IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2919 of 2022
and C.M.P.No.22580 of 2022

The Oriental Insurance Co. Ltd
234, Mannadi Road
Broadway, Chennai – 108
No.114, Prakasam Salai, Broadway
Esplanade, Chennai – 600 108 .. Appellant

Versus

1.G.Gunasundari, W/o. Varadarajan
2.Varadarajan, S/o.Ellappa
Both residing at
No.401, Peterraja Street
Sandrorpalayam
Razak Garden, Arumbakkam
Chennai – 600 106

2.Subburaj & Co
5/1st St, Sylvan Colony
Kilpauk
Chennai – 10 .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accident Claims Tribunal (In the Court of Small Causes, Chennai) made in MCOP.No.5689 of 2017 dated 27.09.2021.

For Appellant	: Mr.K.Vinod
For Respondents	: Mr.Varathakamaraj

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accident Claims Tribunal (In the Court of Small Causes, Chennai) made in MCOP.No.5689 of 2017 dated 27.09.2021.

2.The Insurance Company is the Appellant herein seeking to challenge the award passed by the Tribunal in M.C.O.P.No.5689 of 2017 on the ground of negligence.

3. The respondents are the parents and the legal representatives of the deceased viz., Madanraj. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The Factum of the accident is not in dispute.

4. During the trial before the Tribunal, the Claim Petitioner 1 and 2 were examined themselves as PW1 & PW2. Ex.P1 to P10 were marked. Ex.P1 is the FIR in Crime No.956 of 2017. Ex.P4 is the Driving License of the first respondent, Ex.P5 is the Vehicle Insurance Policy of the first respondent. The Tribunal on consideration of both oral and documentary evidences came to

conclusion that the accident has taken place due to the rash and negligent driving of the first respondent vehicle and accordingly, fixed the negligence liability on the offending vehicle namely the vehicle insured with the appellant company. Considering the age of the deceased as 18, whereas, as per the death certificate, it was 17 years, the Trial Court fixed the notional income as Rs.8,000/- per month, future prospects at 40% (i.e., 3,200/-), totalling (i.e.,8000+3200 = 11,200). As per Sarla Verma's case, it fixed the total loss of dependency to the claim petitioners as Rs.12,09,600/- (i.e., 11,200 x 12 x 18 x ½ = 1209600). Furthermore, the Trial Court granted Loss of estate as 15000/-, Funeral expenses at 15000/-, transportation expenses at 10000/- and loss of love and affection to the claim petitioners 1 and 2 as 80,000/- (40,000/- each) totalling to the tune of Rs.13,29,600/-.

5. After hearing the counsel for the Appellant Insurance Company and also taking note of the plea raised by the Insurance Company that at the time of accident, the deceased was about 17 years and did not possess valid license, however, rode the two wheeler and met with accident. Therefore, the absence of valid driving license to drive the two wheeler on the date of accident, assumes

significance. Therefore, this Court is of the considered view that contributory negligence of 10% has to be put on the head of the deceased. Accordingly, this Court comes to the conclusion that the accident has taken place due to rash and negligence of both, the driver of the offending vehicle as well as the deceased at the ratio of 90:10. Hence, the award amount is reduced by 10% (i.e., 13,29,600 – 1,32,960 (10%) = 1196640) after taking note of the contributory negligence.

6. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above and the contributory negligence is fixed at the ratio of 90:10 among the driver of the offending vehicle and the deceased. Accordingly, the compensation awarded is reduced from Rs.13,29,600/- to Rs.11,96,640/-. The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the Appellant insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) On such deposit being made, all the claimants/respondents 1 and 2 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) If at all the Appellant Insurance Company had already deposited the awarded compensation amount, after satisfaction of the award, the Tribunal is directed to refund the surplus deposited money taking note of the reduced compensation amount herein, to the Appellant Insurance Company.

04.01.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

RMT.TEEKAA RAMAN.J,

dhk

To

The Presiding Officer,
Motor Accident Claims Tribunal
In the Court of Small Causes
Chennai

C.M.A.No.2919 of 2022

04.01.2023