THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.M.A.No.4322 of 2019
and
C.M.P.No.24512 of 2019 & Cross.Obj.No.109 of 2022

M/s.IFFCO-TOKIO General
Insurance Company Limited,
No.25-B, I Floor, Raja Street,
Pudhupalayam, Gobichettipalayam - 638457. ...Appellant

Vs.

1.Jamuna Devi
2.Minor Vaishnavi
3.Minor Ishwarya
(Minor respondents are represented by their
Mother and Guardian, Jamuna Devi)

4.Dhansuamma
5.Palanisamy
6.Bharathi
7.Easwaramoorthy

8.M/s.United India Insurance Company Limited,
No.93, B-1, Trichy Road, Anna Nagar,
Palladam. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 4th Febraury, 2019, passed in M.C.O.P.No.567 of 2015, by the Motor Accidents Claims Tribunal, (In the Court of II-Additional District and Sessions Judge) at Tiruppur.

For Appellant	:	Mr.J.Michael Visuvasam
For Respondents	:	Mr.Ma.P.Thangavel for R1 to R4
		Mr.S.Arunkumar for R8
		R5 & R6 - Served - No Appearance
		R7 - Refused

JUDGMENT

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

The Insurance Company is on appeal. Challenge is to the award of a sum of Rs.24,27,000/-, which is rounded off to Rs.24,00,000/- for the death of one Kalimuthu, husband of the 1st claimant, father of the claimants 2 & 3 and son of the 4th claimant in a road accident that occurred on 30.03.2015.

2.According to the claimants, the deceased was driving a load van and he was travelling from Mysore to Thimbam. At about 4 a.m. in the morning, when he was driving near the 27th hair pin bend, the lorry bearing Registration No.TN 37 A 9199 was parked on the wrong side of the road without any indication or warning sign. Since the vehicles in the opposite direction had their headlights on, the deceased, Kalimuthu, who was driving the Van was unable to control the Van, resulting in the Van dashing against the lorry and catching fire. The deceased died on the spot. It was claimed that the deceased was drawing a monthly salary of Rs.15,000/- and the claimants were dependent on his salary alone for their sustenance. Thus, the claimants sought for a compensation of Rs.40,00,000/-.

3.The claim was resisted by the 3rd respondent /Insurer of the lorry, contending that the First Information Report has been registered against the driver of the Van and therefore there was no negligence on the part of the lorry. It was also pointed out that axil of the lorry got cut, resulting the lorry being parked on the wrong side of the road as it could not be moved. The driver of the lorry had not only put on indicators but also created enough warning signs around the lorry to prevent other vehicles from dashing with it.

4.It was claimed that the driver of the Van drove the vehicle in a rash and negligent manner at a high speed resulting in the accident. The cleaner of the Van was examined as P.W.2 and the driver of the lorry was examined as R.W.1. While the cleaner of the Van deposed to the effect that the lorry was parked on the wrong side of the road and the Van, which was carrying load was coming down hill and its driver could not control the vehicle upon spotting the lorry at a very close distance. It should also be pointed out that P.W.2 was not cross-examined by the appellant/Insurance Company. The driver of the lorry, who deposed as R.W.1 claimed that apart from switching on the indicators, he had also kept stones to warn other vehicles. He had however, in his evidence stated that the fact that he had kept stones was not reflected in Ex. R1/rough sketch.

5.Considering the evidence, the Tirbunal came to the conclusion that it was a negligence on the part of the lorry, which caused the accident.

The Tribunal took note of the fact that the lorry was stopped because its axil got cut. However, it concluded that the lorry alone was responsible for the accident, since there was no proof for the driver of the lorry having taken any precaution to prevent the accident. The Tribunal also took note of the evidence of the driver of the lorry, who had deposed that vehicles coming downhill, while taking a hair pin bend will have to necessarily come very slowly and they will have to come towards left and then turn right to negotiate the hairpin bend. On the above conclusions, the Tribunal fixed the entire negligence on the driver of the lorry.

6.On the quantum, the Tribunal took monthly income of the decesed at Rs.10,000/- added 40% future prospects and after deducting ¼ towards personal expenses fixed the monthly loss of income at Rs.21,42,000/-. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.1,60,000/- towards loss consortium, Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transportation. Thus, the total compensation worked out to Rs.24,27,000/-.

7.Mr.J.Micheal Visuvasam, learned counsel appearing for the appellant / Insurer of the lorry would vehemently contend that this beingis a fit case where the Tribunal should have fixed certain amountof negligence on the part of the driver of the Van also. Relying heavily upon the fact that the lorry stopped due to the axil cut and it is not a voluntary parking in a no parking area, the learned counsel would also contend that the Tribunal should have apportioned certain amount of negligence on the part of the driver of the Van.

