



C.M.A.No.813 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.813 of 2021
and C.M.P.No.4752 of 2021

M/s.Reliance General Insurance Company Limited,
Vellore – 1.

...Appellant

Vs.

1.K.Gandhi
2.G.Gnanasekaran
3.K.M.Kannan
4.Muniyammal
5.M.Shakar
6.New India Assurance Company Limited,
No.91/106, 1st Floor,
Big Street, Tiruvannamalai.
7.R.Sridevi

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in



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M.C.O.P.No.277 of 2013, dated 07.02.2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant : Mrs.C.Harini
for Mr.M.B.Gopalan Associates

For Respondents : R1 to R5 & R7 – No appearance
Mr.M.Krishnamoorthy for R6

J U D G M E N T

This appeal is filed by the appellant Insurance Company challenging the Judgment and Decree made in M.C.O.P.No.277 of 2013, dated 07.02.2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants, the first and third respondents are the owners of the vehicle and the second and fourth respondents are the Insurance Company before the Tribunal.



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4.The brief facts of the case are as follows:

According to the petitioners, on 09.03.2012, the deceased was driving Eicher Lorry bearing Registration No.TN 23 E 9909, while proceeding on Ambur to Vellore Main Road, near Konavattam, the aforesaid Lorry dashed on the backside of another Lorry bearing Registration No.TN 23 AH 5994 which was already met with an accident and stranded in the middle of the road. Since the Lorry was stranded in the middle of the road without any caution, the Lorry driven by one Prasanth dashed on the backside. Due to the accident, the said Prasanth, the driver of Eicher Lorry bearing Registration No.TN 23 E 9909 died on the way to hospital. A case was registered in Crime No.124/2012 under Section 279, 337 and 304 (A) of IPC by Vellore Taluk Police. The petitioners filed a claim petition before the Tribunal in M.C.O.P.No.277 of 2013, the Tribunal awarded a sum of Rs.14,37,300/-. Aggrieved by the same, the present appeal has been filed.



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5.Learned counsel appearing for the appellant submitted that the Tribunal fastened the liability on the appellant Insurance Company alone but no contributory negligence was fixed as against the driver of the vehicle insured with sixth respondent Insurance Company as the vehicle was also involved in the accident. Hence, she prayed for appropriate orders.

6.Learned counsel appearing for the sixth respondent submitted that the Tribunal has rightly fixed the negligence on the appellant Insurance Company and no interference is required by this Court. Hence, he prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the sixth respondent and perused the materials available on record.

8.Though the notice has been served and the names of the respondents 1 to 5 and 7 having been printed in the cause list, there is no representation either in person or through counsel. Considering the



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

9.The accident and the manner in which the accident happened are not disputed. This appeal has been filed questioning the quantum of compensation as well as negligence.

10.Before the Tribunal, the first petitioner was examined as PW1, the third petitioner was examined as PW2 and Mr.Shanmugam, an independent witness was examined as PW3 and 6 documents were marked as Exs.P1 to P6. On the side of the respondents, 3 witnesses were examined as RW1 to RW3 and 7 documents were marked as Exs.R1 to R7.

11.The two grounds on which the present appeal has been filed is that no negligence has been fastened on the deceased and that the compensation awarded is excessive.



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12. Insofar as the contention relating to negligence is concerned, it is the specific case of the claimants that the lorry driven by the deceased dashed on the lorry, which was parked in the middle of the road without any tail light of indication. True it is that there is no evidence with regard to any indication being there with regard to the lorry being parked as neither any tail light was glowing or any indication was kept on the road showing the immobile lorry. However, it should not be lost sight of that the deceased had dashed the lorry from behind and if really the deceased had been driving the lorry carefully, necessarily, the impact on the lorry would not have been of such a magnitude resulting in fatality to the deceased. The deceased ought to have realised that the lorry ahead was stationery, even if there were no tail lights or indications with regard to its immobility. It is further borne out by records that the accident had happened in broad daylight at about 8.00 a.m. and such being the case, it would not be justifiable to fasten the liability on the stranded lorry alone, as the deceased also ought to have been careful while driving the lorry. The impact of the lorry driven by the deceased against the stationery lorry clearly shows the rash and negligent manner in which the deceased



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had driven the lorry and definitely the deceased had equally contributed to the accident. Further, it is also to be noted that no eye witnesses were examined either by the claimants or the owner and the insurer with regard to the accident. Therefore, this Court is of the considered view that equal contributory negligence ought to be fastened on the deceased as well. Accordingly, the contributory negligence of 50% is fixed on the deceased for causing the accident.

13.Coming to the aspect of compensation, which has been awarded by the Tribunal, the Tribunal has awarded a sum of Rs.40,000/- towards consortium, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.6,500/- towards transportation.

14.In respect of loss of dependency, the Tribunal, fixing the income of the deceased at Rs.9,000/- on the basis of the ratio laid down in the case of *Syed Sadiq vs. United India Insurance Company (2014 (1) TNMAC 459)* and deducting 50% towards the personal expenses of the deceased, adopting multiplier of 18 on the basis of the ratio laid down



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in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (2009***

(2) TNMAC 1 SC), while determining the age of the deceased at 24, arrived at the loss of dependency at Rs.9,72,000/- Towards loss of future prospects, the Tribunal, relying on the Constitution Bench decision in ***National Insurance Company Ltd., vs. Pranay Sethi & Ors. (2017 (2) TNMAC 609)***, granted 40% towards future prospects and arrived at the compensation under the said head at Rs.3,88,800/- (Rs.4500 x 40/100 x 18 x 12 = Rs.3,88,800/-).

15.In all, the Tribunal awarded a sum of Rs.14,37,300/- under the heads, which have been discussed above and this Court is of the considered view that the compensation can neither be said to be excessive nor does it traverses beyond the ratio laid down in the decisions of the higher forums and, accordingly, confirms the compensation awarded by the Tribunal at Rs.14,37,300/- along with interest at 7.5% per annum.



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16. Since this Court has fixed the contributory negligence at 50% on the deceased, the compensation, as fixed above has to be equally borne by both the appellant and the 6th respondent, who is the insurer of the vehicle belonging to the 5th respondent, which was driven by the deceased and which met with the accident.

17. In the aforesaid circumstances, this appeal is allowed in part directing the appellant and the 6th respondent each to deposit a sum of Rs.7,18,650/-, totalling to Rs.14,37,300/-, being their respective share of compensation to be paid to the claimants along with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.277 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made by the appellant and the 6th respondent, the Tribunal is directed to transfer the same directly to the bank account of the claimants as per the apportionment ordered by the Tribunal within a period of two weeks thereafter. Any amount deposited by the appellant



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in excess of their 50% share along with interest, the appellant is permitted to withdraw the same upon filing appropriate petition before the Tribunal. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Tirupattur.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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M.DHANDAPANI, J.

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