



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

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

C.M.A.No.2053 of 2024

and

C.M.P.No.15747 of 2024

M/s.Bajaj Allianz General Insurance Co. Ltd.,
Arumbakkam, Chennai.

... Appellant

Vs.

1.P.Jayanthi

2.Minor Sabarivelan

3.Minor Aarthika

[Minor respondents 2 and 3 represented by
their mother/ guardian 1st respondent]

4.Uthrapathy

5.Rasakumari

6.Rajagopal

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.12.2023 made in MCOP.No.2155 of 2018 on the file of the Motor Accidents Claims Tribunal,



Special District Judge No.1, Cuddalore.

For Appellant : Mr.S.Arun Kumar

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J U D G M E N T

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

The appeal is by the Insurance Company. Challenge is to the award made in MCOP.No.2155 of 2018 granting a sum of Rs.23,11,000/- as compensation for the death of one Kumar @ Parthiban in a road accident that occurred on 27.08.2017. According to the claimants, who are the wife, children and parents of the deceased, while the deceased was riding his motorcycle bearing Reg.No.TN-31-AK-1289 at about 2.15 p.m. on the Chidambaram-Cuddalore Road near B.Mutlur, the driver of the car bearing Reg.No.TN-04-AC-5420 drove the car in a rash and negligent manner and dashed against the motorcycle. As a result of the impact, the deceased was thrown off the vehicle and sustained severe injuries. Though he was taken to the Jipmer Hospital, Puducherry, he died after a week without re-gaining consciousness.



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2. Claiming that the negligence of the car driver was the cause of the accident and the claimants have been deprived of their only source of sustenance they sought for a compensation of Rs.25,00,000/-. The quantum was sought to be supported by contending that the deceased was earning Rs.10,000/- per month by working as a daily wager.

3. The 2nd respondent Insurance Company resisted the claim contending that the deceased was solely responsible for the accident and he did not have license. The income claimed and the age of the deceased were disputed and the claimants were put to strict proof of the same.

4. At trial, before the Tribunal the 1st claimant, wife of the deceased was examined as PW1 and one Sukumar, eye witness was examined as PW2. Exs.A1 to A5 were marked. On the side of the respondents a police officer by name Devi was examined as RW1 and an officer of the Insurance Company Mr.Alex was examined as RW2. The final report filed by the police was marked as Ex.R1.



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5. The Tribunal on a consideration of the evidence on record and that the FIR has been registered by the driver of the car and the deceased was in an unconscious stage and he died without regaining consciousness. It also took into account the deceased had no opportunity to put forth his side of story and faulting the Insurance Company for not examining the driver of the offending vehicle, concluded that the accident occurred due to the rash and negligent driving of the car driver.

6. On the quantum, the Tribunal took the monthly income at Rs.10,000/-, added 40% towards future prospects and arrived at the total income at Rs.14,000/- per month. It deducted 1/4th towards personal expenses, considering the number of dependants viz., 5, applied the multiplier '16' since the deceased was aged 31 years and fixed the total loss of dependency at Rs.20,16,000/-. The Tribunal also awarded a sum of Rs.2,40,000/- towards loss of consortium and loss of love and affection. It had also awarded a sum of Rs.15,000/- each towards funeral expenses and Transportation and a sum of Rs.25,000/- towards loss of estate. Thus the Tribunal arrived at a total compensation of Rs.23,11,000/-. Since the



subistence of the insurance was admitted, the Tribunal directed the Insurance Company to pay the award amount. Aggrieved the Insurance Company is on appeal.

7. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant.

8. Mr.S.Arun Kumar, learned counsel appearing for the appellant/ Insurance Company would submit that when there is a specific plea to the effect that the deceased did not have a valid driving license, it is incumbent upon the claimants to show that he was possessed of valid driving license. The Tribunal has not adverted to the said plea, which will have a great impact on the entitlement of the claimants to get compensation. The learned counsel would also submit that the FIR was filed against the rider of the two-wheeler and same came to be closed as abated, since the rider had died. Therefore, the learned counsel would submit that the Tribunal was not right in fixing the entire negligence on the driver of the car.

9. We have considered the submissions of the learned counsel for the



appellant.

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10. No doubt, a plea was taken regarding absence of driving license, but, no evidence was placed by the Insurance Company nor was there any suggestion to the effect that the rider of the two-wheeler/ deceased did not possess a valid driving license. We do not find any discussion in the order of the Tribunal regarding this particular aspect. The fact that the FIR was filed against the rider of the two-wheeler cannot be a ground to conclude that he was negligent. The evidence of PW2, eye witness, was accepted by the Tribunal and there is no contra evidence pleaded by the Insurance Company by examining the driver of the car. We are therefore unable to accept the submission of the learned counsel for the Insurance Company that the rider of the two-wheeler also contributed to the accident.

11. The contributory negligence is a question of fact and the same has to be proved like any other fact. In the absence of any contra evidence, the Tribunal cannot be faulted for accepting the evidence of PW2. The learned counsel for the Insurance Company though would attempt to attack the quantum of compensation awarded, we find that it has been assessed in a



very fair manner.

12. Hence, we see no reason to entertain this appeal, the appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
26.07.2024

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Speaking order
To

The Motor Accident Claims Tribunal,
Special District Judge No.1, Cuddalore.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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