IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

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

C.M.A.No.359 of 2019
and
C.M.P.No.1293 of 2019

The Oriental Insurance Co. Ltd.
Amudham Complex, II Floor,
Mettur Main Road, Omalur,
Salem District, Salem – 636 455. ... Appellants

Vs.

1. Vijayalakshmi
2. Subha
3. Minor Indumathi
4. Minor Sowmya
5. Minor Jagajothi
   Respondents 3 to 5 are Minors rep. by their mother, guardian & next friend Vijayalakshmi
6. R.Padmanaban
7. The New India Assurance Co. Ltd., Divisional Office, Trichy Main Road, Gugai, Salem – 636 006.
8. Alamelu
   6th & 8th respondents remained *ex-parte* and notice dispensed with for them ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the

Motor Vehicles Act, 1988 to set aside the judgment and decree passed by the tribunal in the above M.C.O.P.No.919 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem dated 13.02.2018.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.P.Mani for R1 to R5
Ex parte for R6 & R8
Mr.J.Michael Visuvasam [R7]

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JUDGEMENT

The Civil Miscellaneous Appeal filed to set aside the judgment and decree passed by the tribunal in the above M.C.O.P.No.919 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem dated 13.02.2018.

2. It is the case of the claimant that on 15.09.2012 at about 10.50 am.,when the deceased was riding his two wheeler bearing Registration No.TN 30 J 9347 along with his brother-in-law namely Sakthivel / pillion rider, at that time a car bearing registration No.TN 38 BM 9420 belonging to the first respondent being driven by its driver in a rash and negligent manner suddenly applied brake and due to the said act, the rider and pillion rider of the motor cycle had fallen down and the rider

sustained severe head injuries on head resulting in his death on 17.09.2012, even after taking treatment in the hospital. Claiming compensation for a sum of Rs.25,00,000/-, the legal heirs of the deceased have filed a claim petition.

3. Before the Tribunal, the claimants examined P.W.1 to P.W.5 and marked Exs.P.1 to Ex.P.24. The Respondents examined R.W.1 and R.W.2 and marked Ex.R1. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.13,82,120/- in favour of the claimants and the mother of the deceased. Challenging the same, the fourth respondent / insurer of the deceased vehicle is before this Court.

4. The learned counsel appearing for the appellant / insurer of the deceased vehicle submits that though the said accident happened due to the rash and negligent driving of the driver of the car, however, the Tribunal fastened 25% negligence as against the appellant / insurer of the deceased vehicle which is *per se* unsustainable. Though the deceased is the owner cum occupant of the motor cycle and he is not coming under the third party and only personal accident coverage of Rs.1 lakh can be

awarded for his death. However, the tribunal awarded a compensation of Rs.13,82,120/- and fixed 75% - 25% negligence on the driver of the 6th respondent's car and the deceased, which is not sustainable.

5. The learned counsel appearing for the claimants 1 to 5 / respondents 1 to 5 submits that though the accident had occurred due to the rash and negligent driving of the driver of the car and the F.I.R. has been registered as against the driver of the 6th respondent's car, the Tribunal has fastened 25% negligence as against the deceased which is *per se* unsustainable. Hence, this Court may fix the entire negligence as against the driver and insurer of the car and pass appropriate orders.

6. The learned counsel appearing for the 7th respondent / insurer of the 6th respondent's car submits that while the driver of the 6th respondent's car was proceeding in national highways, the deceased who had driven the motor cycle hit the 6th respondent's car and sustained fatal injuries and lost his life. Though, it is clear from the deposition of R.W.2 that due to the rash and negligent driving of the driver of the motor cycle the said accident had happened, however without considering the said

facts the Tribunal has fastened 75% negligence as against the 7^{th} respondent / insurer of the 6^{th} respondent's car which is *per se* unsustainable.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5 and the learned counsel appearing for the seventh respondent and perused the materials placed on record.

8. The major grievance of the appellant is that the deceased is the owner of the motor cycle, who was an occupant at the time of accident and he is not entitled to claim third party insurance as against its own insurer since the deceased does not come under the purview of third party and if at all the claimants are entitled to any compensation it is only a sum of Rs.1 lakh towards personal accident coverage.

9. It is to be pointed out that negligence is fixed at 75% and 25% on the driver of the car and the deceased. Therefore, to the extent of 25% liability fixed on the vehicle in which the deceased was travelling, which

was insured with the appellant, the claimants would be entitled only to a sum of Rs.1 Lakh under the personal accident cover, since the deceased was the owner of the motor cycle and would not be entitled to any further compensation from the hands of the appellant.

10. However, in respect of the balance compensation of 75% which is fixed on the owner and insurer of the car, the claimants would be entitled to the said compensation and the owner and insurer of the car would be jointly and severally liable to pay the said compensation.

11. There is no quarrel with the quantum of compensation awarded by the Tribunal and, therefore, this Court is not entering into the quantum of compensation awarded by the Tribunal.

12. Further, it is pertinent to note that when the claim petition was filed in the year 2013, the respondents 3 to 5 were minors, aged about 15, 12 & 10 years respectively. Now, they would have attained majority. Though no application has been taken out to declare them as major, this

Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the respondents 3 to 5 as major and discharges their guardian Vijayalakshmi from the guardianship. The Registry shall carry out the necessary amendments.

13. Accordingly, the award passed by the Tribunal is modified and the appeal is allowed in part by directing the appellant-insurance company to deposit the compensation of Rs.1 Lakh awarded by this Court to the credit of MCOP.No.929 of 2013. Any amount deposited in excess thereof, the appellant is at liberty to withdraw the same by filing appropriate application. The 7th respondent has not preferred any appeal, the award of the tribunal passed as against the 7th respondent imposing 75% negligence is confirmed and the 7th respondent is directed to deposit the compensation awarded to the extent of 75% of its share to the credit of MCOP.No.919 of 2013 within a period of four weeks from the date of receipt of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1 to 4/claimants 1 to 4 through RTGS within

a period of two weeks thereafter. Further the Tribunal is directed to deposit the share of the 5th respondent minor in an interest heeding fixed deposit with anyone of the nationalized banks until she attains majority and the interest derived from out of the said deposit shall be paid to the mother of the minor claimant / Vijayalakshmi every quarter to be utilized for the welfare of the said minor claimant after attaining majority. It is open to the minor claimant to file necessary application to establish the majority, at which point of time the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the firth respondent minor claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2023

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Index : Yes / No
Speaking order / Non speaking order
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal (Special District Judge) at Salem
2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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