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C.M.A.No.68 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.68 of 2021
and C.M.P.No.545 of 2021**

Rajendran

... Appellant/Respondent

Vs.

1.M.Sarojini

2.M.Artharkalaiselvan

3.M.Ravikumar

... Respondents /Petitioners

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2020 made in M.C.O.P.No.582 of 2015 on the file of the III Additional District and Sessions Court, Tiruppur, Dharapuram.

For Appellant : Mr.M.Guruprasad

For Respondents : No appearance

J U D G M E N T



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Aggrieved by the quantum of compensation and the liability fixed by the Tribunal against the appellant, who is the owner-cum-driver of the vehicle, while passing the award dated 24.09.2020 made in M.C.O.P.No.582 of 2015, the appellant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The respondents/claimants are the wife and sons of late Manickam. According to the respondents, on 10.12.2014, at about 08.15 p.m., the deceased Manickam was walking on the left side of Dharapuram to Pollachi main road near Balu Spinning Mill Unit-II, after his work. At the time, the rider of the motorcycle bearing Registration No.TN-33-V-9279 drove the vehicle in a rash and negligent manner and hit the deceased behind and caused accident. In the accident, the deceased sustained severe injuries on his right leg, left wrist, forehead, right shoulder and multiple injuries all over the body. Immediately, he was taken to the Government Hospital, Dharapuram and thereafter, he was admitted at



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Ramakrishna Hospital, Coimbatore, however, he succumbed to injuries on 12.12.2014. Under these circumstances, the respondents/claimants have filed this claim petition before the Tribunal seeking for compensation.

3. The Tribunal, after considering the facts and circumstances and based on the materials available on record, came to a conclusion that the accident was caused by the appellant due to rash and negligent driving of the driver of the motor cycle. Having rendered such a finding, the Tribunal proceeded to determine the compensation and awarded a total compensation of Rs.4,62,000/- and the above compensation was directed to be paid by the appellant with interest at the rate of 7.5% per annum from the date of filing the petition. Challenging the liability fixed against the appellant, he has preferred this appeal.

4. The learned counsel appearing for the appellant submitted that the Tribunal ought to have dismissed the entire claim since the accident is caused due to the negligent act of the deceased. The Tribunal failed to



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deceased as 65 years, without any proof of work and income, the Tribunal awarded a sum of Rs.3,92,000/- as loss of dependency is purely mistake of fact and the other heads awarded by the Tribunal is also on the higher side.

5. Though notice was served and paper publication was effected on the respondents, there is no representation for the respondents.

6. Considering the pendency of this appeal, this Court is inclined to dispose of this appeal based on the materials available on record.

7. The Tribunal, on the strength of evidence adduced by P.W.1/wife of the deceased and P.W.2, who was an eye-witness to the accident, came to the conclusion that the accident occurred due to the rash and negligent driving of the appellant herein. Though it was vehemently contended on behalf of the appellant/rider of the vehicle that the deceased was under the influential of alcohol and there is an element of contributory negligence on the part of the deceased, the Tribunal, after going to the



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accident Register/Ex.R2 and Ex.P3/Post-mortem Certificate where there is a specific mention about non-presence of alcohol, came to a conclusion that the deceased was not under the influential of alcohol at the time of accident. That apart, Ex.P1/copy of F.I.R reveals that the Police has registered the case upon the statement of complaint received from the second respondent, who is the son of the deceased which corroborated with the evidence of P.W.2 about the manner in which the accident took place. Therefore, considering the materials placed by both sides, the Tribunal came to a conclusion that the appellant has driven the vehicle in a rash and negligent manner causing the accident. With respect to quantum of compensation, it is seen that the deceased was working as security staff at Mill and thereby, the notional income was arrived at Rs.7,000/- per month and the annual income of the deceased was assessed as Rs.7,000/- X 12 = Rs.84,000/-. Deducting 1/3rd towards personal expenses of the deceased and applying the multiplier of "7" as per the *National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)*, the Tribunal arrived at a sum of Rs.3,92,000/- (Rs.56,000/- X 7 = Rs.3,92,000/-) as loss of dependency and the other quantum of



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compensation awarded by the Tribunal towards funeral expenses, transport expenses, loss of love and affection and consortium appears to be reasonable. Hence, the award dated 24.09.2020 made in M.C.O.P.No.582 of 2015 by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, is hereby confirmed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

26.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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Tiruppur, Dharapuram.

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V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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