IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.4062 of 2019

1.Karolin
2.Davidson ... Appellants

Vs.

1.A.Shanmugavel
2.S.P.Sakthivel

3.The Oriental Insurance Company Limited,
By its The Branch Manager,
No.54, R.V.K. Building, 1st Floor,
Udumelpet,
Tiruppur District. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair order and award passed in M.C.O.P.No.414 of 2013 dated 10.01.2018 on the file of the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam on the ground of limiting the liability 75 : 25 on the appellants, further restricting the amount to Rs.15,00,000/- by holding that the appellants have only asked for Rs.15,00,000/- and praying to set aside the same.

For Appellants : Mr.A.Sundaravadhanan

For Respondents : Mr.M.N.Balakrishnan [R1]
No appearance [R2]
Mr.R.Sivakumar [R3]

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JUDGEMENT

Challenging the award passed by the Motor Accident Claims Tribunal (Sub Court), Sathyamangalam in M.C.O.P.No.414 of 2013 dated 10.01.2018 on the ground of limiting the liability 75 : 25 on the appellants, further restricting the amount to Rs.15,00,000/- by holding that the appellants have only asked for Rs.15,00,000/-, the appellants have filed the present appeal.

2. It is the case of the claimants that, on 17.05.2012, when the deceased along with his neighbour was travelling in the two wheeler bearing Reg.No.TN 41 Y 8844 at about 09.45 p.m., at that time, the first respondent had driven the vehicle bearing Reg.No.TN 39 J 8649 in a rash and negligent manner, without following the rules of the road, dashed against the vehicle driven by the deceased, due to which, the deceased sustained grievous injuries and died on the spot, resulting in the

registration of Crime No.140 of 2002. Therefore, claiming compensation at the hands of the third respondent/the insurer of the offending vehicle, the claim petition has been preferred by the claimants.

3. Before the Tribunal, the claimants have examined two witnesses viz., P.W.1 and P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal appreciating the oral and documentary evidence held that, while fastening the liability and negligence of 75% on the offending vehicle, fastened the negligence and liability to the extent of 25% on the deceased and while arrived at a compensation of Rs.30,63,808/- and computed 75% payable by the third respondent/insurer to the tune of Rs.22,97,856/-. However, directed the payment of award only in a sum of Rs.15,00,000/- as the claimants had claimed only a sum of Rs.15,00,000/- and had paid court fee only to the said extent. Challenging the said reduced compensation, the present appeal has been filed by the claimants.

4. The learned counsel appearing for the appellants/claimants submitted that, when the Tribunal has arrived at the compensation payable at the hands of the third respondent/insurance company at Rs.22,97,856/- though the claimants had prayed only for a compensation of Rs.15,00,000/-, the Tribunal ought not to have restricted the claim only to Rs.15,00,000/- but should have ordered payment of Rs.22,97,856/- and should have directed the claimants to pay the court fee to the extent of the additional compensation awarded by the Tribunal. However, restricting the claim only to the extent of the court fee paid is erroneous. Therefore, he prays that the compensation amount awarded by the Tribunal may be ordered by this Court.

5. Per contra, the learned counsel appearing on behalf of the third respondent/insurance company submitted that, the fixation of liability at 75% : 25% against the offending vehicle and the deceased is not in dispute. However, in view of the fact that the claimants had restricted their claim only to a sum of Rs.15,00,000/-, the Tribunal has directed the third respondent/ insurance company to pay the said sum, which cannot be held to be erroneous. Therefore, he prays that no interference is warranted.

6. Heard the learned counsel appearing for the appellants, the learned counsel appearing on behalf of the first respondent and the learned counsel appearing on behalf of the third respondent and perused the materials available on record.

7. The only issue which arises for consideration in the present appeal is whether the compensation computed by the Tribunal ought to be awarded or is it only the claim which is made by the claimants that is to be awarded.

8. There could no contra view of the fact that the Motor Vehicles Act is a benevolent legislation, which is provided for extending monitory relief to the aggrieved family due to the loss of its breadwinner. In the case on hand, the deceased is the breadwinner of the family, whose untimely death has resulted in the loss of earnings to the claimants. The claimants have made a claim for a sum of Rs.15,00,000/- by paying the necessary court fee. It is to be pointed out that the claimants would not be aware of the manner, in which the compensation is computed by the Tribunal and

an award is passed. Therefore, the claim has been made by the claimants to that extent. However, the claimants have not anywhere restricted their claim only to the said sum of Rs.15,00,000/-. While analyzing the oral and documentary materials available on record and arriving at a compensation of Rs.30,63,808/-, of which, 75% has to be borne by the third respondent/insurance company, which works out to a sum of Rs.22,97,856/-, necessarily the proper approach of the Tribunal ought to have been to direct the third respondent/insurance company to deposit the said sum and further, to direct the claimants to pay the court fee in respect of the enhanced portion of compensation wherein after the amount could be realized to the credit of the claimants. However, without doing so and in the absence of the claimants restricting their claim to Rs.15,00,000/-, it is not right on the part of the Tribunal to restrict the claim to Rs.15,00,000/-, though it had awarded a sum of Rs.22,97,856/- being the 75% payable by the third respondent/insurance company. Therefore, while the compensation computed by the Tribunal is just and proper, however, the order to the extent the Tribunal has restricted the claim only to a sum of Rs.15,00,000/- though it has awarded a sum of Rs.22,97,856/- is erroneous and the same deserves to be interfered with.

9. Accordingly, for the reasons aforesaid, the Civil Miscellaneous Appeal is allowed and the compensation as originally quantified by the Tribunal of Rs.22,97,856/- is ordered to be paid by the third respondent/insurance company. The third respondent/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.414 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount as per the apportionment, directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of requisite Court fee on the compensation. There shall be no order as to costs in the present appeal.

23.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

1.The Motor Accident Claims Tribunal (Sub Court), Sathyamangalam.
2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.4062 of 2019

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