THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.2094/2022 and 2911/2021 and CMP.Nos.16689/2021 and 1846 and 16245/2022

CMA.No.2094/2022 :

1. S.Kavitha

2. S.Sree Hari (minor)

3. S.Sri Janani (minor)

4. G.Deivanai ... Appellants

(appellants 2 and 3 are minors represented
by their Natural Guardian and mother
the 1st appellant Mrs.S.Kavitha)

Vs.

1. M/s.Annamalai Enterprises,
No.7, Bajanaikoil Street,
Veppampattu, Thiruvallur District-602 024.

2. Royal Sundaram Alliance Ins. Co.Ltd.,
   No.113/114, Sir Thiagaraja Road,
   4th Floor, Meena Kampala Arcade,
   T.Nagar, Chennai-17. ... Respondents

CMA.No.2911/2021 :

Royal Sundaram Alliance Ins. Co.Ltd.,
No.113/114, Sir Thiagaraja Road,
4th Floor, Meena Kampala Arcade,
T.Nagar, Chennai-17. ... Appellant

Vs.

1. S.Kavitha

2. S.Sree Hari (minor)

3. S.Sri Janani (minor)

4. G.Deivanai

5. M/s.Annamalai Enterprises,
   No.7, Bajanaikoil Street,
   Veppampattu, Thiruvallur District-602 024. ... Respondents

(respondents 2 and 3 are minors represented
by their Natural Guardian and mother
the 1st respondent Mrs.S.Kavitha)

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 16th February, 2021 passed in M.C.O.P.No.6528 of 2014, by the Motor Accident Claims Tribunal, Special Sub-Court No.1, Small Causes Court, Chennai.

For Claimants : Ms.Ramya V. Rao

For Insurance Company : Mr.M.Krishnamoorthy

COMMON J U D G M E N T

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

These appeals are by the Claimants and the Insurance Company respectively, challenging the award of the Motor Accident Claims Tribunal, Special Sub-Court No.1, Small Causes Court, Chennai in MCOP.No.6528/2014 dated 16.02.2021 granting a sum of Rs.86,85,000/- as compensation for the death of one G.Saravanan in a road accident that occurred on 19.06.2014 at about 07.00 a.m.

2. According to the claimants, while the deceased was riding a Two Wheeler bearing Registration No.TN-05-AT-1443 on Paper Mill Road from East to West direction, a Van bearing Registration No.TN-20-BK-3120 belonging to M/s.Annamalai Enterprises, the 1st respondent in CMA.No.2094/2021 and 5th respondent in CMA.No.2911/2021, insured with the Royal Sundaram Alliance Insurance Company Limited, 2nd respondent in CMA.No.2094/2021 and appellant in CMA.No.2911/2021

linked with a concrete mixer, came from behind and dashed against him. As a result of the accident, the driver of the motor cycle fell down and the van ran over his head resulting his instantaneous death. Contending that the deceased was earning around Rs.67,000/- p.m. as Project Leader in a Software company the claimants sought for a compensation of Rs.1,50,00,000/-.

3. The Insurance Company resisted the claim contending that there was a breach of policy condition in as much as a concrete mixer was attached with the Van. It is his further contention that the accident occurred due to the rash and negligent driving of the deceased since he attempted to overtake the vehicle on the left side. Non-wearing of a helmet was also made a ground to attribute contributory negligence to the deceased. The income particulars were denied and the total compensation claim was termed as excessive.

4. Before the Tribunal, the 1st claimant was examined as P.W.1. Two eye-witnessess were examined as P.W.2 and P.W.4 and an Officer attached with the employer of the deceased was examined as P.W.3. Ex.P.1 to Ex.P.27 were marked. On the side of the respondent-Insurance Company, the Special Sub-Inspector, Chintadripet Traffic Investigation Wing, Chennai was examined as R.W.1 and one Mr.N.Ganesh, Executive-Legal of the Insurance Company was examined as R.W.2. Ex.R.1 to Ex.R.7 were marked.

5. The Tribunal, on consideration of the evidence on record found that the accident occurred due to the rash and negligent driving of the driver of the van. To reach the said conclusion, the Tribunal relied upon the evidences of two eye-witnesses and the F.I.R. that was marked as Ex.P.1. The fact that no attempt was made by the Insurance Company to examine the driver of the Van was also taken as a ground by the Tribunal in support of its conclusion that the negligence is on the part of the driver of the van. On the quantum, the Tribunal took the income of the deceased at Rs.50,000/- p.m. though there was evidence in the form of salary certifiate

to show that the deceased was drawing a much higher income. The Tribunal added 40% towards future prospects and deducted 25% towards personal expenditure and adopted the multiplier of 15 to arrive at a total loss of dependency at Rs.94,50,000/-. Since the deceased was not wearing the helmet, the Tribunal deducted 10% towards contributory negligence and after adding conventional damages towards loss of Consortium, loss of love and affection, loss of estate, the Tribunal fixed out the compensation at Rs.86,85,000/-. Hence these appeals.

6. We have heard Ms.Ramya V. Rao, learned Counsel appearing for the claimants and Mr.M.Krishnamoorthy, learned Counsel appearing for the Insurance Company. Notice to the owner of the Lorry is dispensed with since he had remained absent before the Tribunal.

