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C.M.A.No.2497 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2497 of 2022

and

C.M.P.Nos.19419 & 17248 of 2022

Reliance General Insurance Co. Ltd.,
Reliance House, Haddows Road,
Nungambakkam, Chennai - 600 032.

...Appellant

Vs.

1.S.Santhosam

2.Jacob Iniyam

3.Johan Kaviyam

4.Lysalydial

5.K.V.Sajeethkumar

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.07.2022 passed in MCOP.No.3019 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub-Court -1), Small Causes Court, Chennai.



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For Appellant : Mr.P.Suresh Srinivasan

For Respondents :Mr.K.Varadha Kamaraj for R1 to R4
R5-No such person

J U D G M E N T

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

The Insurance Company is on appeal. Challenge is to the award of the Motor Accident Claims Tribunal (Small Causes Court), Chennai, granting a sum of Rs.44,46,200/- as compensation for the death of one G.Christoper, who died in a road accident that occurred on 30.06.2017.

2.According to the claimants, when the deceased was riding a motor cycle bearing Registration No.TN-20-BD-7801 along with two minor children as pillion riders in Tiruttani to Tiruvallur road near Tirupachur, the car bearing Registration No.TN-02-AE-4574, which came in the opposite direction, driven in a rash and negligent manner on the wrong side of the road, hit the motorcyle. As a result of the impact, the deceased suffered fatal injuries and died. Blaming the driver of the car for negligence, the claimants, who are the wife, children and mother of the deceased sought for



compensation of Rs.75,00,000/-. The quantum was supported by the fact that the deceased was working as a Junior Assistant in the Metropolitan Transport Corporation (MTC) and was earning a sum of Rs.20,000/- per month.

3.This claim was resisted by the Insurance Company contending that the accident did not occur in the manner as suggested by the claimants and there was negligence on the part of the rider of the two wheeler namely, the deceased. The age and income particulars of the deceased were also denied.

4.Before the Tribunal, the 1st claimant was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. Exs.P1 to P14 were marked. The copy of the First Information Report and the postmortem certificate were filed as Exs.P1 and P2. Copy of the pay slip was filed as Ex.P4. Copy of the Service Register Book and Attendance Register were filed as Exs.P11 and P13. The Insurance Company did not lead any evidence, either oral or documentary.



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5.Relying upon the evidence of P.W.2, an eye-witness and the contents of the First Information Report, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the car driver. The Tribunal concluded that the Insurance Company would be liable to pay the compensation.

6.On the quantum, the Tribunal took into account the pay slip and the Service Register that were produced and concluded that the deceased was drawing a sum of Rs.18,545/- as his monthly income. It added 50% towards future prospectus and arrived at the monthly loss of income at Rs.27,818/-. Considering the number of dependents, the Tribunal deducted 1/4 towards personal expenses of the deceased and arrived at the annual loss of dependency at Rs.2,50,362/-. Taking into account the age of the deceased i.e., 30 years, the Tribunal applied the multiplier of 17 and arrived at the total loss of dependency at Rs.42,56,154/-. The Tribunal awarded a sum of Rs.40,000/- each towards loss of love and affection and consortium to the dependents, who are four in number. It also granted Rs.15,000/- each towards loss of estate and funeral expenses. Thus, the Tribunal arrived at total compensation payable at Rs.44,46,200/-



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7.We have heard Mr.P.Suresh Srinivasan, learned counsel appearing for the appellant / Insurance Company and Mr.K.Varadha Kamaraj, learned counsel appearing for the claimants.

8.Mr.P.Suresh Srinivasan, learned counsel appearing for the appellant would vehemently contend that the Tribunal was not justified in adopting future prospectus at 50%. He would also point out that the Tribunal ought to have made certain deductions towards contributory negligence.

9.Contending contra, Mr.K.Varadha Kamaraj, learned counsel appearing for the claimants would rely upon the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and Others* reported in (2017) 2 TAN MAC 609 wherein, in Clause – 3 of Paragraph -61, the Hon'ble Supreme Court had pointed out that if a person is in a permanent job and his age is below 40 years, 50% should be added towards future prospectus. In the case on hand, the claimant was aged about 30 years and was in permanent job with Metropolitan Transport Corporation. Therefore, addition of 50%, according to Mr.K.Varadha



Kamaraj is justified.

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10. On the question of contributory negligence, Mr.K.Varadha Kamaraj would submit that contributory negligence being a question of fact, the Insurance Company must have led some evidence to show that there was some negligence on the part of the rider of the two wheeler. From the contents of the First Information Report, it could be seen that the entire negligence was on the part of the driver of the car and not the rider of the two wheeler. We have considered the rival submissions.

11. We are unable to accept the submission of the learned counsel for the Insurance Company on the quantum of future prospectus applied by the Tribunal. Once it is admitted that the deceased had a permanent job with the MTC and his service book was also produced to establish the same, the Tribunal cannot be faulted for having applied future prospectus at 50%. As rightly pointed out by Mr.K.Varadha Kamaraj, in the absence of any evidence on the side of the Insurance Company, we cannot presume there was negligence on the part of the rider of the two wheeler.



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12.In view of the above, we do not see any reason to interfere with the award of the Tribunal. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed, confirming the award of the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M.,J.) (K.G.T.,J.)

06.10.2023

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R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

KKN

To:-

The Motor Accident Claims Tribunal,
(Special Sub-Court-I),
Small Causes Court, Chennai.

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