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C.M.A.No.2375 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2375 of 2018
and C.M.P.No.18074 of 2018

M/s.Royal Sundaram Alliance Insurance Company Limited,
Rept. By its Branch Manager,
No.3, 2nd Floor, Khader Nawaz Khan Road,
Nungambakkam, Chennai – 600 006. ...Appellant/2nd Respondent

-Vs-

1.Mrs.Nirmala,
W/o.Late Vasu
2.Gopi,
S/o.Late Vasu,
3.Mutharasi (Minor),
D/o.Late Vasu ...Respondents 1 to 3/Petitioners
4.M/s.Jeppiaar Milk Products (P) Ltd.,
Kariyamangalam Village & Post,
Chengam Taluk,
Thiruvannamalai District. ...4th Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 28.01.2016, in M.C.O.P.No.912 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal (Special District Court), Krishnagiri.



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For Appellant : Mr.M.B.Gopalan
for M/s.M.B.Gopalan Associates

For R1 & R2 : Mr.Machavatharam
for Mr.E.Kannadasan
For R3 : Minor represented by R1
R4 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed at the instance of the insurance company/2nd respondent in the M.C.O.P proceedings against the judgment and decree in M.C.O.P.No.912 of 2013 dated 28.01.2016 on the file Special District Judge, (Motor Accident Claims Tribunal), Krishnagiri.

2.Brief facts necessary for the disposal of the Civil Miscellaneous Appeal are as hereunder:

2.1.The claimants, wife, son and daughter of the deceased Vasu have filed the claim against the 1st respondent/owner of the vehicle involved in the accident and its insurer, namely, the 2nd respondent in the M.C.O.P. proceedings, the appellant herein. It is the case of the claimants that the deceased Vasu, aged 42 years, was working as a Supervisor in a private limited company earning about Rs.30,000/- per month and that he was the



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breadwinner of the family. According to the claimants, on 25.12.2011, when the deceased was proceeding in his TVS moped at about 17.50 hrs, a TATA 407 Milk Tempo bearing Registration No.TN 25 06477 belonging to the 1st respondent and insured with the appellant herein/2nd respondent in the M.C.O.P. Proceedings, driven in a rash and negligent manner and coming from the opposite direction dashed against the deceased Vasu, causing the accident and resulting in death on the spot, besides also causing full damage to the TVS moped. The claimants sought for a compensation of Rs.20,00,000/-.

3.The 2nd respondent/Insurance Company the appellant herein, filed a counter statement denying the allegations that the 1st respondent's vehicle was driven in a rash and negligent manner and that it was only the deceased who did not follow traffic rules and while overtaking another vehicle, dashed against the milk tempo van which resulted in the accident and consequently the death of the said Vasu. In short, the contention of the insurance company/appellant herein was that the deceased contributed to the accident, and the Tribunal ought to have factored contributory negligence and sought for dismissal of the claim.



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4. Before the Tribunal, 1st claimant/wife of the deceased was examined as P.W.1 and one Mr.Karunakaran was examined as P.W.2 and Exs.P.1 to P.6 were marked. On the side of the respondents one Mr.Vaitheeswaran was examined as R.W.1 and Exs.R1 to R3 were marked on the side of the respondents.

5. This Court has heard the counsel for the appellant as well as the counsel for the respondents, besides also perusing the oral and documentary evidence available on record.

6. This Court finds that the Tribunal has fixed the entire liability on the Insurance Company without factoring any contributory negligence on the part of the deceased. The Tribunal also took note of the evidence of eyewitness P.W.2 and came to the conclusion that it was only due to the rash and negligent driving of the 1st respondent milk tempo van which caused the accident. With regard to the contributory negligence, the Tribunal held that R.W.1 who was examined had no personal knowledge of the exhibits filed on behalf of the respondents viz., Exs.R1 to R3 and in the absence of any eyewitness examined on the side of appellant/Insurance Company, the defence of contributory negligence cannot be considered.



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7.This Court has perused the exhibits marked on the side of

appellant/Insurance Company which are as follows:

- i. Ex.R1 – Rough Sketch
- ii. Ex.R2 – Observation Mahazar
- iii. Ex.R3 – Copy of the Motor Vehicle Inspector Report

Ex.P1 is the FIR which has been filed through the 1st claimant/wife of the deceased. Merely because Exs.R1 to R3 were marked through the witness examined by the appellant/Insurance Company, on such limited ground, it cannot be brushed aside. In fact, this Court finds that there is no corroboration between the contents of the FIR as well as Exs.R1 to R3.

8.In the above circumstances, there is no hesitation in holding that the deceased contributed to the accident. It is strenuously contended by the learned counsel for the appellant that at least 30% should be factored towards contributory negligence.

9.Considering the nature of the accident and the evidence available on record, this Court, after considering the entire oral and documentary evidence and submissions of the respective learned counsel appearing for the parties, feels that 20% can be factored towards contributory negligence,



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and that would be just and proper in the facts and circumstances of the case. There is no serious contest in so far as the other claims awarded under various heads to the claimants, and therefore, this Court does not deem it necessary to go into the other heads of compensation awarded.

10.In the result, this Civil Miscellaneous Appeal is partly allowed and this Court deems it fit to deduct 20% from and out of the total award amount towards contributory negligence on the part of the deceased Vasu. This Court also notes that in and by an interim order in C.M.P.No.18074 of 2018 dated 23.10.2018, this Court had granted an order of interim stay on condition that the appellant/Insurance Company deposits entire compensation amount, including interest and costs, as ordered by the Claims Tribunal, to the credit of M.C.O.P.No.921 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, within a period of 8 weeks.

11.In view of the partial modification of the award passed by the Tribunal, the appellant/Insurance Company is entitled to withdraw 20% of the total amount deposited in compliance with the interim order of this Court dated 23.10.2018 together with accrued interest if any. The



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remaining 80% together with accrued interest if any, shall be withdrawn by the claimants upon filing necessary application following the due process of law. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

P.B.BALAJI, J.,



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To

The Special District Judge,
(Motor Vehicle Accident Claims Tribunal),
Krishnagiri.

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