8.Contending contra, Mr.Ma.P.Thangavel, learned counsel appearing for the claimants would submit that there is total absence of evidence on the attempts made by the driver of the lorry to prevent the accident. He would also point out to the evidence of R.W.1, the driver of the lorry, who had stated that the lorry was parked at a very dangerous place and vehicles coming downhill, which would take a hairpin bend will have to come very slowly. He would draw support from the fact that the sketch / Ex.R1 does not disclose the warning signs that were planted by the driver of the lorry to warn the vehicles that are coming downhill.

9.Mr.S.Arunkumar, learned counsel for the Insurer of the Van would substantially support the argument of Ma.P.Thangavel. Mr.Ma.P.Thangavel would add that the monthly income fixed by the Tribunal at Rs.10,000/- is too low, considering the fact that the deceased was a driver, who was technically qualified would have earned much more. He would also submit that he has filed cross-objections seeking enhancement of the compensation. We have considered the rival submissions.

10.No doubt, there is some justification in the contentions of the learned counsel for the appellant / Insurance Company. It is an unfortunate incident where the lorry had to stop wherever it was due to mechanical defect but, that alone would not obsolve the driver of the lorry from negligence. Having been forced to park the vehicle at a dangerous place, the driver of the lorry must have been taken enough precautions to ensure that there are no unfortunate incidents. The accident having happened in the early hours, that is at 4 a.m. would also add to the responsibility of the driver of the lorry. Having parked the lorry in a no parking zone, in a precarious position in a hairpin bend, he should have been careful to ensure that vehicles coming down hill are cautioned much earlier. There is no such evidence to establish that the driver of the lorry took efforts to warn the vehicles much ahead of the spot where, the lorry was parked so that they could slow down and avoid the accident.

11.The Tribunal has adverted to the evidence of R.W.1 / driver of the lorry where he would admit the vehicles has to take the hairpin bend to the left and come towards right. He would also admit that the lorry was parked at a place where the vehicles go towards left. This being the case, we are unable to fault the driver of the Van or make him responsible for the accident. We are alive to the fact that the lorry was forced to park where it was but, that by itself, in our considered opinion, will not obsolve the driver of the lorry of the responsibility to take enough precautions. We are therefore, unable to fault the Tribunal for having concluded that the entire negligence was on the part of the lorry.

12.Adverting to the quantum of compensation, Mr.Ma.P.Thangavel, learned counsel for the claimants would submit that fixation of monthly income at Rs.10,000/- is too low and the monthly income has to be enhanced. We find that the submission of the learned counsel is acceptable. The deceased being a technically qualified person, Rs.10,000/- per month as income is too low. Taking into account, the year of the accident, we fix the monthly income at Rs.12,000/-.

13.Mr.J.Micheal Visuvasam would point out that the Tribunal erred in taking the age as 29 years when the driving license shows that the date of the birth of deceased as 20.07.1983 and therefore, he had completed 31 years on the date of the accident. If 31 years is adopted as age of the deceased, the multiplier is 16 and not 17. This contention of the learned counsel cannot be disputed. We therefore, work out the compensation as follows:-

Monthly income is taken as Rs.12,000/-, adding 40% towards future prospects, the mothly income works out to Rs.16,800/-, deducting ¼ towards personal expenses, the loss of earning works out to Rs.12,600/- per month. Adopting a multiplier of 16, the total loss of earning would be

Rs.24,19,200/-. The Tribunal erred in awarding Rs.1,00,000/- for loss of love and affection and another Rs.1,60,000/- for loss of consortium. Therefore, the award on the ground of loss of love and affection have to be necessarily set aside. If we add Rs.1,60,000/- for loss of consortium and Rs.25,000/- towards conventional damages, the total compensation works out to Rs.26,04,200/- . The same is rounded off to Rs.26,00,000/-.

14.This Civil Miscellaneous Appeal is dismisssed and the cross-objection will stand allowed to that extent indicated. The Claimants will pay the Court fee for enhanced compensation. Consequently, connected miscellaneous petitions, if any, are closed. No costs.

15.The Insurance Company will deposit the balance amount amount within 12 weeks from the date of receipt of a copy of this order and the enhanced compensation will be apportioned between the minor daughters equally. The said amount along with the amount awarded by the tribunal towards the share of the minors will be deposited in a Nationalized Bank in the interest earning fixed deposit till they attain majority. The mother of the deceased and the widow of the deceased would be entitled to withdraw their respective shares of the compensation with proportionate interest.

(R.S.M.,J.) **(R.N.M.,J.)**
14.12.2022

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Internet:Yes
Index:No
Speaking

To:-

The Motor Accident Claims Tribunal,
II-Additional District & Sessions Court,
Tiruppur.

R.SUBRAMANIAN, J.
and
R.N.MANJULA, J.

KKN

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