IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2411 of 2018 and
C.M.P.No.18381 of 2018

The United India Insurance Co. Ltd.,
Divisional Office – I
104/A, Peramanur Main Road,,
Salem – 7. ...Appellant

Vs.

1. Minor Keerthika
2. Minonr Kaviya
   Rajathi (Deceased)
3. Kuppusamy
4. Pangayar Selvi ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 15.11.2017 passed by the learned Motor Accident Claims Tribunal, (Special District Judge), Salem, in M.C.O.P.No.657 of 2012.

For Appellant	:	Mr.C.Paranthaman
For Respondents	:	No Appearance

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JUDGMENT

This appeal is filed challenging the fair and decretal order dated 15.11.2017 passed by the learned Motor Accident Claims Tribunal, (Special District Judge), Salem, in M.C.O.P.No.657 of 2012.

2 The appellant is the Insurance Company, respondents 1 to 3 are claimants and fourth respondent is owner of the offending vehicle.

3 The claimants filed claim petition in M.C.O.P.No.657 of 2018 claiming compensation of Rs.20,00,000/- for the death of Murugan, who is father of the first and second claimants and son of the other two claimants.

4 The claim petition was contested by the appellant/Insurance Company and they filed detailed counter denying all the allegations apart from disputing the liability. The fourth respondent, who is the owner of the vehicle remained ex-parte before the Tribunal.

5 Before the claims Tribunal, on the side of the claimants P.Ws.1 and 2 were examined and Exs.P1 to P5 were marked. On the side of the appellant/Insurance Company, R.W.1 to R.W.4 were examined and Exs.R1 and

2 were marked.

6 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the appellant/Insurance Company by fixing contributory negligence of 90% on the Driver of the offending vehicle and 10% on the deceased and awarded a sum of Rs.12,33,160/- as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount. Questioning the liability and the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

7 Learned counsel appearing for the appellant/Insurance Company would submit that the deceased himself is a tort feasor and he also contributed to the accident and the Driver of the offending vehicle is not responsible for the accident. Hence the claimants are not entitled to get compensation. Even though the Tribunal accepted the contributory negligence on the part of the deceased, but, erroneously fixed only 10% on the deceased and fixed remaining 90% on the Driver of the offending vehicle, which is not legally sustainable. Therefore the award passed by the Tribunal is liable to be set aside.

8 Despite service effected on the claimants through paper publication, none appeared on behalf of them.

9 Heard the learned counsel appearing for the appellant and perused the materials available on record.

10 The first and second claimants are minor children of the deceased when the accident took place on 08.04.2012. In order to prove the accident, the claimants examined eye witness P.W.2, who has clearly stated that the accident occurred only due to the rash and negligence driving of the Driver of Mini Lorry bearing Reg.NoTN 39 AC 9339. Even though Driver of the offending vehicle examined and denied the allegations made by the claimants, but to prove the version of R.W.1, no Motor Vehicle inspection report has been filed for neither of the vehicle. The offending vehicle is Mini Lorry and the deceased driven two wheeler and considering the facts and circumstances of the case, the Tribunal fixed 10% liability on the deceased and remaining 90% on the Driver of the offending vehicle and foisted the liability on the appellant/Insurance Company. Even though FIR registered against the deceased, considering the evidence of P.W.2 eye witness, who has clearly stated that due to the rash and negligent driving of the Driver of the offending vehicle only the accident had occurred and

Considering the facts and circumstances of the case and also on reading of the order of the Tribunal, this Court does not find any perversity in fixing the 90% negligence on the part of the Driver of the offending vehicle.

11 Coming to the quantum of compensation, there is no dispute with reference to the age and notional income of the deceased and the Tribunal rightly adopted multiplier method and awarded the compensation, which is fair, just and reasonable and the same need not be interfered with.

12 In view of the above, the Civil Miscellaneous Appeal stands dismissed. The appellant/Insurance Company is directed to deposit the compensation awarded by the Tribunal along with 7.5% interest less the amount already deposited within a period of three weeks from the date of receipt of a copy of this order. On such deposit being made, The Tribunal is directed to verify as to whether the minor claimants attained majority and also the fourth claimant Viz. Kuppusamy s/o Vickaraman is alive or not, if they attained majority, credit the award amount as per the apportionment made by the Tribunal directly to the account of the claimants without any formal application as per the decision of the Division Bench of this Court reported in *2016 (2) LW*

561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others). If the minor claimants not attained majority, keep the shares of the minors in any one of the Nationalised Bank and pay the interest periodically to the guardian or under whose custody the minors are being kept and after the minors attaining majority, the amount shall be paid to them. Further, if the said fourth claimant is not alive, pay the shares of the fourth claimant to the children of the deceased viz. the first and second claimants equally and if the fourth claimant is alive, credit his shares directly in his account immediately without any further delay. Consequently connected miscellaneous petition is closed. However, there shall be no order as to costs.

12.09.2023

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Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal/
   Special District Judge, Salem.

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

P.VELMURUGAN. J.,

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