BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	08.11.2023
Pronounced on	22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.934 of 2019
and
C.M.P.(MD)No.12586 of 2019

National Insurance Company,
Rep. By its Branch Manager,
Door No.73, Near Collector Office,
Perunthurai Road, Erode,
Erode District. ... Appellant / 2nd Respondent

-vs-

1.Revathi

2.Minor R.Vibu Sutha
[Minor rep. by his mother and natural guardian
1st Respondent]

3.Chellammal ... Respondents/Petitioners 1-3

4.C.Varadarajan ... Respondent / 2nd Respondent

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the Fair and Decretal order dated 27.04.2019 made in

M.C.O.P.No.142 of 2017 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Palani.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.C.Gangai Amaran for R1 & R3

Minor for R2

No Appearance for R4

JUDGMENT

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.No.142 of 2017 by the Motor Accident Claims Tribunal (Additional District Judge), Palani, dated 27.04.2019, the Insurance Company/appellant filed this appeal on the ground of negligence and quantum.

2. The respondents 1 to 3 are the legal representatives of the deceased Ranganathan and they filed claim petition in M.C.O.P.No.142 of 2017 claiming compensation of Rs.75,00,000/- for the death of the said Ranganathan in the road transport accident taken place on 03.12.2015.

3. Before the Tribunal, the insurance company has filed counter statement disputing the manner of the accident and *interalia* contended that the accident had

occurred due to the negligence on the part of the deceased and he had invited the accident.

4. Before the tribunal, the appellant has marked Ex.R1 rough sketch and also the policy copy as Ex.R2 and staff from the insurance company was examined as R.W.1. On behalf of the claimants, the first claimant was examined as P.W.1 and one occurrence witness was examined as P.W.2 and Ex.P1 to Ex.P9 were marked.

5. After consideration of both oral and documentary evidence, the tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry, which is insured with the appellant insurance company. Consequently, held that both the owner of the lorry as well as the appellant insurance company are jointly and severally liable to pay the compensation. The tribunal based upon Ex.P5 and Ex.P6-salary certificate issued by the employer, compensation has been awarded. Aggrieved against the award, the insurance company has filed the present appeal.

6. The learned counsel for the appellant / insurance company on the point of negligence and quantum drew our attention to Ex.R1 rough sketch and also the evidence of P.W.2, the occurrence witness and would contend that as per the

driving licence-Ex.P9, the date of birth of the deceased is 10.06.1965 and as per Ex.P1-FIR, the date of the accident is 03.12.2015 and hence, on the date of accident, the age of the deceased was 50 years and 6 months and therefore, the correct multiplier is '11', but the Tribunal has applied the multiplier as '13'. He further contended that at the time of accident, the deceased was not wearing helmet as per the admission of P.W.2 and hence, necessary amount has been fixed for contributory negligence.

7. The learned counsel for the appellant fairly contended that the Tribunal has not awarded any amount for consortium to the minor claimant.

8. The sole point that was urged by the learned counsel for the appellant/Insurance Company is that at the time of the accident, the deceased was not wearing helmet and hence, on the part of the deceased, there is a contributory negligence. On the computation of compensation as damages, we find that the award passed by the Tribunal is just and fair and hence, the same is hereby confirmed

9. Before the Tribunal, on the point of contributory negligence on the part of the deceased before the Tribunal, it was urged that as per Ex.P.2-charge sheet, the driver of the offending vehicle is charge sheeted and on perusal of Ex.R.1-

rough sketch and also taking note of the contents of Ex.P.1-FIR and Ex.P.2-charge sheet, this Court found that the version of P.W.1 with regard to the rash and negligent driving on the part of the driver of the offending vehicle is established. At the same time, we have also noticed that the occurrence witness-P.W.2 during the cross examination by the Insurance Company had categorically admitted that at the time of the accident, the deceased was not wearing the helmet and hence, we find that since the version of P.W.2 was duly corroborated by documentary evidence of Ex.P.1, Ex.P.2 and Ex.R.1 while we uphold that the accident had taken place due to the negligence on the part of the driver of the offending vehicle and the deceased appears to have drove the vehicle without helmet. As admitted by P.W.2 and hence, 10% has to be fixed as a contributory negligence. Accordingly, the negligence on the part of the driver of the offending vehicle is fixed at 90% and on the part of the deceased is fixed at 10% and with regard to the calculation of the salary and also multiplier method and 30% of future prospects and loss of estate, transportation and funeral expenses are in accordance with the judicial pronouncement made by the Hon'ble Supreme Court, we find that the compensation arrived at by the Tribunal is hereby confirmed. Accordingly, 10% is deducted from the award amount.

Deduction 10%	=	Rs.66,92,562/- (-) Rs.6,69,256/-
Compensation	=	Rs.60,23,306/-

10. In fine, the Civil Miscellaneous Appeal stands partly allowed and the award, dated 27.04.2019 made in M.C.O.P.No.142 of 2017 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Palani, is hereby modified and the compensation is reduced from **Rs.66,92,562/-** to **Rs.60,23,306/-** with interest at the rate of 7.5% per annum along with proportionate interest and costs.

11.The appellant / Insurance Company is directed to deposit the modified award amount of **Rs.60,23,306/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Insurance Company.

12.On such deposit being made, the respondents 1 and 3/ claimants 1 and 3 are permitted to withdraw their respective award amounts, along with interest and costs as apportioned by the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minor - second claimant, the Tribunal is directed to deposit her share amount in any one of the Nationalised Banks till she attain the age of majority. Till then, the first claimant herein - mother of the minor shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minor. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

[T.K.R., J.] [P.B.B., J.]
22.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal
Additional District Judge, Palani

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

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