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CMA.No.728 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.04.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

C.M.A.No.728 of 2023

Reliance General Ins.Co.Ltd.
Sree Lakshmi Complex, 1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri,
Salem-4.

... Appellant

Vs.

1. R.Devi
2. Minor S.D.Vishwaajith
3. A.Pandian
4. Selvarani
5. Hemalatha
6. Minor Anuprabha
7. P.Madhankumar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.02.2022 made in M.C.O.P.No.2269 of 2019, on the file of Motor Accident Claims Tribunal, District Court, Salem.

For Appellant : Mr. C. Bhuvanasundari
For Respondents : P. Tamilavel



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JUDGMENT

[Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*]

The respondents 1 to 6 have filed the Claim Petition before the Tribunal, claiming a compensation amount of Rs.1,50,00,000/- as the legal heirs of the deceased Senthilkumar, who died in a motor accident occurred on 23.09.2019.

2.The case of the respondents 1 to 6/claimants is that, at the time of the accident, the deceased aged about forty years and he was working as a teacher in Government Panchayat Union Primary School, Oorandivalasu, Arasanatham Post, Attur Taluk and was earning a salary of Rs.70,684/- per month. Due to the said death of Senthilkumar, the entire family has suffered financially as he was the sole bread-winner of the family. Therefore, the respondents 1 to 6/claimants have filed the claim petition before the Tribunal, claiming compensation as above.

3.The appellant/2nd respondent had filed a counter affidavit before the Tribunal denying the said allegation and stated that there is contributory



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negligence on the part of the deceased and therefore the claim made by the claimants towards compensation was excessive.

4.Before the Tribunal, on the side of claimants P.W.1. to P.W.4 were examined and Exs. P1 to P8, X1 and X2 were marked. On behalf of the respondents Exs. R1, X3 and X4 were marked. No one was examined on the side of the respondents. The Tribunal, after considering the evidence, both oral and documentary, adduced on behalf of the claimants and respondents, negated the defense taken by the appellant/insurance company that there was contributory negligence on the part of the deceased and finally held that the accident occurred only due to the rash and negligent driving of the insured vehicle and awarded compensation.

5.Challenging the compensation awarded by the Tribunal, the appellant/insurance company has preferred the appeal before this Court.

6.It is submitted on behalf of the appellant/insurance company that the defence raised by the Insurance Company was not considered by the Tribunal in proper perspective and accordingly the compensation amount determined by the Tribunal is excessive and therefore warrants interference.



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7.The learned counsel appearing for the respondents/claimants, on the other hand, has contended that the Tribunal has rightly awarded due compensation amount to the claimants and therefore the said award does not warrant interference.

8.On a perusal of the findings of the Tribunal, it is seen that the Tribunal, while awarding compensation, has elaborately discussed the various aspects, namely salary of the deceased at the time of accident, age of the deceased, etc, by taking into consideration both oral and documentary evidence adduced by the parties.

9.It is the case of the appellant/insurance company that there is contributory negligence on the part of the deceased. However, the Tribunal had rightly held that in order to prove this stand, the appellant/insurance company had not examined any independent eye-witness. In such circumstance, the appellant/insurance company ought to have examined the driver of the insured vehicle, who was involved in the accident, but it failed to do so. On the other hand, the respondents/claimants have examined PW3, an eye-witness, to substantiate their case that it is the driver of the insured vehicle, who was negligent at the time of the accident. The



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claimants have marked Ex.P1-FIR registered against the driver of the insured-vehicle. It is also seen that the driver of the insured vehicle did not possess any valid driving licence at the time of the accident. For all these reasons, the Tribunal has rightly held that the driver of the insured-vehicle alone was negligent at the time of accident. There is no contra material produced before this Court to disprove or dispute this finding of the Tribunal and hence we confirm the finding of the Tribunal that the accident had occurred due to the negligence on the part of the driver of the insured-vehicle.

10.Coming to the quantum of compensation under the head 'loss of income', the Tribunal has observed that the monthly gross income of the deceased was Rs.70,684/- as per the salary certificate Ex.X1 marked through P.W.2, the officer in the Education Department, and the net monthly income was Rs.58,119/- at the time of accident. Based on the said net salary of the deceased at the time of accident, the Tribunal had determined the compensation for the petitioners by applying 15 as the multiplier, taking into consideration the age of the deceased, which was 40 at the time of accident, and fixed the loss of income of the family of the deceased as Rs.1,04,61,420/- (Rs.58,119*12*15). Further, out of this amount, 1/3rd



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has been deducted towards the personal expenses of the deceased Senthilkumar. After such deduction, the total loss of income had been determined as Rs.69,74,280/-. Apart from this, under the other heads, the Tribunal has awarded a compensation of Rs.40,000/- towards loss of consortium; Rs.20,000/- each for petitioners 1 to 6 towards loss of love and affection and Rs.25,000/- towards funeral expenses. In total, the compensation, which has been determined by the Tribunal under various heads comes to Rs.71,59,280/-.

11. Admittedly, the deceased Senthilkumar was working as a Teacher in the Government Panchayat Union Primary School and was drawing a salary of Rs.70,684/- per month. No contrary evidence or material has been placed before the Tribunal disputing the said salary of the deceased Senthilkumar. So far as the other heads are concerned, we are satisfied that the Tribunal has awarded compensation under each head appropriately and the said award has been passed in accordance with the decision of the Hon'ble Supreme Court ***in Sarla Verma & Ors vs Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121***. In the light of the decision of the Hon'ble Supreme Court, nothing warrants interference with the said Award passed by the Tribunal. No cross appeal has been filed in the matter.



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12. In view of the aforesaid discussion, we are of the considered view that the Tribunal has awarded compensation under various heads, after assessing all materials in proper perspective. There is no illegality or impropriety in the award of compensation amount in favour of the respondents/claimants. Hence, the Award of the Tribunal does not warrant interference.

13. In fine, the Civil Miscellaneous Appeal stands dismissed. No costs.

(D.K.K., J.) (K.G.T., J.)
11.04.2023

Intex : Yes/No
Internet : Yes/No
mrn

To
The Motor Accident Claims Tribunal, District Court, Salem.



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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.
(mrn)

JUDGMENT MADE IN
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