IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.4635 of 2019
and
CMP.No.26232 of 2019

The Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
Branch Office, No.14-1581/1,
Palace Extension, Kuppam, Chitoor District,
Andhra Pradesh ...Appellant

Vs.

1. Nowhera Begam
2. Samiulla Khan
3. Thaseena Sulthana
4. K.Tasleem Sulthana
5. M.Palani . ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree passed in M.C.O.P.No.44 of 2014 dated 30.04.2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mrs.A.Subadara
for Mrs.M.Malar, for R5
: Not ready Notice, for R1 to R4

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the award and decree passed in M.C.O.P.No.44 of 2014 dated 30.04.2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2. The case of the appellant is that, the respondents 1 to 4 filed a claim petition claiming compensation of Rs.50,00,000/- on the ground that, on 01.11.2013 at about 4.30 pm., when the deceased Ejas Khan was travelling in a TVS Appache motorcycle bearing Regn.No.AP-02-AP-0990 along with two pillion riders, the appellant insured Hero Honda Splendor plus motorcycle bearing Regn.No.TN-29-K-5369 owned by the 5th respondent, driven by its driver in a rash and negligent manner, came in the opposite direction with high speed and dashed against the motorcycle in which the deceased was travelling, as a result of which, the deceased sustained fatal injuries all over his body and died on the way to the hospital.

Thereby, the respondents 1 to 4/claimants being the dependents of the deceased filed a claim petition claiming compensation for the death of the deceased at the hands of the appellant and the 5th respondent. After contest, the tribunal, vide impugned judgment, awarded a compensation of Rs.19,05,000/-. Aggrieved with the said order, the appellant has come up with this appeal.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the deceased, for which, the FIR came to registered as against the deceased and the two other pillion riders and at the time of accident, three persons have travelled in the motorcycle in which the deceased travelled, which is a clear violation of policy condition, for which, the insurer cannot be made liable to pay compensation. Further, at the time of accident, the deceased was a final year student and was only 20 years old, however, the tribunal, without any basis had fixed the monthly income of the deceased as Rs.15,000/- which is very high and a total sum of Rs.2,50,000/- has been awarded under the head Loss of Love and affection, which is on the higher side and is contrary to

the ratio laid down by the Hon'ble Apex Court in catena of decisions, which has to necessarily be interfered with. Accordingly, he prayed for appropriate orders, reducing the compensation fixed by the tribunal.

4. On the above said contentions, heard learned counsel appearing for the 5th respondent and perused the material documents placed on record.

5. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect. The major grievance of the appellant/insurance company is with regard to the compensation fixed by the tribunal. It is claimed by the appellant that the deceased was a final year student and no contribution was made by him to his family, however, the tribunal had fixed the monthly income of the deceased as Rs.15,000/- which is *per se* illegal.

6. Though it is claimed by the learned counsel for the appellant that the compensation awarded by the tribunal by fixing the monthly income of the deceased as Rs.15,000/- is on higher side, it has been the view of the

courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Hence, this Court does not finds any fault with the monthly income of the deceased arrived at by the tribunal by applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459.***

7. Further, though the appellant states that the compensation awarded under the head “loss of love and affection” is on the higher side, however, a perusal of the impugned award reveals that the tribunal had failed to award 40% future prospectus and therefore, giving under one head and reducing under the other head would result in the amount to be awarded to be the same and, therefore, no useful purpose would be served in modifying the compensation under the heads, while the compensation amount would remain the same, which would be nothing but an exercise in futility. Therefore, this Court is not embarking upon the said modification, but suffice to confirm the compensation awarded by the Tribunal.

8. Insofar as the negligence fixed by the tribunal is concerned, though it is claimed by the learned counsel for the appellant that the above said accident happened solely due to the rash and negligent driving of the deceased and the same is evident from the FIR, Ex.P1, however, in order to prove the contents of the FIR, neither the appellant/insurer nor the 5th respondent/owner of the vehicle have taken any steps to examine any individual witness and no documentary evidences have been produced by the appellant to show that the said accident had not happened due to the rash and negligence on the part of the driver of the appellant insured vehicle. Further, when the deceased person was fighting for his life, taking advantage of the same, the complaint has been lodged before the law enforcing agency by the pillion rider of the offending vehicle and the same cannot be sufficient to deny the claimants their right for compensation for the death of the deceased, since the FIR is not a conclusive proof. Further, the respondents have examined two witnesses and the PW.2, eye witness in his deposition had clearly denied the fact that the accident had happened solely due to the rash and negligent driving of the deceased. Hence, in the

absence of positive evidence in favour of the appellant, the tribunal had fixed the entire liability as against the appellant.

9. However, when it is an admitted fact that three persons have travelled in the motorcycle in which the deceased travelled at the time of accident, which is a clear violation of policy, the Tribunal ought to have directed the appellant/insurer to compensate the claimant and thereafter, recover the same from the owner of the vehicle, but losing site of the above, the Tribunal had directed to pay the compensation as the insurance company was liable to indemnify the owner, which finding is perverse and the same is liable to be set aside.

10. In view of the well acceptable ratio on this issue, this Court directs the appellant/insurance company to pay the compensation awarded by the Tribunal and recover the same from the owner of the vehicle.

11. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal and the appellant-insurance company is directed to deposit the compensation awarded by the tribunal to the credit of M.C.O.P.No.44 of 2014 along with interest at the rate of 7.5%

per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount as apportioned to the claimants/respondents 1 to 4 directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. It is open to appellant/insurer to recover the said amount from the 5th respondent/owner of the vehicle in the manner known to law. No costs. Consequently, the connected Miscellaneous petition is closed.

14.12.2023

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NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2. The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

skt

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