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CMA No.3186 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2023

PRONOUNCED ON : 07.02.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.3186 of 2021
and CMP No.18136 of 2021

The Manager,
United India Insurance Co. Ltd.,
Opposite Old Bus Stand,
Ranipet.

.. Appellant

Vs.

1. S.Mari
2. D.Sekar
3. S.Shanthi
4. M.Damodaran

.. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award dated 22.02.2021 passed in MCOP No.11 of 2020 on the file of the Motor Accident Claims Tribunal [II Additional District Judge], Vellore @ Ranipet.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.Ma.P.Thangavel
for Mr.M.Lokesh (for R1 to R3)
No Appearance (for R4)



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JUDGMENT

Insurance Company is the appellant herein.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

3. The legal representatives of the deceased Sekar, who died in a road transport accident on 05.12.2019, filed MCOP No.11 of 2020 before the Motor Accident Claims Tribunal [II Additional District Judge], Vellore @ Ranipet, seeking compensation.

4. Before the claims tribunal, the 2nd petitioner was examined as PW1 and occurrence witness is examined as PW2 and Ex.P1 to P6 were marked. On the side of the respondents, none was examined and no documents were marked.

5. On consideration of both oral and documentary evidence, the claims tribunal has come to the conclusion that the accident had happened



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only because of the negligence on the part of the driver of the lorry, who had parked the lorry in the middle of the road and accordingly, held that the owner of the lorry and its insurer are jointly and severally liable to pay compensation and awarded a sum of Rs.24,03,000/-. Hence, the appeal by the insurance company, both on the ground of negligence and quantum.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On perusal of Ex.P1-FIR and PW2 occurrence witness, it is seen that on 05.12.2019 at about 4.30am, the deceased Ramaraj was riding a Two Wheeler Hero Honda Splender bearing Regn.No.TN 21 AP 2970 on Chennai to Vellore N.H.Road and when he came near K.H.Apollo Hospital, Visharam, the driver of Eicher Lorry bearing Regn.No.TN 10 X 8929 belonged to the 1st respondent parked the vehicle in the middle of the road without any signal and without following any traffic rules and hence, the deceased Ramaraj hit against the back side of Eicher Lorry and the deceased had sustained grievous injuries and died on the spot. The 2nd petitioner



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namely Sekar who is the father of deceased Ramaraj was examined as PW1 and the eye witness namely Suriya was examined as PW2. PW2 has clearly narrated about the rash and negligent act of the driver of Eicher Lorry bearing Reg.No.TN 10 X 8929 belonged to the 1st respondent who parked the Lorry in the middle of the road without illuminating any signal or indication lights in the Lorry without following the traffic rules and regulations.

8. Therefore, I find that the oral evidence of PW2-occurrence witness duly corroborates the documentary evidence i.e. Ex.P1-FIR and the claims tribunal has rightly come to the conclusion that the accident has taken place only due to the negligent act of the driver of the lorry, who had parked the Eicher Lorry on the middle of the road. Furthermore, the driver of the Eicher Lorry was not examined as witness on the side of the Insurance company and no oral or documentary evidence has been let in, to disprove the evidence of PW2. Hence, the claims tribunal rendered the finding that the accident has taken place due to the parking of the Eicher lorry on the middle of the road and also in the early hours ie.4.30am and



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accordingly, has rightly fixed the entire liability on the owner of the lorry and the insurance company.

9. On the point of quantum of compensation, heard both the learned counsel.

10. The deceased was a bachelor and aged about 24 years at the time of the accident and he was doing Flower Decoration for the wedding and when he went to Vellore on 05.12.2019 to purchase additional flowers, he met with the accident. The tribunal has rightly fixed the notional income of the deceased as Rs.15,000/- and also added 40% (i.e. Rs.6,000/-) as future prospects and arrived at the income of Rs.21,000/- per month. Thereafter, by applying multiplier '18' and deducting 50% towards his personal and living expenses, computed the loss of dependency as Rs.22,68,000/-.

11. Further, the award of Rs.5,000/- towards Transportation, Rs.15,000/- towards Funeral Expenses, Rs.50,000/- each to petitioners 1 and



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2, towards loss of love and affection and Rs.15,000/- towards, loss of estate, appears to just and reasonable. Therefore, I find that the quantum of compensation awarded by the claims tribunal does not warrant any interference.

12. In view of the above discussion, it is ordered as follows:

(i) Both the plea raised by the appellant-Insurance Company on the point of negligence and quantum, stand negatived.

(ii) The judgment and decree dated 22.02.2021 passed in MCOP No.11 of 2020 on the file of the Motor Accident Claims Tribunal [II Additional District Judge], Vellore @ Ranipet, is confirmed.

(iii) At the time of granting interim stay, the appellant-Insurance company was directed to deposit 50% of the award amount and the claimants were permitted to withdraw 25% of the award amount. Therefore, the appellant-Insurance Company is directed to deposit the balance award amount with proportionate accrued interest and costs, to the credit of MCOP



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No.11 of 2020 on the file of the Motor Accident Claims Tribunal [II Additional District Judge], Vellore @ Ranipet, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents/claimants are permitted to withdraw their share as apportioned by the Claims Tribunal, less the amount already withdrawn, on making necessary applications.

13. With the above directions, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

07.02.2023

Index : Yes/No
Neutral Citation : Yes/No.
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To
The Motor Accident Claims Tribunal
II Additional District Judge,
Vellore @ Ranipet,



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RMT.TEEKAA RAMAN,J.,
ars

Pre-delivery Judgment in
CMA No.3186 of 2021
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