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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.03.2022
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.607 of 2022

Sriram General Insurance Co. Ltd.,
1st Floor, Front Portion,
No.5 F, Sachin Plaza,
Reddiyar Block No.1,
Salem District - 16.

... Appellant

Vs.

1.Selvaraj
2.Bharathi
3.The Chiarman

Winner Vikas International School
ARS Kalvinagar, Koranampatty Village,
Katchupalli Bus Stop, Edappady Taluk,
Salem District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to set aside order dated 02.12.2021 made in M.C.O.P.No.1869 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S.Dhakshinamoorthy

J U D G M E N T

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

Challenging the Judgment and Award passed by the learned Special Judge, Motor Accidents Claims Tribunal, Salem in M.C.O.P.No.1869 of 2018, the present appeal has been filed.

2.The respondents 1 and 2 herein filed the claim petition seeking compensation of Rs.2 Crores for the death of their daughter Swetha in the accident occurred on 12.10.2018. According to them, the deceased was riding a two wheeler bearing registration No.TN-25-BV-4235 from Konganapuram to Magudanchavadi and when she was near Alaganur bus stop, the school bus bearing registration No.TN-52-H-7668, which was driven by its driver in a rash and negligent manner came to the



wrong side of the road and hit against the two wheeler. In the accident, the said Swetha sustained multiple grievous injuries all over the body and she was immediately carried to VIMS Hospital, but despite treatment, she died on the same day. It is their further case that the deceased has successfully completed her MBBS degree in Annapoorna Medical College and Hospital, Salem, however, she died at the age of 23 years in the accident. It is next contended that her notional income was Rs.1,00,000/- per month. Hence, they are entitled for compensation of Rs.2 Crores.

3. The appellant-Insurance Company contested the claim petition stating that the deceased, who was riding the two wheeler in a rash and negligent manner, suddenly tried to overtake an ongoing vehicle and in that process, hit against the bus. Hence, no negligence can be attributed to the driver of the bus. The claim is excessive and prayed for dismissal of the claim petition.

4. In order to prove the case of the claimants, they examined two witnesses and marked 13 documents. The appellant examined two witnesses and produced Ex.X1. P.W.1 and P.W.2 have deposed in the line of the averments made in the claim petition. The driver of the bus R.W.1 has admitted during the cross examination that a criminal case was registered against him. Ex.X1 charge sheet containing First Information Report, Rough Sketch, MVI Report, show that the bus which was coming in the opposite direction came to the wrong side and hit against the two wheeler. R.W.2, the Head Constable also stated that the charge sheet filed against the driver of the bus. In view of the above, the oral testimony of R.W.1 was rejected by the Tribunal and held that the accident occurred due to the negligence of the driver of the bus. Hence, we find no reason to interfere with the reason arrived by the Tribunal with regard to negligence.

5. Insofar as quantum is concerned, Ex.P9 provisional certificate establishes that the deceased has successfully completed MBBS degree at the relevant point of time. Ex.P2 postmortem certificate shows that the deceased died at the age of 23 years. Though the claimants could not able to prove that the deceased monthly earning was Rs.1,00,000/- the Tribunal has fixed notional income at Rs.60,000/- and applied '18' multiplier.

6. It is vehemently contended by Mr.S.Dhakshinamoorthy, learned counsel appearing for the appellant that the notional income fixed by the Tribunal is on the higher side. We are not able to agree with the submission of the learned counsel



appearing for the appellant for the reason that in the instant case, it is an admitted fact that the deceased had studied in the private medical college and she has completed her M.B.B.S course at the time of accident. This Court can take judicial notice that there are number of vacancies in the Government Hospitals and the doctors appointed by the Medical Recruitment Board are paid more than Rs.60,000/- as salary. Even in the private hospitals also, the doctors who have completed M.B.B.S degree are employed with a salary of Rs.60,000/-. Further, it is relevant to note that the claimants would have spent more money to provide education to the deceased in the private medical college.

7. In the light of the peculiar facts and circumstances of the case, the notional income fixed by the Tribunal cannot be said to be on higher side. The Tribunal has arrived at the total income as Rs.1,29,60,000/- (Rs.60,000/- x 12 x 18) and deducted 50% i.e., Rs.64,80,000/- for her own expenses and also held that the claimants would be entitled for Rs.64,80,000/- under the head of loss of income. In addition, Rs.40,000/- was awarded for love and affection; Rs.20,000/- for funeral expenses and Rs.10,960/- towards medical expenses. Totally, Rs.65,55,960/- was awarded by the Tribunal.

8. In the considered opinion of this Court, the Award of the Tribunal is fair and reasonable. In that view of the matter, the Appeal fails and the same is dismissed. The appellant / Insurance Company is directed to deposit the entire award amount 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 order. On such deposit, the claimants 1 and 2 are permitted to withdraw their share as apportioned by the Tribunal. There is no order as to costs.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Special District Court,
Motor Accidents Claims Tribunal,
Salem.

+1 cc to M/s.S.Dhakshana Moorthy Advocate sr18952/2022

C.M.A. No.607 of 2022

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