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1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2780 of 2019
and Cross Obj. No.No.49 of 2021

CMA.No.2780 of 2019:

Royal Sundaram Alliance Insurance Co. Ltd.,
12A, ATP Towers, 5th Floor,
Bye pass Road, Madurai.

.. Appellant

Vs.

1. Kavitha
2. Minor Sathish Kumar
3. Minor Dhinesh
(Minor respondents are represented by
next friend and guardian, first respondent)
4. Vasantha
5. P.Datchinamoorthi
6. M.Shanmugam

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 5.06.2017 in MCOP.No.533 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court) Erode District at Bhavani.

For Appellant : Mr.S.Elveera Ravindran

For Respondents : Mr.C.Kulanthaivel RR1 to 4
R5 & R6 – NRN

**CROSS OBJECTION NO. 49 OF 2021**

1. Kavitha
2. Minor Sathish Kumar
3. Minor Dhinesh
(Minor respondents are represented by
next friend and guardian, first respondent)
4. Vasantha

.. Cross Objectors

- Vs -

Royal Sundaram Alliance Insurance Co. Ltd.,
12A, ATP Towers, 5th Floor,
Bye pass Road, Madurai.

2. P.Datchinamoorthi

3. M.Shanmugam

... Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to set aside the decree and judgment dated 5.06.2017 in MCOP.No.533 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court) Erode District at Bhavani.

For Cross Objectors : Mr.C.Kulanthaivel

For Respondents : Mr.K.Vinod R1

COMMON JUDGMENT

The civil miscellaneous petition has been by the insurance company to set aside the decree and judgment dated 5.06.2017 in MCOP.No.533 of



2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court) Erode District at Bhavani.

Cross Objection has been filed by the claimants to set aside the decree and judgment dated 5.06.2017 in MCOP.No.533 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court) Erode District at Bhavani.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

On 23.03.2012 at about 01.15 pm. The deceased drove his friend's motor cycle bearing Reg. No.TN 36 P 9970 on Sathy to Bhavani Main Road. at that time, a lorry bearing Reg. No.TN 66 C 5650, owned by the 5th respondent, driven by its driver, in a rash and negligent manner, hit against the motor cycle, in which deceased was driving. Due to the said accident, the deceased Vadivel sustained grievous injuries and died on the spot. Thereafter, the dependents of the deceased filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.15/- lakhs.



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3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimants, three witnesses were examined viz., PW1 to PW3 and marked 6 documents viz., Exs.P1 to P6, On the side of the Insurance company, two witnesses were examined and 8 documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.14,53,0000/- in favour of the claimants. Aggrieved by the same, the appellant/insurance company, has filed this appeal before this Court.

4. The learned counsel for the appellant/insurance company submitted that the Tribunal has failed to appreciate that the deceased riding his motor cycle in the wrong side rashly and negligently and suddenly, hit against the lorry, which was proceeding in its path. There was no independent eye witness examined by the claimants. The Tribunal ought to have found that the accident was caused only because of the the deceased. Without considering the entire fact, the Tribunal has awarded huge compensation to the claimants, which warrants interference of this Court.



5. Per contra, the learned counsel appearing for the respondents/claimants/cross objectors submitted that the Tribunal erred in apportioned the negligence of 30% on the deceased on the basis of misconstruing the evidence of PW1 and PW2 as well relying upon the rough sketch marked in Ex.R2. The claims Tribunal failed to properly consider that the deceased was aged 33 years at the time of the accident on 23.03.2012 and working in bricks chamber. The claims Tribunal has applied the judgment of Hon'ble Apex Court in the case of Syed sadiq to decide the notional income of the deceased wherein the accident took place in the year 2008. Hence, the notional income fixed for the deceased as bricks chamber worker applicable to the relevant year of accident which is 2012 is to be considered.

6. The learned counsel further submitted that the Tribunal has not properly compensate towards loss of love and affection for minor children and aged mother of the deceased. Hence, this Court may set aside order passed by the Tribunal and enhance the compensation.

7. Heard the learned counsel for the appellant as well as the respondents and also perused the materials available on record before this



Court.

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8. The factum of the case are not in dispute. The manner of the accident is also not in dispute. The only issue that arises for consideration is with regard to the quantum of compensation awarded by the Tribunal under various heads, according to the appellant/insurance company, which is highly excessive.

9. With regard to the accident, one Moorthy has lodged a complaint against the lorry driver and the FIR was registered by Bangalapudur Police Station in Cr.No.120 of 2012. After enquiry, the Police has closed the FIR as charge abates as the accident had happened due to rash and negligent riding of the deceased Vadivel. During trial, RW1, who is the Manager of the insurance company, has spoken only about the final report filed by the Police for dropping the further action in the case as charge abated. It is pertinent to note that RW1 is not an eyewitness. The mere filing of final report as charge abates cannot give substantial proof as to rash and negligent driving on the part of the deceased. PW1 has clearly stated that the accident had occurred only due to rash and negligent driving of the



driver of the lorry. PW2 and PW3 have also well corroborated the version of PW1, have clearly deposed that the accident had happened only because of the negligence of the lorry driver. It is pertinent to note that PW1 is not an eyewitness and PW2 and PW3 have clearly admitted in their cross examination that they came to the scene of occurrence only after the noise, which clearly shows that they would not have seen the occurrence. On the other hand, the driver of the lorry has not produced his driving license before the trial Court and the claimants have also not marked the driving license of the deceased. Further, the motor vehicles inspectors report of the motor bike ridden by the deceased was also not marked by the claimants side. All these things clearly show that the possibility of the deceased also contributed to the accident. Even assuming that the deceased had ridden his motor cycle on the wrong side or in the middle of the road, the lorry driver who was driving a heavy vehicle ought to have taken reasonable care and caution to avoid the accident.

10. The Tribunal has rightly come to the conclusion that the accident had occurred both for the driver of the lorry and the rider of the two wheeler/deceased. Further, the age of the deceased is 33 years at the time of



the accident and the Tribunal has fixed the monthly income of Rs.6000/- per annum and adopted "16" multiplier followed by the decision rendered by the Hon'ble Apex Court in the case of *Sarla Verma*, which is perfectly in order. The amount of Rs.60,000/- towards loss of love and affection awarded to the children and the mother of the deceased is reasonable. The Tribunal has rightly passed award under other heads which are just and reasonable, which needs no interference.

11. With the above discussion, both the appeal and the cross appeal are dismissed. No costs. The compensation awarded by the Tribunal is confirmed and the appellant/insurance company is directed to pay compensation as awarded by the Tribunal to the claimants with 7.5% interest per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimants through RTGS within a period of two weeks thereafter.

27.11.2023

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Index : Yes

Speaking Order : Yes

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To

The Motor Accidents Claims Tribunal (IV Additional District Court) Erode
District at Bhavani.



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10

M.DHANDAPANI,J.

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