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C.M.A. No. 1481 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

PRONOUNCED ON : 19.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1481 of 2021

Amirtham

... Appellant/ Petitioner

Vs.

1. J. Rajesh

2. M/s. Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor, Plot No.2054,
2nd Avenue, Anna Nagar,
Chennai - 600 040

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 15.11.2018 passed in M.C.O.P. No. 2409 of 2013 on the file of the V Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant : M/s. K. Varadha Kamaraj

For R1 : Ex-parte

For R2 : M/s. C. Bhuvanasundari



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation amount awarded in the Judgment and Decree passed in M.C.O.P. No. 2409 of 2013, dated 15.11.2018 on the file of the V Small Causes Court, Motor Accident Claims Tribunal, Chennai.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case in brief is as follows.

3. The case of the claimant is that, on 27.03.2013, at about 16:30 hours, Manimuthan @ Kumar was walking at the R.K. Madam Salai, near Dindigul Biriyan shop, Mandaveli, Chennai, at that time, one motorcycle bearing Registration No. TN-02-M-3621 ridden by its rider in a rash and negligent manner, hit on the Manimuthan @ Kumar, thereby he sustained grievous injuries and admitted in the Government General hospital, Chennai for treatment and inspite of taking treatment, he died on 06.04.2013. The rash and negligent riding by the rider of the motorcycle was responsible for the accident and F.I.R. was also registered against the



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rider of the motorcycle bearing Registration No. TN-02-M-3621 in Crime No.205 of 2013 on the file of the Inspector of Police, J2 Adyar Traffic Investigation Wing. Due to loss of Manimuthan @ Kumar, the claimant has filed a claim petition seeking compensation for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) from the first respondent, who is the owner of the motorcycle and the second respondent, who is the insurer of the offending motorcycle at the time of occurrence.

4. The first respondent, owner of the offending motorcycle has not contested the claim and remained ex-parte. The second respondent - insurance company has contested and filed a counter contending that the rider of the motor cycle was not having a valid driving licence at the time of occurrence and the accident was occurred due to the negligent act of the deceased. The second respondent also contended that the claimant has to prove that she is the legal heir to the deceased and to prove the age, avocation and income of the deceased through documentary evidence and the compensation claimed under various heads is excessive and prays to dismiss the claim petition.



5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.8 were marked, on the side of the respondent, no witness were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal has held that in point No.1, the rash and negligent riding by the rider of the motorcycle bearing Registration No. TN-02-M-3621 is responsible for the accident. In point No.2, the Tribunal has held that the deceased sustained fatal injuries in the above motor vehicle accident and hence, quantified the quantum of compensation for a sum of Rs.4,41,400/- (Rupees Four Lakh Forty One Thousand and Four Hundred only) payable by the second respondent - insurance company to the claimant.

7. In view of the above, the present civil miscellaneous petition has been filed by the claimant seeking enhancement of compensation on the ground that the age of the deceased has been wrongly fixed by the Tribunal for adopting multiplier.

8. The learned counsel appearing for the claimant has submitted



that the claimant has marked the post-mortem certificate, legal hier certificate to show that the deceased was aged about 55 years and the same was not properly appreciated by the Tribunal and based on the slip answer given by the mother of the deceased, the Tribunal has wrongly fixed the age of the deceased as 59 years and prays to modify the same as 55 years.

9. Per contra, the learned counsel appearing for the insurance company has submitted that the claimants have not produced any documents containing the age of the deceased issued by the appropriate authority, which was came into existence prior to death of the deceased, thereby suppressed the age of the deceased and it is not now permissible to contend that the deceased was aged about 55 years without producing any document to prove the age of the deceased.

10. On hearing the submissions made on both sides and perusal of evidence placed on record, it shows that the deceased was taken into hospital and the age of the deceased was recorded as 78 years in the accident register, which is marked as Ex.P.5 and in the post mortem certificate marked as Ex.P.2, the age of the deceased has been mentioned as 55 years. Wherein,



in the death certificate of the deceased, his age is recorded as 55 years. In the F.I.R., there was no mentioning about the age of the deceased and it was recorded as unknown person, except these documents, the claimant have not come forward to produce any document to prove the age of the deceased. Instead of producing documentary proof, the claimants relied on the age given in the post mortem certificate, which was recorded subsequent to the death of the deceased.

11. Before the Tribunal, the mother/ claimant of the deceased was examined as P.W.1 and in the cross examination, it was specifically questioned regarding the age of the deceased and it was admitted by her that her son is unmarried and he was born when she was 25 years old, at the time of giving evidence, she was 89 years. Based on this specific admission given by the P.W.1, the Tribunal has fixed the age of the deceased as 59 years.

12. Even before this Court, the Official records such as aadhaar card, family card or any other documents to prove the age of the deceased has not been produced. In the absence of any other document, a specific admission given by the claimant about the age of the deceased is more probable than



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the age mentioned in the post mortem certificate which was came into existence after the death of the deceased. Hence, this Court is of the veiw that the age fixed by the Tribunal is proper and there is no infirmity in adopting multiplier '9'. Accordingly, the quantum of compensation under the head loss of dependency is proper. Hence, this Court is of the view that the compensation awarded by the Tribunal under various heads are just and the same is hereby confirmed. Hence, this Court finds there is no merit in the appeal and the same is dismissed.

13. In the result, this present civil miscellaneous appeal is dismissed.

No costs.

19.10.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:



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1. The V Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.

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