7. Mr.M.Krishnamoorthy, learned Counsel appearing for the Insurance Company would vehemently contend that there was a breach of policy condition since a concrete Mixer was attached with the vehicle, the Tribunal ought not to have awarded the pay and recovery. It should have

made the owner of the lorry liable for the payment of compensation. He would also contend that the quantum of compensation is on the higher side inasmuch as there was no concrete evidence to show that the actual income of the deceased except the salary certificate. The learned Counsel for the Insurance Company would also point out that the eye-witnesses have deposed that the deceased was not wearing a helmet. Therefore, the Tribunal should have deducted atleast 15% for contributory negligence.

8. Contending contra, Ms.Ramya V. Rao, learned Counsel appearing for the claimants would submit that in view of Section 149 (4) of the Motor Vehicles Act and the proviso thereto, the Tribunal was justified in ordering the Insurance Company to pay the compensation with liberty to recover the same from the owner of the vehicle. She would further contend that the fixation of monthly income at Rs.50,000/- by the Tribunal is flawed in view of the fact that there is evidence to show that the yearly salary of the deceased was Rs.8,83,572/- as per the Salary Certificate Ex.P.16. She would also point outtat the documents are supported by the oral evidence of P.W.3.

9. In these appeals, the claimants have filed CMP.No.16245/2022 for receiving additional documents, namely, the Form-16 and the Bank Statement of the deceased to establish that the deceased was drawing atleast a sum of Rs.59,980/- p.m. after deductions. Relying upon the documents that are sought to be produced in these appeals, the learned Counsel for the claimants would contend that the Tribunal has committed an error in fixing the income of the deceased at Rs.50,000/-. Considering the fact that the documents that are sought to be produced are public documents, namely, Form-16 and Bank Statement, which would be definitely useful for deciding the appeals, the application to let in additional evidence is allowed and the two documents are taken on record and they are marked as Ex.P.28 and Ex.P.29. (Registry to assign Exhibit numbers to the two documents produced along with the CMP.No. 16245/2022).

10. We have considered the contentions of the learned Counsel on either side on the merits of the appeals.

11. No doubt, an attempt was made by the learned counsel for the

Insurance Company to demonstrate that the negligence was on the part of the deceased. We are unable to sustain the said submission of the learned Counsel for the Insurance Company in view of the concrete evidence that is available in the form of FIR and the evidences of P.Ws.2 and 4 who are the eye-witnessess. The fact that the insurance company had not chosen to examine the driver of the van also militates against the said contention of the learned Counsel for the Insurance Company. We are unable to fault the Tribunal for having concluded that the negligence was on the part of the driver of the van.

12. On the quantum, we find that the Tribunal was not justified in taking Rs.50,000/- as monthly salary of the deceased. Even before the Tribunal, there was some evidence to show that the deceased has drawn more than Rs.50,000/- p.m. The documents that have been produced before us add weight to the contentions of the claimants to the effect that the deceased was earning much more than Rs.50,000/- p.m. The bank statement which is an indisputable document shows that the deceased was drawing a sum of Rs.59,980/- p.m. Therefore, we take the monthly income of the

deceased at Rs.58,000/- p.m. If we add the future prospectus at 40%, the total income for a month comes to Rs.81,200/- and total loss of income after adopting the multiplier at 15 would be Rs.1,46,16,000/-. If we deduct 1/4th for personal expenditure, the total loss of dependency would be at Rs.1,09,62,000/-. With this, we need to add the conventional damages at Rs.1,95,000/- so that the total compensation would be Rs.1,11,57,000/-, deducting 10% towards contributory negligence, the compensation payable by the owner of the van would be at Rs.1,00,41,300/- rounded to Rs.1,00,41,000/-. We are adopting the percentage of contributory negligence as fixed by the Tribunal. We should not be taken to have decided that 10% should be the standard percentage of deduction in case of injured or deceased is found to be accused of not wearing the helemt. The direction to pay and recover made by the tribunal is sustained.

13. In fine, the CMA.No.2094/2022 will stand allowed partly to the extent indicated above and CMA.No.2911/2021 will stand dismissed. The claimants shall pay the balance court fee payable in their appeal. Consequently, connected Miscellaneous Petitions are closed.

14. At this stage, it is stated by the learned Counsel for the Insurance Company that the Insurance Company has deposited 50% of the award amount. It is directed to deposit balance 50% of the award amount along with the enhanced compensation within a period of four weeks from the date of receipt of a copy of this order.

15. On such deposit, we apportion the compensation awarded as follows:

a.The wife would be entitled to Rs.32,85,000/- with proportionate interest and costs as awarded by the Tribunal;

b. The minor claimants, namely, the son and daughter of the deceased, would be entitled to Rs.31,78,000/- each, namely, claimants 2 and 3, with proportionate interest and costs; and

c. The mother of the deceased would be entitled to Rs.4,00,000/- as awarded by the Tribunal.

On the deposit of the compensation by the Insurance Company, the major claimants, namely, the widow and the mother of the deceased would be entitled to withdraw their respective share. The remaining amount of the minor shares would be kept in deposit in a Nationalised Bank with auto renewal clause till they attain majority.

(R.S.M.,J.) (S.S.K.,J.)
05.01.2023

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Internet :Yes
Index :No
Speaking order

To:
The Motor Accident Claims Tribunal,

Special Sub-Court No.1,

Small Causes Court, Chennai.

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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C.M.A.Nos.2094/2022 and 2911/2021

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