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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM:

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

C.M.A.No.1761 of 2021
and
C.M.P.No.9383 of 2021

M/s. Bharati AXA General Insurance Co. Ltd.,
Anna Salai, Chennai - 600 002.

...Appellant/5th Respondent

Vs.

1.Sridevi
2.Master Lohith
3.Master Monish
4.Girija
5.Manoj Ravichandran

6.The Oriental Insurance Co. Ltd.,
No.216/115, Prakasam Salai,
Broadway, Chennai - 600 108.

7.Saravanan
8.R.Mohandoss

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 11.03.2020 made in MCOP No.6542 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judge Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.P.Ravishankar for
Ms.V.Usharani for R1 to R4
Mr.J.Chandran for R6
No appearance for R5
R7 & R8 not ready



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, Chief Judge, Court of Small Causes, Chennai in MCOP No.6542 of 2015, dated 11.03.2020.

2. Brief facts of the case would run thus:-

The case of the claimants is that on 14.08.2014 at about 23.30 hours, the deceased Umapathy was travelling in a share auto bearing Reg.No.TN-05-T-6059. When the said auto was taking "U" turn on the right side of the Sakthi Nagar Junction in 200 Feet Road, a container lorry bearing Reg.No.TN-19-V-0576 belonging to the 5th respondent, which came from the opposite direction in a rash and negligent manner, hit the share auto. In the impact, the deceased sustained grievous head injuries and died on the way to the hospital. At the time of accident, the deceased was 33 years old and he was working as Medical Representative in Pharmed Limited and earning Rs.6,24,539/- per annum. The first claimant is the wife, claimants 2 and 3 are the children and the fourth claimant is the mother of the deceased. The respondents 5 and 6 are the owner and insurer of the container lorry and the appellant and the respondents 7 and 8 are the insurer, driver and the owner of the share auto. Hence, the claimants filed the claim petition seeking compensation of Rs.1,62,00,000/-.

3. Resisting the claim, the appellant/Insurance Company and the 6th respondent/Insurance Company filed their respective counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. According to them, the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, the first claimant examined herself as P.W.1 and one Sampth, Sub-Inspector of Police was examined as P.W.2 and Exs.P1 to Ex.P.10 were marked. On the side of the appellant/Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and Exs.R1 and R2 were marked.

5. The Tribunal, after considering the oral and documentary evidence adduced by the parties, held that both the drivers of the lorry as well as share auto were responsible for the accident and fixed the negligence upon the driver of the lorry and share auto at the ratio of 60:40 and awarded compensation of Rs.61,23,000/- to the claimants. Assailing the award, the appellant/Insurance Company has filed the present appeal challenging the negligence of 40% fixed on the auto.



6.The learned counsel appearing for the appellant/Insurance Company Mr.S.Arunkumar would contend that the Tribunal erred in holding that the driver of the auto was responsible for the accident to the extent of 40% in spite of the fact that admittedly the complaint and charge sheet are filed against the driver of the lorry. He would further contend that the compensation awarded by the Tribunal is on the higher side.

7.The learned counsel appearing for the respondents/claimants Mr.P.Ravishankar Rao and the learned counsel appearing for the 6th respondent/Insurance Company Mr.J.Chandran supported the award of the Tribunal and pleaded to dismiss this appeal.

8.We have considered the rival submission of the learned counsel appearing on either side and perused the materials available on records.

9. In the case on hand, the First Information Report (Ex.P.4) has been filed as against the driver of the container lorry and the charge sheet (Ex.P.10) has also been filed against him and the Investigator of the appellant/Insurance Company opined that the accident was due to the rash and negligent driving of the container lorry. However, the Tribunal by considering the Rough Sketch (Ex.P.5) held that the driver of the auto contributed the negligence and fixed the negligence at the ratio of 60:40 on the driver of the lorry and auto. We find no reason to interfere with the conclusion reached by the Tribunal. Hence, the negligence fixed by the Tribunal is confirmed.

10.Insofar as quantum is concerned, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence of Income Tax Return (Ex.P.8), has fixed the monthly income and adopting correct multiplier '16' awarded a just and reasonable compensation of Rs.61,23,000/- by following the decision of the Hon'ble Apex Court in the case of Smt. Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009(2) TNMAC 1(SC). We are of the view that amount awarded by the Tribunal is just and reasonable. This appeal has no merit. Hence, this appeal is liable to be dismissed.

11. In such view of the matter, this Civil Miscellaneous Appeal is dismissed and the award dated 11.03.2020 made in MCOP No.6542 of 2015 passed by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai is confirmed. The claimants are entitled to the award amount as per the ratio fixed by the Tribunal. The appellant/Insurance Company and the 6th respondent/Insurance Company are directed to deposit the entire award amount at the ratio of 40:60 with accrued interest 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 Judgment. On such deposit, the major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank till they attain majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants/Lohith and Monish on attaining majority are permitted to withdraw their share. There is no order as to costs in this appeal. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skn

To

- 1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR. No. 30483
+1cc to Mr.J.Chandran, Advocate SR. No. 29587
+1cc to M/s.V.Usha Rani, Advocate SR. No. 29983

C.M.A.No.1761 of 2021
and
C.M.P.No.9383 of 2021

SPD (CO)
PR (01/06/2022)