IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 23.09.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.1456 of 2022

and C.M.P.No. 10749 of 2022

Reliance General îns. Co. Ltd
73, 1 floor, Officers Line, Vellore 632 001. ... Appellant
// III Respondent

-Vs-

1. Mr.Jagadeeswaran
S/o Shanmuganathan
... I Respondent/ I Petitioner
2. Mrs. Shanmugavadiva
W/o Jagadeeswaran
both residing at D.No.3/108, Arunagirinathan Thera No.2
Chennimalai, Erode 638 051, Tamilnadu.
...II Respondent/ II Petitioner
3. Mr.Jayaseelan
S/o Saravanan Malandal Village
Thirukoilar Taluk, Villupuram District - 605 793.
....III Respondent/ I Respondent
4. Mr.Jagadeesan
S/o Saravanan
133/11, East Street, Malandai Village, Thirukoilar Taluk
Villupuram District - 605 793.
... IV Respondent / II Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2021 passed in M.C.O.P. No.582 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court at Erode.

For Appellant: C.Bhuvanasundari

For Respondents : Mr.K.P.P.Raja raja chozhan for R1 and R2.

JUDGMENT

This appeal is preferred by the Insurance Company challenging the award of the Motor Accident Claims Tribunal, Special District Court at Erode passed in M.C.O.P. No.582 of 2017.

2. The case of the claimants/R1 and R2 herein, before the Tribunal is that on 01.12.2016 at about 9.15 a.m., when the deceased Rajaraghavan was riding the two-wheeler bearing Registration number TN 56H 7960, was involved in an accident near Pallavaram, Thuraipakkam, 200 Feet Radial Road, close to S. Kalathur junction. An Indica car beairng registration number TN 32 AJ 3550, driven recklessly at high speed by the 3rd respondent/1st respondent before Tribunal, suddenly collided with the deceased Rajaraghavan's two-

wheeler, resulting in the accident. The deceased Rajaraghavan suffered injuries on his face and legs, and he had a brain hemorrhage, which led to his death.

3.The claimants pleaded before the Tribunal that the accident was caused by the high speed and negligence of the 3rd respondent. The deceased was a computer engineer earning ?25,000 per month and the sole bread winner of his family. His unexpected death has caused significant financial and emotional hardship for his family, who was depended on him.

4. The claimants sought compensation of Rs.1,00,00,000/- with interest and costs.from the 3rd respondent, the driver of the car/offending vehicle, 4th respondent/owner of the car, and the Appellant/Insurance company as they are jointly and severally liable.

5. The Appellant Insurance company filed a counter before the tribunal stating that the petition is not maintainable in law and on facts. The accident did not occur as described in the petition. The driver of an Indica car with the registration number TN 32 AJ 3550, did not possess a valid driving license at the time of the accident. Therefore, this respondent is not obligated to

compensate the parents of the deceased. The accident was caused by the negligence of the deceased. The Indica Car driver was careful, drove at a moderate speed, and followed all traffic regulations. It is submitted that since the accident was not caused by the car driver's fault, the insurance company is not liable for compensation. As two vehicles were involved in the accident, the insurer of the motorcycle is an essential party to this petition and submitted that this petition is deficient for not including the necessary parties. The deceased caused the accident without a valid driving license and without knowledge of traffic rules. The claim that the deceased was 23 years old and worked as a computer engineer earning ?25,000 per month is untrue. Thus the insurance company prayed for dismissal before the tribunal.

6. The Tribunal, after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.36,12,665/- (Rupees Thirty-Six Lakhs Twelve Thousand Six Hundred Sixty-Five) on various heads.

7. Challenging the liability, quantum, the Appellant Insurance Company has filed the present appeal before this Court.

8. The appellant Insurance Company's main argument is that the Tribunal misinterpreted the Motor Vehicle Inspection Report to assess negligence in the accident. The report shows that the motorcycle had front headlight damage, while the car had damage to the left rear door. The appellant counsel would submit that the motorcycle collided with the car, not the other way around. The learned counsel further contends that the car had already made a U-turn when the motorcycle after overtaking a bus on its left, skidded and collided due to slippery road conditions due to ongoing rain at the time of accident. Further, none of the key witnesses (PW1, PW2, PW3) stated to have witnessed the accident, which cast doubt on their testimonies. The appellant also argues that the deceased was likely not wearing a properly strapped helmet, contributing to the fatal injuries. The counsel for the appellant concluded the argument stating that the negligence of the driver of the offending vehicle was not sufficiently proved. Hence, prayed to set aside the award of the Tribunal.

9. The Court is unable to agree with the said contentions of the Appellant counsel because as per the testimony of PW3, helmet was found lying at the accident spot. When this being the case, the contention of the Appellant Insurance Company that the deceased was not wearing a helmet at the time of

accident is inappropriate. Therefore, the first contention of the appellant raised as against the liability fixed by the Tribunal, has not been met out.

10. The second contention that the car had already made a U-turn when the motorcycle after overtaking a bus on its left, skidded and collided due to slippery road conditions because of the ongoing rain at the time of occurrence, cannot be taken into consideration by us, as the car which took the U turn had also incurred damages. Also, the Appellant tried to establish that at the time of accident, the road was slippery and that there was rain during the occurrence, therefore, the deceased would have lost balance, vehicle skidded and resulted in the accident. But, it was imperative on the part of the driver of the offending vehicle to drive the vehicle slowly so as to avoid any accident. Therefore, the other contentions raised by the learned counsel for the appellant as against negligence and circumstances, would also fail.

11. Even though the appellant raised grounds in the appeal in respect of quantum of the award stating that the tribunal awarded higher quantum of compensation, during the argument, the counsel for the appellant could not raise any point stating that the learned Judge, Tribunal was wrong in awarding the

quantum. However, the Appellant Insurance Company filed a memo dated 09.09.2024 stating that the entire award amount has been deposited before the tribunal as ordered by this court vide order dated 11.07.2024. Therefore the claimants/Respondents 1 and 2 are permitted to immediately withdraw the award amount along with the accrued interest.

12. In the result, C.M.A.No. 1456 of 2022 is dismissed. Connected C.M.P.No.10749 of 2022 is closed. The amount awarded by the Tribunal at Rs.36,12,665/- together with interest at the rate of 7.5% per annum, is confirmed. The Respondents 1 and 2/claimants are entitled to withdraw the entire award amount along with the accrued interest. No costs.

(J.N.B.J.) **(R.K.M.,J.)**

nvsri 23.09.2024

To

The learned Judge,
Motor Accident Claims Tribunal,
Special District Court at Erode.

J.NISHA BANU ,J.

and

R.KALAIMATHI, J.

nvsri

C.M.A.No.1456 of 2022

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