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C.M.A.No.1370 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1370 of 2022
and C.M.P.No.9922 of 2022

The Branch Manager,
Reliance Gen. Ins. Co. Ltd.,
AVS Tower, R.S.No.181/2, 100 feet road,
Muthaialpet, Puducherry.

.. Appellant

Vs.

1.G.Jaya

2.G.Thamarai Selvi

3.M.Sarihath Nisha

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2021, made in M.C.O.P.No.248 of 2021, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Mahila Court, Nagapattinam.

For Appellant : Mrs.C.Bhuvanasundari



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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 Limited against the judgment and decree dated 10.12.2021, made in M.C.O.P.No.248 of 2021, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Mahila Court, Nagapattinam.

2.Originally the respondents 1 & 2 filed the claim petition in M.C.O.P.No.243 of 2020 before the Sessions Court, Nagapattinam, claiming a sum of Rs.75,00,000/- as compensation for the death of one G.Gunasekaran, who died in the accident that took place on 15.12.2019. The same was taken on file on 05.09.2020. Thereafter, the said M.C.O.P.No.243 of 2020 was transferred to the Motor Accident Claims Tribunal, Additional District Court, Fast Track Mahila Court, Nagapattinam and re-numbered as M.C.O.P.No.248 of 2021 and taken on file on 23.11.2021. The appellant is the 2nd respondent in M.C.O.P.No.248 of 2021.



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3. According to the respondents 1 & 2, on 15.12.2019 at about 11.00 A.M., while the deceased G.Gunasekaran was returning home after dropping his mother, the 1st respondent herein at the Majakollai Kamatchi Amman Temple by riding the Honda Dio motorcycle bearing Registration No.TN 51 AF 7102 from West to East direction near Manjakollai Kannara street Arch, the driver of the Chozha private bus bearing Registration No.TN 51 H 6752 belonging to 3rd respondent, drove the bus in a rash and negligent manner from East to West, dashed on the motorcycle driven by the said G.Gunasekaran and caused the accident. In the accident the said G.Gunasekaran sustained injuries in the left fore head, left chest, left hand and left thigh. Immediately after the accident the said G.Gunasekaran was taken to Government Head Quarters Hospital, Nagapattinam for first aid treatment. Thereafter, he was taken to Thiruvavarur Government Medical College and Hospital, Thiruvavarur for further treatment. In spite of medical treatment, the said G.Gunasekaran succumbed to injuries on the same day. Hence, the respondents 1 & 2 filed the claim petition against the 3rd respondent and appellant, being the owner and insurer of the bus respectively.



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4.The 3rd respondent – owner of the bus remained exparte before the Tribunal.

5.The appellant being the insurer of the bus belonging to 3rd respondent filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. The appellant denied the manner of accident as well as the involvement of 3rd respondent's bus in the accident as alleged by the respondents 1 & 2. At the time of accident, the driver of the bus belonging to 3rd respondent did not possess valid driving license to drive the bus. The 3rd respondent violated the policy conditions by allowing a person without possessing driving license to drive the bus, which had no valid permit and Fitness Certificate. The accident has occurred only due to the negligence on the part of the deceased and there is no negligence on the part of the driver of the bus. At the time of accident, the bus belonging to 3rd respondent was not covered with valid insurance policy. Hence, the appellant is not liable to pay any compensation to the respondents 1 & 2. In any event, the respondents 1 & 2 are not entitled to any interest for the delay period caused by them in furnishing the medical documents or any other documents. The quantum



of compensation claimed by the respondents 1 & 2 are excessive and prayed for dismissal of the claim petition as against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Siva, eyewitness to the accident was examined as P.W.2 and 20 documents were marked as Exs.P1 to P20. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent and directed the appellant as insurer of 3rd respondent's bus to pay a sum of Rs.23,93,000/- as compensation to the respondents 1 & 2.

8.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 10.12.2021, made in M.C.O.P.No.248 of 2021, the appellant has come out with the present appeal.



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9.The learned counsel appearing for the appellant contended that the accident occurred only due to the negligence on the part of the deceased. At the time of accident, the deceased did not possess driving license and did not wear helmet. The respondents 1 & 2 did not produce and mark the Motor Vehicle Inspector's Report. The Tribunal relied on the evidence of P.W.2 and erroneously fixed the negligence on the part of the driver of the bus belonging to 3rd respondent and insured with appellant. The deceased was unemployed for more than 1 ½ years after completing his degree. There is no material to show that he was waiting for Government job. In the absence of any evidence, the monthly income of the deceased fixed by the Tribunal at Rs.15,000/- is excessive. The 2nd respondent is neither a legal heir nor dependant of the deceased and hence, a sum of Rs.40,000/- awarded to the 2nd respondent is not correct and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

11.It is the case of the respondents 1 & 2 that on 15.12.2019, while



the deceased G.Gunasekaran, son of the 1st respondent and brother of the 2nd respondent was riding the Honda Dio motorcycle from West to East direction near Manjakollai Kannara street Arch, the driver of the Chozha private bus belonging to 3rd respondent, drove the same in a rash and negligent manner and dashed on the motorcycle in which the deceased G.Gunasekaran was riding and caused the accident. In the accident, the said G.Gunasekaran sustained injuries and due to the injuries, he died on the same day. To prove their contention, the respondents 1 & 2 examined one Siva, eyewitness to the accident, as P.W.2 and marked F.I.R., which was registered against the driver of the bus belonging to 3rd respondent, as Ex.P1. On the other hand, it is the case of the appellant that the accident occurred only due to the negligence on the part of the deceased. It is the further case of the appellant that at the time of accident, the deceased did not wear helmet and also did not possess driving license. The appellant did not let in any oral and documentary evidence to prove their case. Especially, the appellant did not examine the driver of the bus or any eyewitness to prove their case that the deceased only caused the accident. The contention of the learned counsel appearing for the appellant that the deceased was not having driving license and did not wear helmet at the time of accident is not supported by any evidence. In



the cross examination of P.W.2, there was no material to show that he is not an eyewitness and he is not reliable evidence had been elucidated. In the absence of uncontraverted evidence of P.W.2 and F.I.R. which was marked as Ex.P1, the Tribunal considered the above materials and rightly held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to 3rd respondent and insured with appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, it is the case of the respondents 1 & 2 that the deceased was aged 23 years at the time of accident and has completed Marine Engineering course and was waiting for the job. The accident has occurred in the year 2019. Even if deceased is unemployed, taking into consideration the circumstances of the case, the notional income can be fixed and compensation can be awarded for loss of dependency. In the present case, considering the fact that the deceased has completed Marine Engineering course and the possibility of getting employment is not ruled out, a sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased is not excessive as the accident occurred in the year 2019. Further, the



contention of the learned counsel appearing for the appellant that the 2nd respondent was not the dependant of the deceased and hence, a sum of Rs.40,000/- granted to the 2nd respondent towards loss of love and affection is to be set aside is concerned, had the deceased been alive, he would have been taking care of his own sister and contributed towards her education and other maintenance. In view of the same, a sum of Rs.40,000/- awarded by the Tribunal towards loss of love and affection to 2nd respondent is not interfered with.

13.For the above reasons, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.23,93,000/- awarded by the Tribunal as compensation to the respondents 1 & 2, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.248 of 2021, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Mahila Court, Nagapattinam. On such deposit, the respondents 1 & 2 are permitted to withdraw their respective share of the award amount as per



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the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)

30.06.2022

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Index : Yes / No

Internet : Yes / No

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Mahila Court,
Nagapattinam.

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



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