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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.3052 of 2023
and
C.M.P.No.28826 of 2023

The Manager,
Reliance General Insurance Company Ltd.,
Reliance Tower, No.6,
Hadows Road, Nungambakkam,
Chennai – 600 034. ...Appellant

Vs.

1.S.Meena

2.K.Subramani

3.Samuvel ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.06.2023 passed in MCOP.No.2546 of 2018 on the file of MACT(II Small Causes Court) at Chennai.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.SP.Yuraj for R1 and R2

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JUDGMENT

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

The Insurance Company is on appeal aggrieved by the grant of a sum of Rs.25,88,000/- as compensation for the death of one Dinesh aged about 21 years in a motor accident that occurred on 01.01.2018.

2. According to the claimants, when the deceased was travelling in auto rickshaw bearing Reg.No.TN-03-V-6645 along with four others on S.N.Chetty Road, near Thideer Nagar, 2nd Street Junction in Chennai, an Eicher Van bearing Reg.No.TN-020AV-0943, which came in the opposite direction, driven by its driver in a rash and negligent manner at a dangerous speed, hit against the auto rickshaw, as a result of which, the passengers in the auto rickshaw sustained grievous injuries.Though they were treated at Government Stanley Hospital, Chennai, Dinesh died on the same day. Contending that it was the negligence on the part of the driver of the van, which was the sole cause of the accident, the claimants sought for Rs.30,00,000/- as compensation. The quantum of compensation was sought to be sustained by claiming that the deceased was employed as an Executive in M/s.S.K.Impex, Customs Clearing and Forwarding Agency and was drawing a monthly income of Rs.15,500/-.

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3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was the case of the Insurance Company that there was negligence on the part of the auto rickshaw driver also which contributed to the accident. It was claimed that the Insurer and the owner of the auto rickshaw are necessary parties to the claim petition. The quantum of compensation was also termed excessive. The age and income of the deceased were disputed and the claimants were put to strict proof of the same.

4. At trial before the Tribunal, the 1st claimant was examined as PW1, one Aravind @ Aravindraj, eye witness was examined as PW2 and one Senthil Kumar, employer was examined as PW3. FIR was marked as Ex.P1, the job identity card and the salary certificate were marked as Exs.P5 and P6 respectively. The documents relating to the identity of the claimants and other KYC details were marked as Exs.P7 to P13. Exs.P14 and P15 are the GST Registration Certificate of the employer and Import/ Export Code. On the side the Insurance Company one Shahana was examined as RW1 and Exs.R1 to R4 were marked.

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5. The learned Tribunal, on a consideration of the evidence, held that the accident occurred due to the rash and negligent driving of the driver of the Eicher van. It was also found that the fitness certificate of the Eicher van was not renewed after 14.11.2017. The Tribunal took into consideration the fact that the FIR was filed against the driver of the Eicher van and the final report was also filed against the driver of the Eicher van to come to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Eicher van.

6. On the quantum, the Tribunal took the monthly income at Rs.15,500/- based on the salary slip and the evidence of PW3. It added 50% towards future prospects, since the deceased was aged only about 21 years at the time of the accident. It deducted 50% towards personal expenses, since the deceased was a bachelor and worked out the loss of dependency at Rs.25,11,000/-. The Tribunal also awarded as sum of Rs. 44,000/- towards loss of love and affection, Rs.16,500/- each towards loss of estate and funeral expenses. The total compensation was arrived at Rs.25,88,000/-. The Tribunal held that the mother of the deceased would be entitled to the entire compensation.

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7. We have heard Mr.P.Suresh Srinivasan, learned counsel appearing for the appellant/ Insurance Company.

8. The learned counsel for the appellant would vehemently contend that the Tribunal erred in fixing the sum of Rs.15,500/- as income, relying upon the salary certificate and the evidence of PW3, in the absence of any supporting evidence in the form of Bank statement etc., The learned counsel would also submit that the Tribunal ought to have apportioned certain amount of negligence on the driver of the auto rickshaw.

9. We have considered the submissions of the learned counsel for the appellant. We are unable to countenance the submissions of the learned counsel for the appellant for the following reasons. The accident occurred on 01.01.2018. Even basic salary in the Government service was more than Rs.17,000/- at the relevant date. Therefore, we are unable to fault the Tribunal for taking the monthly income at Rs.15,500/-. In the absence of any proof, even for an un-employed person, we take the notional income at about Rs.17,000/- to Rs.18,000/- at the relevant point of time. Therefore, we do not see any reason to interfere with the conclusion of the Tribunal and the

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quantum fixed by it. As regards negligence is concerned, once the FIR and final report are against the driver of the Eicher van, we do not think that any negligence can be attributed to the driver of the auto rickshaw. We therefore do not find any reason to interfere with the award of the Tribunal.

10. The appeal therefore fails and it is accordingly **dismissed**. We find that the Tribunal has permitted the 1st petitioner / mother of the deceased to withdraw only 50% of the compensation and directed the remaining 50% to be deposited in a Nationalized Bank. We do not see any justification for such direction, since it is not shown that the mother / 1st petitioner is an illiterate. Hence, we modify the award permiting the 1st petitioner to withdraw the entire award amount deposited by the Insurance Company. The direction for pay and recovery is sustained, since it is shown that the Eicher van did not have a fitness certificate on the date of the accident. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) **(N.S.,J.)**
22.12.2023

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Index :No
Neutral Citation :No
Speaking order

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To

The II Small Causes Judge,
Motor accident Claims Tribunal,
Chennai.

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