THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2821 of 2022

Zonal Manager,
The Reliance General Insurance Company Limited.,
Rai's Towers 2nd Floor,
2nd Avenue Plot No.2054 Next to GRT Jewellers,
Anna Nagar, Chennai. ... Appellant

Vs.

1.Ezhilmathi

2.Minor Nivedha

Rep. by her Mother Ezhilmathi

3.Janaki

4.Muthuswamy

5.Abdul Azad ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24th February 2022 passed in M.C.O.p.No.403 of 2018, by the Motor Accident Claims Tribunal, III Additional District Judge, Cuddalore at Virudhachalam.

For Appellant : Mrs.C.Bhuvanasundari

JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal against the award of a sum of Rs.28,90,000/- for the death of one Manikandan in a road accident that occurred on 28.09.2018.

2. The claimants who are the wife, daughter and parents of the deceased Manikandan sought for a compensation of Rs.50,00,000/- contending that the accident had occurred due to the rash and negligent driving of the driver of the lorry insured with the appellant Insurance Company and the said Manikandan was working as a driver in Dubai and earning a substantial sum as salary. He was also sending monies for the maintenance of the claimants. It was contended that the claimants have lost their sole bread winner therefore, there is a substantial loss of dependency.

3. The Insurance Company resisted the claim contending that the accident did not happen in the manner suggested by the claimants. The Insurance Company also denied that the driver of the lorry had a valid driving license. The age and the other particulars given by the claimants were also denied and the claimants were put to strict proof of same.

4. Before the Tribunal, the 1st claimant was examined as PW1 and one Arivazhagan was examined as PW2. Ex.P1 to Ex.P13 were marked as exhibits on the side of the claimants and there were no evidence either oral or documentry on the side of the Insurance Company.

5. Though a plea was taken that the deceased did not wear helmet, the Insurance Company did not choose to let in evidence on that plea also. The Tribunal relied upon the FIR that was filed against the driver of the lorry and evidence of PW1, wherein, she had stated that the deceased was wearing helmet. In the absence of the evidence on the side of the Insurance Company, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the driver of the lorry.

6. On the quantum, the Tribunal had fixed the monthly income of the deceased at Rs.15,000/- and added 40% towards future prospects. The Tribunal had deducted 1/4th for his personal expenses and worked out the loss of dependency at Rs.28,35,000/-. The Tribunal had also awarded Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. The total compensation was thus arrived at Rs.28,90,000/-.

7. Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Tribunal ought to have reduced certain amounts for non-wearing of helmet by the deceased. It is her further contention that the income fixed at Rs.15,000/- is on the higher side.

8. We have considered the submissions of the counsel for the appellant. We are unable to agree with the contention that the income should have been fixed at less than Rs.15,000/-. The accident had occurred in the year 2018. The deceased was working as driver in Dubai. Even minimum wages payable to the unskilled workers was more than Rs.15,000/- at the relevant point of time. On the question of non-wearing of helmet also the Tribunal has accepted the evidence of PW1 and we do not find anything amiss on the part of the Tribunal in accepting the evidence of PW1. In fact, there is evidence to show that the deceased was earning more than about Rs.35,000/- per month. Even assuming that there could be some deduction for non-wearing of helmet, that would be set off since the Tribunal has fixed a very low amount as income.

9. Hence, we do not see any ground to interfere with the award passed by the Tribunal. The appeal therefore fails and it is accordingly **dismissed**. No costs.

(R.S.M.,J.) **(S.S.K.,J.)**
21.12.2022

dsa

Internet :Yes
Index :No
Speaking order

To:-

The Motor Accident Claims Tribunal,
III Additional District Judge,
Cuddalore, Virudhachalam.

<u>R.SUBRAMANIAN, J.</u>
<u>and</u>
<u>SATHI KUMAR SUKUMARA KURUP, J.</u>

dsa

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