IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1231 of 2018
and
C.M.P.No.10036 of 2018

M/s.Royal Sundaram General Insurance
Company Limited,
Policy issuing office at Millennium City,
Information Technology Park,
Unit No.T-2-2A, Tower 2,
Plot No.DN-62, Sector V,
Salt Lake, Kolkatta 700 091,
West Bengal having its Registered Office at
No.21, Patullos Road, Chennai 600 002. ... Appellant

Vs.

1. Gowsalya

2. Indira

3. M/s.OSL Logistics Private Limited,
No.122-A, Ganapathi Chambers,
No.18, 1st Floor, CR Avenue,
Kolkatta 700 073,
West Bengal State. ... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the decree and judgment dated 21st day of November 2017, made in M.C.O.P.No.234 of 2017 on the file of the Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For Appellant	: Mr.Elveera Ravindran
For R1 and R2	: No appearance
For R3	: Notice served No appearance

<u>J U D G E M E N T</u>

This Civil Miscellaneous Appeal has been filed against the Award and decree dated 21.11.2017 passed in M.C.O.P.No.234 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. Appellant herein is the Insurance Company which is the second respondent before the Tribunal. First and second respondents herein are the claimants who are the wife and mother of the deceased respectively. Respondents 1 and 2 herein, who are the dependants of the deceased, filed the claim petition before the Tribunal. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.23,54,800/- as compensation. Challenging the Award passed by the Tribunal, the Insurance Company has filed the present appeal on the ground that the accident had occurred due to rash and negligent driving of the deceased alone, who was driving the lorry bearing Registration No.TN.52-4074, which hit the rear side of the Container Lorry bearing Registration No.NL02-G-7595 HGV-NP.

3. Learned counsel for the appellant submitted that accident had not occurred due to rash and negligent driving of the driver of the insured vehicle. The deceased was driving the lorry bearing Registration No.TN.52-4074 in a rash and negligent manner and hit against the rear side of the said container lorry. The Tribunal failed to consider the same

and fixed the entire liability on the driver of the container lorry, which was insured with the appellant.

4. Learned counsel for the appellant further submitted that the insured vehicle i.e., the container lorry is a lengthy vehicle and it could not be turned very fastly. The deceased who drove the lorry, was coming on the rear side of the container lorry and hit the container lorry. Hence, the driver of the container lorry is not the cause for the accident and the death of the deceased. The Tribunal failed to consider the oral and documentary evidence and wrongly fixed the liability on the driver of the insured vehicle. The Tribunal ought to have fixed the contributory negligence on the part of the deceased at the rate of 50%. Hence, the appellant/Insurance Company is not liable to pay compensation and the quantum fixed by the Tribunal is exorbitant.

5. It is the claim of the claimants before the Tribunal is that the deceased was working as driver at the time of accident and he was driving the lorry bearing Registration No.TN.52-4074 and the accident

occurred only due to rash and negligent driving of the said container lorry which was insured with the appellant Insurance Company. Hence, the appellant/Insurance company is liable to pay compensation.

6. The Tribunal also, after considering the entire oral and documentary evidence, found that the accident had occurred only due to rash and negligent driving of the container lorry and has rightly fixed the liability on the appellant Insurance Company and the owner of the container lorry.

7. As far as the quantum is concerned, since the deceased was working as Heavy Goods Transport vehicle driver and further, taking note of the earning capacity of the deceased and the economic situation prevailing at that time and also considering the fact that the deceased was the breadwinner of the family and also considering the fact that the first and second respondents are dependants of the deceased, the Tribunal has rightly fixed the monthly income of the deceased at Rs.12,000/-.

8. Heard the learned counsel appearing for the appellant and perused the materials available on record. Inspite of notice having been served on all the respondents, there is no representation for them either in person or through a counsel.

9. Admittedly, two lorries are involved in the accident which are the container Lorry which was insured with the appellant/Insurance company and the lorry driven by the deceased. On a perusal of the oral and documentary evidence, it is found that the accident had occurred only due to rash and negligent driving of the container lorry, which was insured with the appellant/Insurance Company. Though the learned counsel for the appellant vehemently contended that the container lorry is a heavy vehicle than the lorry driven by the deceased and also the container lorry was a lengthy one and it could not have been driven by the driver with high speed, the same could not be turned all of a sudden, and hence the driver of the container lorry is not the cause of the accident and the death of the deceased.

10. On a perusal of the materials, it is found that all the eye witnesses have clearly stated that the driver of the container lorry has driven the container lorry with high speed and all of a sudden, without any signal, and without following the road traffic Rules, turned the container lorry and hence the deceased could not control his vehicle, which led to the accident. The appellant/ Insurance Company has not produced any contra evidence to the eye witness. In the absence of any specific evidence, this court does not find any perversity in appreciation of evidence by the Tribunal.

11. As far as the negligence part is concerned, this Court also finds that the claimants have proved that the accident had occurred only due to rash and negligent driving of the driver of the container lorry. Further, the appellant Insurance Company has not produced any contra evidence. Hence, the insurer of the offending vehicle ie., the appellant/Insurance Company and the owner of the container lorry, both are jointly and severally liable for the indemnified loss caused by the driver of the insured vehicle.

12. As far as the quantum of compensation is concerned, admittedly, the deceased was working as driver at the time of accident and he would have earned atleast Rs.15,000/- per month, in addition to other incidental charges. Hence, the monthly income fixed by the Tribunal is not exorbitant and the same is just and reasonable.

13. Further, this Court does not find any perversity in appreciation of evidence and adoption of multiplier method for arriving at the quantum of compensation. This Court finds that the compensation fixed by the Tribunal is “just compensation” and there is no merit in the appeal and the same is liable to be dismissed.

14. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

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To

1. The District Judge,
   Motor Accident Claims Tribunal,
   Special District Court for Motor Accident Claims Cases,
   Krishnagiri.

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

P.VELMURUGAN, J.

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