IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2023

DELIVERED ON : 28.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2266 of 2021

Shriram General Insurance Co.Ltd.,
Cuddalore Town ...Appellant

Vs.

1.Krishnaveni
2.Saravanan
3.Senthil Kumar
4.Vinoth
5.Thamarai ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.01.2021, in M.C.O.P.No. 142 of 2014, on the file of the Motor Accidents Claims Tribunal, (Additional Sub Court), Mayiladuthurai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.Ma.P.Thangavel
for Mr.M.Lokesh for R1 & R2.
R3, R4 & R5 - No appearance.

JUDGMENT

Insurance Company is the appellant herein. Challenging the award made in M.C.O.P.No.142 of 2014. The Insurance Company has preferred this appeal on the ground of negligence on the part of the driver of the vehicle insured with the appellant company.

2. The factum of the accident is not in dispute. Respondents 1 & 2 are the legal representatives of the deceased Jeyaraman. They filed M.C.O.P.No.142 of 2014 before the Motor Accident Claims Tribunal claiming compensation for the death of Jeyaraman (husband of the first claimant/ petitioner) in the road accident on 12.04.2014.

3. Both in the claim petition as well as in the witness box, the first claimant/petitioner as P.W.1 deposed that while her husband was riding a two wheeler bearing Reg.No.TN-51-P-5729, in the said road from west to east another two wheeler driven by the another person came from the opposite direction in the east to west direction and dashed against him. Thereafter, a Tata Indigo car bearing Reg.No.TN-51-M-09-79 came from the right side from south to north which ran over her husband. The Tribunal has fixed the negligence on the part of the driver of the offending two wheeler No.TN-05-V-49-75 and four wheeler insured with the appellant and awarded a sum of Rs.7,77,800/-. It appears that the offending two wheeler rider was not having a valid driving license and was not insured, they were

not added as a party. The rider cum owner of the two wheeler was added as the first respondent before the Tribunal. Owner of the car was arrayed as R2. Insurance Company of the car is R3. Since, there was no insurance for the two wheeler the Tribunal has fixed the liability on the owner of the two wheeler who died in the accident and R5 is added as the LR of the deceased owner of the two wheeler and contributory negligence was fixed at the rate of 50:50.

4. Challenging the contributory negligence fixed by the Tribunal at 50:50, the appellant Insurance Company has preferred the appeal. On perusal of the Lower Court records, it is seen that PW2 is the witness and Ex.P1 is the FIR, Ex.P2 is the Motor Vehicle Inspectors Report. On behalf of the Insurance Company RW1 Mr.Sathish, Legal Law Officer was examined as private investigator appointed by the Insurance Company, who had filed the Report Ex.R1. As stated supra, The Tribunal fixed the liability as 50% each.

5. Assailing the same, the learned counsel for the Appellant/Insurance Company would contend that as per Ex.R1 both the FIR and charge sheet has been filed against the owner of the two wheeler

and the same was not considered by the trial Court and the post moterm certificate indicates the age of deceased as 60. Though the claim petitioners have stated the deceased Jeyaraman was a lorry driver, they failed to produce the driving license.

6. After going through the oral evidence of PW2 and his cross examination and the appellant submission, it is clear that the first respondent dashed against the two wheeler driven by the deceased and hence fixed contributory negligence on the part of the deceased and the first respondent. The injured fell down from the two wheeler and at the time, a car coming from the right side proceeding from south to north ran over the Jeyaraman. After perusing the Ex.R1, I find that before the tribunal, the second respondent has not entered the witness box, who is the best evidence to project the manner of the accident. Since the Insurance Company has not chosen to examine the driver of the 4 wheeler on the date of the accident, assumes significance.

7. The trial Court on a similar observation has rejected. Ex.R1 report filed by the Private Investigator appointed by the Insurance Company and therefore, in the absence of any contra evidence to that of PW2 regarding

the manner of accident and in the absence of any positive evidence let in by the insurance company and the non examination of the driver of the car by the appellant/Insurance Company, I find that contributory negligence at 50% fixed by the Tribunal does not suffer from any irregularity or illegality warranting interference and hence, the judgement passed by the tribunal is hereby confirmed.

8. The quantum of compensation fixed by the tribunal cannot be termed as excessive, rather, on certain heads no compensation has been awarded and requires to be enhanced. Therefore, even in the absence of any cross Appeal, by invoking Order 41 Rule 33 of CPC, and Section 151 and Article 227 of Constitution of India, this Court is inclined to suo motu enhance the compensation awarded by the claim tribunal. The provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Hon'ble supreme Court in ***Nagappa Vs. Gurdayal Sigh reported in 2004 (2) TN MAC 398 (SC).***

9. Accordingly, a sum of Rs.40,000/- each is awarded to the sons of the deceased/2nd petitioner & 4th respondent. There is no award under the heads, loss of estate and transportation. Therefore, a sum of Rs.15,000/- and Rs.10,000/- respectively is now awarded. Thus, the reasoned compensation is as follows:-

S.No.	Description	Tribunal Award	Now awarded	Enhanced
1	Pecuniary Loss	Rs.7,12,800/-	7,12,800/-	_
2	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	_
3	Loss of Consortium 1st petitioner/wife	Rs.40,000/-	Rs.40,000/-	_
4	Damages	Rs.10,000/-	Rs.10,000/-	_
5	Loss of love and affection to sons/2nd petitioner & 4th respondent @Rs.40,000/- each.	_	Rs.80,000/-	Rs.80,000/-
6	Loss of estate	_	Rs.15,000/-	Rs.15,000/-
7	Transportation	_	Rs.10,000/-	Rs.10,000/-
	Total	**Rs.7,77,800/-**	**Rs.8,82,800/-**	**Rs.1,05,000/-**

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,77,800/- is hereby enhanced to (Rs.7,77,800/- + 1,05,000/-) Rs.8,82,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.142 of 2014 on the file of Motor Accidents Claims Tribunal (Additional Sub Court), Mayiladuthurai. On such deposit, the claimants are permitted to withdraw the enhanced award amount, as apportioned by the tribunal, along with interest and costs, less the amount if any, already withdrawn. No costs.

28.03.2023

Index : Yes/No
Speaking/Non-speaking order
kmm

RMT.TEEKA RAMAN, J.

kmm

To

1.The Motor Accidents Claims Tribunal,
(Additional Sub Court), Mayiladuthurai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

C.M.A.No.2266 of 2021

28.03.2023