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C.M.A.No.4708 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.04.2023
Pronounced on	27.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.4708 of 2019

The Divisional Manager,
Oriental Insurance Company Ltd.,
Motor third party Claims Cell,
No.216, Old No.115, 2nd Floor,
Pragasam Salai, Broadway,
Chennai-600 001.

...Appellant

Vs.

1.Ramani
2.Sangeetha
3.Periyardasan
4. S.Sekar
(4th respondent set-exparte in the lower
Court. Hence, notice is dispensed with)

...Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, appeal against the award and decree dated 27.04.2019 made in M.C.O.P.No. 87 of 2016 on the file of the Motor Accidents Claims Tribunal, (Additional District Court (FTC), Kanchipuram.

For Appellant : Mr.R.Sivakumar

For RR1 to R3 : Mr.C.Richard Suresh Kumar

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The Insurance Company has filed this Civil Miscellaneous Appeal, aggrieved over the award, dated 27.04.2019 made in M.C.O.P.No.87 of 2016 on the file of the Motor Accident Claims Tribunal, (Additional District Court F.T.C.), Kanchipuram. Awarding a compensation of Rs.64,65,376/- as against the claim of Rs.4,00,00,000/-.

2.It is the case of the claimants that on 30.08.2015 at about 4.30 a.m the deceased was riding his motor cycle bearing Reg.No.TN-20-AB-2516 on the extreme left side of Chennai to Tirupathi bye-pass road near Durga Rice Mill



following the traffic rules. At that time, Maruti Omni Van bearing Reg. No.TN-09-BW-8985 came in a rash and negligent manner and dashed behind the motor cycle.

Due to this, the deceased sustained fatal injuries and died on the spot. It is the further case of the claimants that the accident was not due to the negligence of the deceased and that the deceased was earning Rs.5,90,338/- from the Brick Industry per month and Rs.1,30,000/- from agricultural occupation. Therefore, prayed for appropriate compensation under various heads.

3.The appellant/Insurance Company, with the leave of the Court, disputed the manner of the accident. It is contended that the accident occurred only due to the negligence of the respondent/deceased. It is submitted that the claim is highly exorbitant and excessive and liable to be rejected.

4.Before the Tribunal respondents/claimants examined P.W.1 to P.W.4 and marked Exs.P.1 to P.20. On the side of the respondents, one Thiru. Selvakannan, Junior Assitant, R.T.O.Office, as examined as R.W.1 and Exs.R.1 to R.2 marked on the side of the respondents.



5.The Tribunal on evaluation of pleadings and evidence, held that the Insurance Company is liable to pay compensation and awarded a sum of Rs.64,65,376/- with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

6.Assailing the correctness of the award, Mr.R.Sivakumar, learned counsel for the appellant/Insurance Company submitted that the Tribunal has erred in arriving at the conclusion that the driver of the Omni bus is liable to pay compensation for the death of the Shanmugam, despite the fact that the deceased was responsible for the accident. It is further submitted that the Tribunal ought not to have accepted Ex.P.13 for fixing the monthly income of the deceased.

7.Per Contra, Mr.C.Richard Suresh Kumar, learned counsel for the respondents/claimants submitted that a "Just" compensation has been awarded by the Tribunal which calls for no interference. He further submitted that the accident occurred not due to the negligence of the deceased, but only due to the negligence of the driver of the Omni bus. On the quantum of Compensation, the learned counsel for the respondents/claimants submitted that sufficient oral and



documentary evidences has been let in to prove that the deceased was earning a sum of Rs.7,00,000/- per month by doing brick business and agriculture.

8.Heard the learned counsel for the parties and persued the materials available on record.

9.Admittedly, Ex.P.11- FIR is registered as against the driver of the Omni bus. No contra evidence adduced on the side of the respondent to prove the negligence on the part of the deceased. Hence, the Tribunal has rightly concluded that the accident occurred only due to the fault of the Omni bus driver. Hence, as far as negligence is concerned the findings of the Tribunal is confirmed.

10.The next point for consideration is on quantum and the Tribunal is accepting Ex. P.13, copy of Income Tax Return for the year 2015-2016 fixing the monthly income of the deceased at Rs.49,195/-. The alleged accident took place in the year 2015. The claimants have marked Exs.P.7, P.8, P.17, P.18 respectively to prove the income of the deceased. Ex.P.7 is the Certificate issued by the Village Administrative Officer to establish that the deceased was owning agricultural lands. Ex.P.8 is copy of Adangal to show that during the relevant period the deceased was cultivating groundnuts in the said land. Ex.P.17 is certificate of registration issued in the name of the deceased for doing brick klim business and



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Ex.P.18 is form D issued by the Commercial Tax Department for running a brick Industry from 15.05.2014 by the deceased. Apart from the evidence of P.W.1 the claimants have also examined the Village Administrative Officer as P.W.3 to speak about Exs.P.7 and P.8 documents. Apart from this, Exs.P.17 and P.18 would also goes to show that the deceased was doing brick business during his life time. The Tribunal upon considering the above documents has rightly fixed the monthly income of the deceased at the time of the accident Rs.49,195/-. No contra evidence was let in on the side of the Insurance Company to disprove the above facts. Therefore, there is no infirmity in the findings of the Tribunal in fixing the monthly income of the deceased at Rs.49,195/-. After considering the age of the deceased as 48 years, the Tribunal has added 25% for future prospects of his monthly income and fixed the total monthly income of the deceased at Rs.61,494/-. The Tribunal has rightly deducted 1/3rd for the personal expenses of the deceased, considering the number of dependants and awarded a sum of Rs.63,95,376/- under the head of loss of income. The said findings of the Tribunal are found to be reasonable. The Tribunal has also awarded a sum of Rs.15,000/- towards for funeral expenses, Rs.40,000/- for loss of consortium and Rs.15,000/- towards loss of estate applying the principles laid down in *pranay sethi* case. In total, the Tribunal has awarded a sum of Rs.64,65,376/- as compensation for the death of the



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deceased which is found to be just compensation. Hence, the findings of the Tribunal calls for no interference. Accordingly, the civil miscellaneous appeal is dismissed. Confirming the order of the Tribunal.

11.In the result, these Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal in M.C.O.P.Nos.87 of 2016 is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw the award amount along with interest fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) (K.G.T.,J.)

27 .04.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To:-

The Motor Accident Claims Tribunal,
(Additional District Judge,FTC), Kanchipuram.



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Pre-delivery judgment made in
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27.04.2023