IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1183 of 2024

1.Muniamma

2.Suban @ Subramani

3.Vasantha ..Appellants

.vs.

1.S.V.Somasekar

2.The Manager
SBI General Insurance Co. Ltd.,
Ground & 1st Floor, Rukmani Towers,
3-1, Platform Road / Railway Approach Road,
Seshadripuram,
Bangalore - 560 020. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.11.2022 made in MCOP No.1007 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For Respondents : Mr.K.Vinod for R2

JUDGMENT

The claimants aggrieved by the Tribunal attributing 10% contributory negligence on the claimants, has filed the present appeal challenging the Award passed by Motor Accident Claims Tribunal and Special District Court, Krishnagiri in MCOP No.1007 of 2020 dated 10.11.2022.

2.The case of the claimants is that the deceased Amaresh was riding the two wheeler from Kelamangalam to Varaganapalli and at about 19:00 hours, when the vehicle was proceeding at the curve near Varaganapalli, the offending vehicle which was owned by the 1st respondent was driven in a rash and negligent manner and it dashed on the two wheeler. As a result of which, the deceased sustained fatal injuries and he succumbed to the injuries. An FIR came to be registered in Crime No.54 of 2015 as against the driver of the offending vehicle. It is under these circumstances, the parents and the sister of the deceased filed a claim petition before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had occured only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered this finding, the Tribunal came to a conclusion that no driving license possessed by the deceased was produced before the Tribunal, even though it was claimed that he was a call taxi driver and therefore, proceeded to attribute 10% contributory negligence on the deceased.

4.The Tribunal fixed total compensation at Rs.19,79,400/- under various heads in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	18,14,400
2.	Loss of Estate	16,500
3.	Funeral Expenses	16,500
4.	Loss of Consortium (P1 to P3) Rs.44,000/- x 3 = (Rs.1,32,000/-)	1,32,000
	Total	**19,79,400**

5.Out of this, the Insurance Company was directed to pay 90% compensation of Rs.17,81,460/- with interest at the rate of 7.5% per annum.

6.The claimant aggrieved by the contributory negligence attributed against the deceased have filed the present appeal before this Court.

7.Heard Mr.S.P.Yuvaraj, learned counsel appearing on behalf of the appellants and Mr.K.Vinod, learned counsel appearing on behalf of the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The only issue that requires the consideration of this Court is with regard to the attributing 10% contributing negligence on the part of the deceased.

10.The Tribunal on considering evidence of PW1 and PW2 and also the documents marked as Ex.P1 to Ex.P8, came to a categoric conclusion that the accident had taken place only due to rash and negligent driving on the part of the driver of the offending vehicle. There were no witnesses examined on the side of the respondents and the evidence tendered by PW1 and PW2 was not discredited. In view of the same, mere non-furnishing the driving license of the deceased will not result in attributing contributory negligence against the deceased. Such a finding that was rendered by the Tribunal runs against the settled position of law.

11.In view of the above,the finding rendered by the Tribunal attributing 10% contributory negligence against the deceased is hereby set aside. The entire liability shall be borne by the Insurance Company for the total compensation of

Rs.19,79,400/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.19,79,400/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,97,940/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay period of 397 days as was ordered by this Court in C.M.P.No.7623 of 2024, dated 29.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

12.In the result, this Civil Miscellaneous Appeal stands allowed. No costs.

10.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

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N. ANAND VENKATESH., J

ssr

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