IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.No.1360 of 2023**
**and C.M.A.No.153 of 2022**
**and C.M.P.No.1144 of 2022**

**C.M.A.No.1360 of 2023**

1.K.Lalitha
2.K.Murugan
3.B.Rajeswari
4.S.Sathya
5.M.Devi ...Appellants

Vs.

1.K.Mohanlal

2.Bharti Axa Gen. Insurance Co. Ltd.,
No.8, Walltax Road,
Harrington Plaza 1st Floor,
Park Town, Chennai - 600 003. ...Respondents

**PRAYER :** The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2018 in M.C.O.P.No.4711 of 2013 on the file of the Motor Accident Claims Tribunal, Chennai (in the III Court of Small Causes).

For Appellants : Mr.Terry Chella Raja
for Mr.M.Pachiyappan

For Respondents : M/s.K.Poomalai for R2
No appearance for R1

**C.M.A.No.153 of 2022**

Bharati Axa Gen.Insurance Co. Ltd.,
2nd Floor, Metro Plaza,
No.162, Annasalai,
Chennai - 600 002. ... Appellant

Vs

1.K.Lalitha
2.K.Murugan
3.B.Rajeswari
4.S.Sathya
5.M.Devi
6.K.Mohanlal ... Respondents

**PRAYER :** The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2018 in M.C.O.P.No.4711 of 2013 on the file of the Motor Accident Claims Tribunal, Chennai (in the III Court of Small Causes).

For Appellant : M/s.K.Poomalai

For Respondents : Mr.Terry Chella Raja
for Mr.M.Pachiyappan

**J U D G M E N T**

The above appeals have been filed by the Insurance Company as well as by the claimants aggrieved by the quantum of compensation awarded by the Tribunal.

2. The claimants filed the Claim Petition in M.C.O.P.No.4711 of 2013 on the file of Motor Accident Claims Tribunal, Chennai (in the III Court of Small Causes). They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one K.Arumugam, who died in the accident that took place on 13.03.2013.

3. According to the claimants, on the date of accident i.e., on 13.03.2013 at about 2.30 p.m., while the deceased was crossing the L.B road opposite to Jayanthi Theatre, Thiruvanmiyur from East to West direction, a motorcycle bearing Registration No.TN-02-AE-5112 ridden by its rider in a rash and negligent manner without observing the traffic rules, dashed against the deceased; due to the said impact, the deceased suferred injuries and succumbed to it; that the deceased, who was aged 58 years, was working as a stone cutter; and that he was a sole bread winner of his family and hence, the Insurance Company is liable to pay Rs.10 lakhs as compensation.

4. The rider of two wheeler, who is the owner of the motocycle, remained ex-parte before the Tribunal.

5.The Insurance Company filed counter statement, denying the averments made in the claim petition and stated that the rider of the two wheeler did not possess any valid license and hence, the Insurance Company was not liable to pay the compensation. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimants examined two witnesses as P.W.1 and P.W.2 and marked 9 documents as Exs.P1 to P9. The Insurance Company R.W.1 was examined and marked two documents as Exs.R1 and R2 on their side.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased died only due to rash and negligent act of the rider of the two wheeler and directed the Insurance Company being the insurer of the offending vehicle to pay a sum of Rs.11,69,200/- as compensation to the claimants.

8. The learned counsel for the Insurance Company submitted that the accident was of the year 2013 and the notional income of Rs.12,000/- fixed by the Tribunal in the absence of any evidence to prove the income is excessive.

9. Per contra, the learned counsel for the claimants submitted that the notional income fixed at Rs.12,000/- is meagre and the Tribunal ought to have taken into consideration the fact that the deceased was earning Rs.500/- per day and the Tribunal ought to have taken Rs.15,000/- as notional income.

10.The first respondent remained ex-parte before the Tribunal. The learned counsel for the appellants has made an endorsement to dispense with the notice to him.

11. Heard the learned counsel appearing for their respective parties and perused the materials/ documents available on record before this Court.

12.This Court finds that the Tribunal had fixed the notional income at Rs.12,000/- which is just and reasonable. The accident had taken place in the year 2013 and considering the fact that the wages of even daily wage labourers was around Rs.500/- per day at that time the notional income fixed by the Tribunal is reasonable.

13. It is further seen that the Insurance Company has established the fact through R.W.1 that the rider of the two wheeler did not have a valid licence. The Tribunal found that the Insurance Company is liable to pay and recover the same from the rider of the two wheeler.

14. Neither the learned counsel appearing for the claimants nor the learned counsel appearing for the Insurance Company could find fault with the compensation awarded by the Tribunal under other heads. Hence, the award of the Tribunal is confirmed. The Insurance Company is directed to deposit the compensation amount within a period of six weeks. On such deposit the claimants shall withdraw the amount as per the apportionment fixed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

15.In fine, these C.M.As. are dismissed.

**17.07.2023**

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No

gba

To

1.The Motor Accident Claims Tribunal,
(in the III Court of Small Causes),
Chennai.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104

**SUNDER MOHAN,J.**

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