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C.M.A.No.1090 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1090 of 2019

and

C.M.P.No.3055 of 2019

M/s.Bajaj Allianz General
Insurance Company Ltd.,
K.M.A.Complex,
12-G, Ram Nagar,
Bye-Pass Road,
Madurai – 625 010.

... Appellant/ II Respondent

Vs.

1. Pichai Savari
 2. Periyannayagam (Died)
 3. R.Anjala
 4. John Francis S/o.Pichai Savari
 5. Sheela D/o.Pichai Savari
 6. Arockiyaraj S/o.Pichai Savari
- 6

...1st Respondent/Petitioner
...2nd Respondent/2nd Petitioner
...3rd Respondent/3rd Petitioner

...Respondents 4 to

(2nd Respondent died. Respondents 4 to 6 are brought on record as LR's of the deceased R2 viz.Periyannayagam vide Court order dated 11.09.2023 made in C.M.P.Nos.17176, 17179 and 17180 of 2023 in C.M.A.No.1090 of 2019)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the final award dated 30th of October, 2015, passed in M.C.O.P.No.4 of 2013, by the Motor Accidents Claims Tribunal, (in



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the Court of III Additional District Judge), Villupuram @ Kallakurichi.

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For Appellant : M/s.J.Michael Visuvasam

For Respondents : Mr.Mary Mahila
for R1, 2,3,4,5 & 6

Insufficient Address [R3]

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the final award passed in M.C.O.P.No.4 of 2013 dated 30.10.2015 on the file of Motor Accidents Claims Tribunal, Villupuram, Kallakurichi.

2. It is the case of the appellant that the first respondent's son namely Anthoni @ Anthoni Leo was working as a cleaner in the third respondent's vehicle JCB Excavator bearing Reg.No.PY-01-Z-1179. On 30.11.2015, due to the rash and negligent driving of the third respondent's driver, the said Anthoni was thrown out of the vehicle and the JCB ran over his body and due to which he died. Thereby, the respondents 1 and 2 filed a claim petition before the Tribunal claiming compensation to the tune of Rs.10,00,000/- and the Tribunal vide order dated 30.10.2015 awarded compensation to the tune of Rs.7,67,000/-. Challenging the same, the present appeal has been filed.



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3. The learned counsel for the appellant submits that though the seating capacity for the JCB vehicle is only for the driver, however, the cleaner of the JCB vehicle is not entitled for compensation. Hence, the award passed by the Tribunal as against the appellant / insurance company which is *per se* unsustainable. He further submits that though the monthly income for cleaner was only fixed at Rs.4000/- per month during the time of accident, the Tribunal fixed a sum of Rs.6500/- as monthly income adopting the multiplier at 18 and deducted 50% of salary towards personal expenses and awarded compensation which is highly excessive.

4. Per contra the learned counsel for the respondents 1, 2, 4, 5 and 6 submit that admittedly the deceased person was employed as a cleaner in the third respondent's vehicle. She further submits that the third respondent being the owner of the vehicle did not adduce any evidence to prove that the vehicle was not driven in a rash and negligent manner. In order to prove the negligence on the part of the driver, the respondents 1 and 2 i.e., father and mother of the deceased have adduced oral evidence and the First Information Report which is marked as Ex.P1, in which it is made clear that due to the rash and negligent



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driving of the driver of JCB, the deceased died. More so, no contra evidences were adduced by the owner of the vehicle as well as the appellant insurance company to prove their case before the Tribunal. Hence, she prayed to allow this appeal

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 1,2,4,5 and 6 and perused the materials available on record.

6. Admittedly, the deceased was aged at about 19 years and as per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459***, the notional income of the vegetable vendor has to be fixed at Rs.6,500/-. Taking into consideration all those facts, the Tribunal has rightly fixed a sum of Rs.6,500/- as monthly income and applying the multiplier method awarded compensation to the tune of Rs.7,67,000/- which cannot be interfered with. It is also seen that the premium of the insurance policy also covers the maintenance / operation of vehicle. Hence, the cleaner is also covered under the insurance policy. Upon perusing the oral and documentary evidences, the Tribunal has rightly passed



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the impugned award in favour of the deceased which cannot be interfered with.

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7. With the above observation, this appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order: Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accidents Claims Tribunal, III Additional District Judge, Villupuram
@ Kallakurichi
2. The Section Officer, V.R. Section, High Court, Madras.

M.DHANDAPANI,J



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