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CMA.No.86 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CMA.No.86 of 2023
and CMP.No.682 of 2023

The Branch Manager,
United India Insurance Co.Ltd.,
Branch Office, No.19/2A,
Junction Main Road,
Salem – 636 004.

..Appellant

Vs.

1.Seenappa
2.Munirathnamma
3.Nethiravathi
4.S.P.Venkatesan

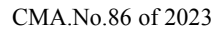
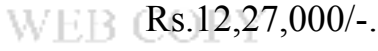
..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree dated 30.04.2015 made in MCOP.No.976 of 2013 on the file of the MACT (Spl. District Judge), Krishnagiri.

For Appellant : Ms.E.Malar

JUDGMENT

The Civil Miscellaneous Appeal is filed as against the judgment and decree dated 30.04.2015 passed in MCOP.No.976 of 2013 on the file of the



MACT (Spl. District Judge), Krishnagiri, thereby awarded compensation of Rs.12,27,000/-.

2. The respondents 1 to 3 are claimants, who filed a Claim Petition stating that on 02.09.2013 at about 17.30 hours, the son of the respondents 1 and 2 herein was riding his motor cycle bearing Reg.No.TN-70-E-6657 from Hosur to his house. When he was proceeding in his motor cycle on the left side of the road cautiously observing the traffic rules, the driver of the lorry bearing Reg.No.TN-30-P-9199, belonging to the fourth respondent herein and insured with the appellant herein, drove the same in a rash and negligent manner and also in an uncontrolled speed, came in the opposite direction and hit on the two wheeler. Due to said accident, the deceased sustained grievous head injury and other multiple injuries all over the body and died on the spot. Based on the complaint, FIR was registered as against the driver of the lorry in Crime No.235 of 2013.

3. Resisting the same, the appellant filed a counter affidavit stating that the accident did not occur due to the driver of the fourth respondent vehicle but occurred only because of the rash and negligent driving of the deceased. As such, the appellant is not liable to pay any compensation. Further, the age, occupation and income of the deceased are not proved by the claimants.



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4. On the side of the respondents 1 to 3, PW1 and PW2 were examined and Exs.P1 to P5 were marked and on the side of the appellant no one was examined and no exhibit was marked.

5. On perusal of oral and documentary evidence, the Tribunal awarded a sum of Rs.12,27,000/- as compensation payable by the respondents 1 and 2 within a period of one month from the date of award. Aggrieved by the same, the present civil miscellaneous appeal.

6. The learned counsel for the appellant would submit that the accident had occurred in the year 2013 and therefore, the salary fixed by the Tribunal is very high and it is liable to be reduced. He would further submit that the Tribunal ought to have fixed the contributory negligence on the part of the deceased and therefore, the appellant is liable to pay only 50% of the compensation awarded by the Tribunal. He would further submit that though the Tribunal fixed the monthly income at Rs.9,000/- it was not supported by any documentary proof.

7. On perusal of records revealed that when the deceased was riding his motor cycle from opposite side, the driver of the lorry drove the lorry in a rash



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and negligent manner and hit on the two wheeler. Therefore, he sustained grievous head injuries and died on the spot. Immediately, a complaint was lodged and FIR was registered, as against the driver of the lorry, which was marked as Ex.P1. Therefore, the negligence is only on the part of the lorry and the Tribunal rightly fixed the liability on the appellant herein. The deceased was only 23 years at the time of his death. PW1 deposed that the deceased was working as Manager in petrol pump and he was earning a salary of Rs.20,000/- per month. However, no document was marked in order to prove the same. Therefore, the Tribunal had fixed notional income at Rs.9,000/- and adopted the multiplier method and awarded compensation. This Court feels that it is a just and fair compensation and as such, it does not warrant any interference by this Court.

8. Accordingly, the civil miscellaneous appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.01.2023

Speaking/Non-speaking order
Index : Yes/No
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G.K.ILANTHIRAIYAN.J.

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To

The Motor Accidents Claims Tribunal,
Krishnagiri.

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