

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1112 of 2022
and C.M.P.No.8161 of 2022

Reliance General Insurance Co. Ltd.
Reliance House
6th floor
MTPCO, Legal Department
No.6, Haddows Road
Nungambakkam, Chennai-6. ...Appellant/II Respondent

Vs.

1.K.Babu
2.B.Priya
3.B.Pradeep
4.B.Prasanth ...Respondents 1 to 4/Petitioners

5.M/s.JSM Logistics Private Limited
Plot No.1 and 1A, Flat No.4A
4th street, UR Nagar Extension
Anna nagar west extension
Chennai-600 101. ...5th Respondents/I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2021 made in M.C.O.P.No.1006 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II to deal with MCOP cases, Small Causes Court, Chennai.

For Appellant : Ms.C.Bhuvanasundari

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 28.10.2021 made in M.C.O.P.No.1006 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II to deal with MCOP cases, Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1006 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II to deal with MCOP cases, Small Causes Court, Chennai. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Sujatha, who died in the accident that took place on 27.09.2014.

3.According to the respondents 1 to 4, on the date of accident i.e., on 27.09.2014 at about 08.45 hours, while the deceased Sujatha along with other co-workers were travelling in the share Auto Rickshaw bearing Registration No.AP-03-X-9477 from Mugali, Venkatagiri Village to Mugali Village in Chittoor District towards Palamaner side, on Chennai - Bangalore National Highways Road and while they were proceeding near Gandlapalli bus stop in Bangarupalem Mandal, the driver of the lorry belonging to the 5th respondent bearing Registration No.TN-02-AR-8043, who was coming in the opposite direction, drove the same in a rash and negligent manner and came on the wrong side of the road, hit the share Auto Rickshaw and caused the accident. In the accident, the said Sujatha and one Pyarijan died and other persons sustained grievous injuries all over the body. Therefore, the respondents 1 to 4 have filed the above claim petition claiming compensation for the death of said Sujatha against the 5th respondent, owner of the lorry and appellant/Insurance Company, insurer of the said lorry.

4.The 5th respondent, owner of the lorry filed counter statement denying the averments made in the claim petition and stated that the driver of the share Auto Rickshaw drove the same in a rash and negligent manner and invited the accident. The total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

5.Though the 5th respondent, owner of the lorry filed counter statement, he remained exparte before the Tribunal.

6.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to negligence of the driver

of the share Auto Rickshaw, in which the deceased person travelled, since at the time of accident, more than ten persons have travelled in the said share Auto Rickshaw. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 4. In any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent, husband of the deceased examined himself as P.W.1 and other claimants in other M.C.O.Ps. have examined themselves as P.W.2 to P.W.6 and 84 documents were marked as Exs.P1 to P84. The appellant/Insurance Company did not let in any oral and documentary evidence. Disability certificates issued by the Medical Board were marked as Exs.C1 and C2.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.18,05,100/- as compensation to the respondents 1 to 4.

9. Against the said award dated 28.10.2021 made in M.C.O.P.No.1006 of 2015, the appellant/Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal without properly appreciating the materials, erroneously held that the accident has occurred due to negligence of the driver of the lorry belonging to the 5th respondent, insured with the appellant. At the time of accident, more than ten persons have travelled in the share Auto Rickshaw and the accident has occurred due to negligence of the driver of the said share Auto Rickshaw. The accident is head on collision. The Tribunal ought to have fixed contributory negligence on the part of the driver of the share Auto Rickshaw. In any event, the notional income of Rs.8,000/- per month fixed by the Tribunal for the deceased Sujatha, who is temporary worker in Juice Factory, is excessive. The total compensation awarded by the Tribunal is also excessive and prayed for setting aside the award of the Tribunal.

11. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials on record.

12. From the materials on record, it is seen that on 27.09.2014, while the deceased Sujatha along with her co-workers were travelling in the share Auto Rickshaw bearing Registration

No.AP-03-X-9477, from Mugali, Venkatagiri Village to Mugali Village, the driver of the lorry bearing Registration No.TN-02-AR-8043 belonging to the 5th respondent, insured with the appellant, drove the same in a rash and negligent manner, dashed against the said share Auto Rickshaw and caused the accident. In the accident, the said Sujatha, wife of the 1st respondent and mother of the respondents 2 to 4 and one Pyarijan died and four other co-workers who travelled in the said share Auto Rickshaw sustained grievous injuries. The respondents 1 to 4 filed claim petition claiming compensation for the death of the said Sujatha. The said claim petition was taken by the Tribunal along with other claim petitions filed claiming compensation for the death of one Pyarijan and for the injuries sustained by other persons. Common evidence was let in and common award was passed. To substantiate their case, the claimants examined P.W.1 to P.W.6 and marked 84 documents as Exs.P1 to P84. The Court documents were marked as Exs.C1 and C2. The appellant/Insurance Company did not let in any oral and documentary evidence. According to the appellant, accident has occurred only due to rash and negligent driving by the driver of share Auto Rickshaw. The appellant/Insurance Company contended that at the time of accident, more than ten persons travelled in the share Auto Rickshaw and only due to the same, the accident has occurred. To substantiate this contention, the appellant did not let in any oral and documentary evidence. The 5th respondent, who is owner of the lorry even though filed counter affidavit denying the manner of the accident as alleged by the respondents 1 to 4, did not appear before the Tribunal. In the absence of any contra evidence, the Tribunal considering the evidence of P.W.1 to P.W.6, held that the accident occurred only due to negligent driving by the driver of the lorry belonging to the 5th respondent, insured with the appellant and directed the appellant/Insurance Company to pay compensation to the respondents 1 to 4. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the respondents 1 to 4 claimed that the deceased was working as Labourer in Juice Factory and was earning a sum of Rs.7,000/- to Rs.8,000/- per month. They have failed to substantiate their stand with regard to avocation and income. In the absence of any materials with regard to avocation and income, the Tribunal fixed notional income of the deceased at Rs.8,000/- per month. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. The Tribunal considering post-mortem certificate, fixed age of the deceased at 36 years. The Tribunal, following the judgments of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and

another), has rightly granted 40% enhancement towards future prospects and applied multiplier '15'. There are four dependants of the deceased and the Tribunal deducted 1/4th towards loss of dependency. Thus, the Tribunal has awarded a sum of Rs.15,12,000/- towards loss of dependency. The learned counsel appearing for the appellant contended that the deceased would have been more than 40 years and the Tribunal ought to have granted 25% enhancement instead of 40% enhancement towards future prospects. The appellant has not produced any material to show that the deceased was aged 40 years at the time of accident and claim of appellant is only based on presumption and assumption, which cannot be accepted. The Tribunal has awarded a sum of Rs.1,60,000/- towards loss of consortium to the respondents 1 to 4. The Tribunal has not awarded any amount towards loss of love and affection to the respondents 1 to 4. In view of the same, a sum of Rs.1,60,000/- awarded by the Tribunal towards loss of consortium is not interfered with. The Tribunal has also awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Considering Ex.P10/Medical bills, the Tribunal has awarded a sum of Rs.1,03,067/- towards medical expenses. In the considered view of this Court, the total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

14. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.18,05,100/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.Special Subordinate Judge No.II
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section, High Court
Madras.

C.M.A.No.1112 of 2022
and C.M.P.No.8161 of 2022

VBM (CO)
PR (11/07/2022)