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C.M.A.No.2328 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2328 of 2022

and

C.M.P.No.18130 of 2021

The Divisional Manager,
Reliance General Insurance Company Limited,
Plot No.2054, II Floor,
Rajis Towers, Second Avenue,
Anna Nagar, Chennai – 600 040.

.. Appellant

Vs.

1.Gnanambal

2.Minor. Helan Sneha

3.Minor. Helan Swetha

(Minor respondents 2 & 3 are
represented by their Mother /
Next Friend and Guardian
Gnanambal, 1st respondent herein)

4.Anbonsa

5.R.Thangarasu

.. Respondents



Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.08.2021, made in M.C.O.P.No.1604 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

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 16.08.2021, made in M.C.O.P.No.1604 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

2.The appellant is the 2nd respondent in M.C.O.P.No.1604 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. The respondents 1 to 4 / claimants filed the said claim petition, claiming a sum of Rs.80,00,000/- as compensation for the death of one Anthonisamy, who died in the accident that took place on 01.12.2014.

3.According to the respondents 1 to 4, on 01.12.2014 at about 20.30 hours, while the deceased Anthonisamy was proceeding in a



motorcycle bearing Registration No.PY 01 AT 6634 on the left side of the Kanji – Chengam Road near Karapattu Junction at Sakunthala Rice Mill, the driver of the Tarass Lorry bearing Registration No.TN 28 AM 6316, drove the same in a rash and negligent manner and dashed against the motorcycle in which the said Anthonisamy was proceeding and caused the accident. In the accident, the said Anthonisamy sustained injuries and died on the spot itself. Hence, the respondents 1 to 4 filed the claim petition claiming compensation against the 5th respondent and appellant, who are the owner and insurer of the Tarass Lorry respectively.

4.The 5th respondent - owner of the Tarass Lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4. The appellant denied the manner of accident as alleged by the respondents 1 to 4. According to appellant, if there is any violation of terms and conditions of the insurance policy, the appellant is not liable to pay any compensation. The appellant denied the age, avocation and income of the deceased and also denied that the deceased was the only breadwinner of



the family. The appellant denied that the driver of the motorcycle bearing Registration No.PY 01AT 6634 was possessing valid and effective driving license to ride the motorcycle on the date of accident and the respondents 1 to 4 have to prove that the motorcycle was insured and the motorcycle was having valid vehicular records on the date of accident. The respondents 1 to 4 have not impleaded the owner and insurer of the motorcycle as parties to the claim petition and the claim petition has to be dismissed for non-joinder of necessary parties. The accident has occurred only due to rash and negligent driving by the rider of the motorcycle and there is no negligence on the part of the driver of the Tarass Lorry. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. As per the investigation report, the motorcycle was not insured with any insurance company and in view of the violation of Motor Vehicles Act, the appellant is not liable to pay any compensation to the respondents 1 to 4. The respondents 1 to 4 are not entitled to any interest for the delay period caused by them in furnishing the medical documents. In any event, the quantum of compensation claimed by the respondents 1 to 4 is highly excessive and prayed for dismissal of the claim petition as against the appellant.



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6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Peter Anthony, eyewitness to the accident was examined as P.W.2 and one Narayanan, Sub Inspector of Police, Tiruvannamalai was examined as P.W.3 and 5 documents were marked as Exs.P1 to P5. The appellant examined two witnesses as R.W.1 & R.W.2 and two documents were marked as Exs.R1 & R2.

7.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 Tarass Lorry belonging to 5th respondent and directed the appellant-Insurance Company to pay a sum of Rs.39,51,640/- as compensation to the respondents 1 to 4.

8.To set aside the said award dated 16.08.2021, made in M.C.O.P.No.1604 of 2017, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to consider the final report



and erroneously allowed the claim petition. In the final report it has been clearly mentioned about the non-involvement of the Tarass Lorry belonging to 5th respondent in the accident. The Tribunal erroneously relied only on the FIR and failed to consider the final report for fixing the negligence. The monthly income of the deceased fixed by the Tribunal at Rs.29,621/- and 30% enhancement granted towards future prospects are excessive. The multiplier '14' applied by the Tribunal is not correct. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

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

11.From the materials on record, it is seen that it is the case of the respondents 1 to 4 that on 01.12.2014, while the deceased Anthonisamy was proceeding in a motorcycle on the left side of the Kanji – Chengam Road near Karapattu Junction at Sakunthala Rice Mill, the driver of the Tarass Lorry belonging to 5th respondent drove the same in a rash and negligent manner, dashed against the motorcycle driven by the deceased and caused the accident. In the accident, the said Anthonisamy sustained



fatal injuries and died on the spot. To substantiate their case, the 1st respondent examined herself as P.W.1, one Peter Anthony, eyewitness to the accident was examined as P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the Tarass Lorry belonging to 5th respondent. P.W.2 / eyewitness deposed that the accident has occurred only due to rash and negligent driving by the driver of the Tarass Lorry belonging to 5th respondent. On the other hand, it is the case of the appellant that the accident has occurred only due to rash and negligent driving by the deceased. To prove their contention, the appellant examined the Sub Inspector of Police, Kadaladi Police Station as R.W.2 and marked the Motor Vehicle Inspector's Report of the motorcycle bearing Registration No.PY 01 AT 6634 as Ex.R2. R.W.2 is not an eyewitness to the accident and he deposed based on the available materials. The appellant did not examine the driver of the Tarass Lorry, who is the best witness to depose about the manner of accident or any eyewitness to prove their case. Further, the owner or the driver of the Tarass Lorry did not file any objection to the FIR and also has not lodged any complaint against the deceased. The Tribunal considering the evidence of P.W.1, P.W.2 / eyewitness & R.W.2, contents of Ex.P1 / FIR and non-examination of the driver of the Tarass Lorry or any eyewitness,



not filing any objection to FIR and not lodging any complaint against the deceased, held that the accident has occurred due to rash and negligent driving by the driver of the Tarass Lorry belonging to 5th respondent. 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 to 4 that at the time of accident, the deceased was working as Head Constable in the Office of the Superintendent of Police, Tiruvannamalai District and was earning a sum of Rs.29,000/- per month. To prove their case, the respondents 1 to 4 marked the original salary slip of the deceased as Ex.P4 and last month salary bill of the deceased as Ex.P5. The Tribunal considering Exs.P4 and P5, fixed a sum of Rs.29,621/- as monthly income of the deceased and the same is proper. At the time of accident, the deceased was aged 41 years and was in a permanent job. The Tribunal considering the same, has rightly granted 30% enhancement towards future prospects and applied multiplier '14'. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased and awarded a sum of Rs.38,81,640/- towards loss of dependency and the same is not



excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.39,51,640/- as compensation to the respondents 1 to 4, which is not excessive and hence, the same is hereby confirmed.

13.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.39,51,640/- 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 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.1604 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. On such deposit, the respondents 1 & 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attains majority. On such deposit, the 1st



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respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare the minor respondents 2 & 3. Consequently the connected Miscellaneous Petition is closed. No costs.

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

02.11.2022

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Index : Yes / No

Internet : Yes / No

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

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



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