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C.M.A.No.1731 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.1731 of 2023

1.Jayalakshmi

2.Minor Varshini

3.Minor Tharun

[The appellants 2 and 3 are represented
by next friend and mother 1st appellant]

4.Chinnaponnu

...Appellants

Vs.

1.M/s.Peenya Industrial Gases Pvt. Ltd.,
No.313, 4 Phase, 8th Cross, Peenya Industrial Area,
Bangalore – 560 058.

2.The New India Assurance Co. Ltd.,
No.202, Brigade Plaza, North Wing, 2nd Floor,
Subedar Chatram Road, Anadrao Circle,
Karnataka – 560 009.

3.R.Kuppusamy



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4.IFFO-TOKIO General Insurance Co. Ltd.,
KSCMF Building, 3rd Floor, 3rd Block,
No.10, Cunningham Road,
Bangalore – 560 052

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.1361 of 2018 dated 21.10.2021 on the file of the Motor Vehicle Accident Claims Tribunal / Fast Track Mahila Court, Krishnagiri.

For Appellants : Mr.S.Viswanathan
for M/s.Dass and Viswa Associates

For Respondents : Mr.R.Neethi Perumal for R2

Mr.J.Michael Visuvasam for R4

J U D G M E N T

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

1. Since the appeal lies in a very narrow campus and the learned counsel are appearing for both the Insurance Companies, the appeal itself is taken up for hearing at the admission stage.



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2. Before Tribunal both the private respondents viz., the 1st and 3rd respondents remained *ex parte*. Hence, notice to them is dispensed with in terms of Order 41 Rule 4(4) of the Code of Civil Procedure.

3. The claimants who are wife, children and mother of one Gunasekaran who died in the road accident that occurred on 01.08.2017 filed MCOP.No.1361 of 2018 seeking a compensation of Rs.40,00,000/- for the death of the said Gunasekaran. According to them, Gunasekaran was proceeding from Bangalore to Sholagiri in Bangalore to Hosur National Highways driving the tipper lorry bearing Registration No.KA-05-AF-7947 belonging to the 3rd respondent and insured with the 4th respondent. A Taurus Eicher Lorry bearing Registration No.KA-04-AA-9939 belonging to the 1st respondent and insured with the 2nd respondent, driven by its driver in a rash and negligent manner, came from the north side suddenly tried to cross the road and dashed on the front side of the Eicher van, bearing Registration No.TN-70-R-0333, which was about to stop for signal. Due to the said impact the Eicher van was pushed to some distance and turned towards right side. The lorry driven by Gunasekaran which was coming



behind the Eicher van dashed against the right side of the Eicher van. Due to the impact Gunasekaran sustained serious injuries all over the body and declared dead upon reaching the hospital.

4. Claiming that the accident had occurred due to the rash and negligent driving of the Taurus Eicher lorry bearing Registration No.KA-04-AA-9939 owned by the 1st respondent and insured with the 2nd respondent the claimants sought for compensation as aforesaid. The case was registered by Hosur Sipcot Police station in Crime No.398/2017 against the driver of the 1st respondent. The deceased was aged about 26 years he was working as lorry driver and getting a salary of Rs.50,000/-.

5. The claim was resisted by the 2nd respondent insurer of the lorry bearing Registration No.KA-04-AA-9939 contending that the accident did not occurred in the manner suggested by the claimants. It is also claimed that the said Gunasekaran who was driving the lorry bearing Registration No.KA-05-AF-7947 was also responsible for the accident and the compensation claimed was termed as excessive.



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6. The Tribunal on an analysis of evidence that was placed before it concluded that the accident occurred due to the rash and negligent driving of the lorry owned by the 1st respondent and insured with the 2nd respondent.

7. On the quantum, the Tribunal concluded that the claimants would be entitled to Rs.68,45,500/-. In arriving at the said amount the Tribunal took the net pay at Rs.29,000/- per month, adding 50% towards future prospects, applied the multiplier '17' after deducting 1/4th for his personal and living expenses and arrived at the loss of dependency at Rs.66,55,500/-. It also added the conventional damages viz., loss of consortium at Rs.40,000/-, funeral expenses at Rs.15,000/- and loss of estate at Rs.15,000/-. Thus, the Tribunal concluded that the claimants would be entitled to a sum of Rs.68,45,500/- as total compensation. The Tribunal however restricted it to Rs.40,00,000/- because the claimants have restricted their claim to Rs.40,00,000/-. The claimants are on appeal aggrieved by fixation of Rs.40,00,000/-.



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8. We have heard Mr.S.Viswanathan, for M/s.Dass and Viswa Associates for the appellant, Mr.R.Neethi Perumal, learned counsel appearing for the 2nd respondent Insurer of the offending lorry and Mr.J.Michael Visuvasam, learned counsel appearing for the 4th respondent Insurer of the lorry which was driven by the deceased.

9. The Tribunal had rightly placed the entire liability on the 2nd respondent which is the Insurer of the offending lorry.

10. Mr.S.Viswanathan, learned counsel appearing for the appellants would vehemently contend that even if the claimants had restricted their claim to a particular amount, if the Tribunal finds that they are entitled to more, it has to award the amount that the claimants are found entitled to, of course with a rider that they should pay the Court fee for the excess compensation awarded and it cannot limit the compensation to the amount claimed.

11. Mr.R.Neethi Perumal, learned counsel appearing for the 2nd



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respondent Insurance Company would submit that once the claimants themselves have restricted their claim to Rs.40,00,000/- the Tribunal was right in limiting the award to the sum claimed.

12. We are unable to agree with the contention of the learned counsel for the 2nd respondent. The proceedings before the Tribunal are proceedings for just compensation for the loss caused by unfortunate accident. The Tribunal has to award just compensation and not the compensation claimed. This Court and the Hon'ble Supreme Court have repeatedly pointed out that the Tribunals are not powerless to award more than what was claimed, if the claimants are found entitled to. Therefore, we are unable to sustain the action of the Tribunal in restricting the compensation to Rs.40,00,000/- only. We therefore, set aside that portion of the award and the award will be modified granting Rs.68,45,500/- as compensation. The compensation is apportioned as follows:

The 1st petitioner wife will take Rs.20,00,000/-, the minor children will each take Rs.20,00,000/- and the mother will take a sum of Rs.8,45,500/- with proportionate interest.



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13. The Insurance Company will have twelve (12) weeks time to deposit the compensation. On such deposit the major claimants viz., the wife and mother are entitled to withdraw their shares of compensation. The share of the minors shall be deposited in an interest earning cumulative deposit in a Nationalised Bank at Krishnagiri till the minors attain majority. The other terms of the award are confirmed.

14. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(R.S.M.,J.) (R.K.M.,J.)
03.08.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



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To

WEB COM The Motor Vehicle Accident Claims Tribunal
/ Fast Track Mahila Court, Krishnagiri.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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