000/- was awarded for loss of estate; Rs.40,000/- for loss of love and affection and Rs.15,000/- for funeral expenses. The total amount was rounded off to Rs.27,48,300/-. Considering the facts and circumstances of the case, we are of the opinion that the Award is fair and reasonable.

9. In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The appellant/ The Manager, Reliance General Ins.Co.Ltd is directed to deposit the entire award amount of Rs.27,48,300/- with interest at the rate of 7.5 % from the date of claim petition, till the date of realization and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. Out of the total award amount the 1<sup>st</sup> claimant/wife of the deceased is entitled for a sum of Rs.10,00,000/- and the minor children are entitled for a sum of Rs.7,50,000/- each and the 4<sup>th</sup> claimant/mother of the deceased is entitled for Rs.2,48,300/-. On such deposit is being made, the



major claimants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount already withdrawn, if any. In so far as, share of the minor children, the Tribunal is directed to deposit the same in any of the nationalized bank in a fixed deposit scheme, till the minors attain majority. Till such time, the interest accrued thereon shall be withdrawn by the mother of the minor children/1st claimant, once in three months, directly from the Bank. It is made clear, the claimants are not entitled for interest during the delay period. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,  
II Small Causes Court,  
Chennai.

C.M.A.No.651 of 2022  
and  
C.M.P.No.4625 of 2022

KJ(CO)  
PM/02/06/2022