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CMA NO.660 OF 2022 & CROS.OBJ.69 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.660 OF 2022

AND

CMP NO.4697 OF 2022 IN CMA NO.660 OF 2022

AND

CROS.OBJ.NO.69 OF 2022

CMA NO.660 OF 2022

The Branch Manager
Reliance General Insurance Company Limited
Branch Office, Sakthi Super Market,
3rd Floor, 408, Perundurai Road,
Erode – 638 011.

... Appellant /
2nd Respondent

Vs.

1.R.Ranjitham W/o. Late Ramesh
2.Minor R.Karthick S/o. Late Ramesh
3.Minor R.Menaka D/o. Late Ramesh
4.Chinnathayee W/o. Ponnusamy
(Minors 2 and 3 represented by their
N.F.G. / Mother 1st Respondent)

... Respondents 1-4 /
Petitioners

R.Vinoth (died)
5.Raja S/o. Subban

... 5th Respondent /
3rd Respondent



CMA NO.660 OF 2022 & CROS.OBJ.69 OF 2022

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.244 of 2019 dated 23.08.2021 on the file of Motor Accidents Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.SP.Yuaraj
1 to 4

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1.R.Ranjitham W/o. Late Ramesh
2.Minor R.Karthick S/o. Late Ramesh
3.Minor R.Menaka D/o. Late Ramesh
4.Chinnathayee W/o. Ponnusamy
(Minors 2 and 3 represented by their
N.F.G. / Mother 1st Respondent)

... Cross Objectors /
Respondents 1-4 /

Vs.

1.The Branch Manager
Reliance General Insurance Company Limited
Branch Office, Sakthi Super Market,
3rd Floor, 408, Perundurai Road,
Erode – 638 011.

... 1st Respondent /
Appellant

R.Vinoth (died)



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2.Raja S/o. Subban

... 2nd Respondent /
5th Respondent

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PRAYER: Cross Objection filed under Order 41 Rule 22 of Code of Civil Procedure for enhancement of the compensation awarded in the judgment and decree dated 23.08.2021 made in M.C.O.P.No.244 of 2019 on the file of Motor Accident Claims Tribunal / Special District Court for Motor Accident Claim Cases, Krishnagiri.

For Cross Objectors: Mr.SP.Yuaraj
For Respondent-1 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Civil Miscellaneous Appeal and Cross Objections are at the instance of the insurance company and the claimants.

2.Challenge is to the Award of the Motor Accidents Claims Tribunal, Krishnagiri, made in MCOP No.244 of 2019 dated 23.08.2021.



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3.The claimants sought for a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs Only) for the death of one Ramesh in a motor accident that occurred on 01.07.2018. According to the claimants, when the said Ramesh was riding his motorcycle on the Thirupattur to Singarapettai Road towards Singarapettai at around 04.30 p.m, the first respondent in the Claim Petition namely R.Vinoth who was riding his motorcycle bearing Registration No.TN24-AL-2288 in the opposite direction drove it in a rash and negligent manner and dashed against the motorcycle that the deceased was riding. As a result of the impact, the deceased was thrown off from the vehicle, sustained vital injuries and died on the spot. Attributing negligence on the part of the rider of the motorcycle bearing Registration No.TN24-AL-2288 as the cause of the accident and contending that the deceased was earning about Rs.40,000/- per month, the claimants sought for compensation of Rs.50,00,000/-.

4.The claim was resisted by the insurance company contending that the rider of the two wheeler bearing Registration No.TN24-B-4215 was equally responsible for the accident and hence, the insurance company cannot be mulcted with the liability to pay the entire



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Award amount. The age and the income particulars were denied and the claimants were put to strict proof of the same.

5.At trial, the FIR was marked as Ex-P.1 and final report was marked as Ex-R.2. P.W.2 was examined as an eye witness to the accident. It should be noted here that P.W.2 was a pillion rider also.

6.The Tribunal, on the question of negligence, relied upon the evidence of P.W.2 in preference to the FIR that was lodged by the father of the first respondent in the Claim Petition. The Tribunal also took into account the fact that the father of the first respondent who was impleaded as third respondent has not appeared to contest the proceedings. On the quantum, the Tribunal took the monthly income at Rs.9,000/- and added 40% towards future prospects, deducted 1/4th for his personal expenses and computed the loss of dependency at Rs.19,27,800/-. The Tribunal also awarded a sum of Rs.40,000/- each to the four claimants towards loss of consortium and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses respectively. On the said conclusion, the Tribunal fixed the total compensation at Rs.21,17,800/-.



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7. Aggrieved, both the insurance company is on appeal and the claimants have filed cross objections.

8. We have heard Mr.M.B.Raghavan, learned counsel appearing for the insurance company and Mr.SP.Yuaraj, learned counsel appearing for the claimants. The fifth respondent, the owner of the offending two wheeler, has remained *exparte*.

9. Mr.M.B.Raghavan, learned counsel appearing for the insurance company would vehemently contend that the Tribunal was not right in relying upon the evidence of P.W.2 and concluded that the entire negligence was on the part of the first respondent in the Claim Petition. He would submit that both the vehicles, being two wheelers and both the riders having died, the Tribunal ought to have apportioned a certain amount of negligence to the rider of the two wheeler bearing Registration No.TN24-B-4215 also.



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10.Contending contra, Mr.SP.Yuaraj, learned counsel appearing for the claimants would submit that since the FIR has been given by the father of the first respondent in the Claim Petition before the Tribunal, the same is bound to be tainted and hence, the Tribunal was justified in taking the evidence of P.W.2 in preference to the FIR and the Charge Sheet. He would also point out that fixation of monthly income at Rs.9,000/- for an accident that took place in 2018 is too low.

11.We have considered the rival submissions.

12.We must point out that we see considerable force in the submissions of both the counsels regarding negligence as well as the quantum. The FIR squarely blames the rider of the two wheeler bearing Registration No.TN24-B-4215 and the final report is in tune with the FIR, whereas the evidence of P.W.2 completely puts the blame on the rider of the two wheeler bearing Registration No.TN24-AL-2288 namely the first respondent before the Tribunal. The Tribunal had eschewed the FIR and Charge Sheet and gone by the version of P.W.2 who was subjected to cross examination. Though a suggestion has been made to P.W.2 that he, being



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the cousin of the deceased is deposing falsely to get enhanced compensation for the death of his cousin, there is no suggestion in the evidence that he was not at all presented at the scene of occurrence. We are therefore, unable to fault the Tribunal for having relied upon the evidence of P.W.2. However, we find that in the light of the conflicting versions contained in the FIR, Charge Sheet and the evidence of P.W.2, the Tribunal could have assigned certain amount of negligence to the deceased Ramesh also. Having said that, we do not think that we should interfere with the quantum of compensation in view of the fact that the assumed monthly income is little below the fair figure which in our opinion compensates for the non-apportionment of the negligence on the part of the deceased Ramesh. Assumption of Rs.9,000/- as monthly income for even a Casual Labourer in the year 2018 in our considered opinion is on the lower side.

13.However, considering the peculiar facts and circumstances of the case, whether there was a possibility for the Tribunal to assign a portion of the negligence on the deceased Ramesh also, we do not think that it is a fit case for our interference in the quantum of compensation. We



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therefore uphold the Award of the Tribunal though on different grounds and the Civil Miscellaneous Appeal and the Cross Objections are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.] [R.S.V., J.]

22.03.2024

Index : No
Internet : Yes
Neutral Citation : No
Speaking Order
TK

To

The Motor Accidents Claims Tribunal
Special District Court for Motor Accident Claims Cases
Krishnagiri.



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