IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2302 of 2021
and
C.M.P.No.12789 of 2021

M/s.United India Insurance Co. Ltd.,
Nehruji Road,
Villupuram. ... Appellant

Vs.

1.Ravi
2.Vijayalakshmi
3.Kesavan
4.Senthilkumar ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 30.09.2020 made in M.C.O.P.No.39 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.N.Lavanya
for M/s.E.C.Ramesh [R1 to R3]
No appearance [R4]

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JUDGMENT

The Insurance Company has filed the above appeal challenging the award passed by the Motor Accidents Claims Tribunal, Special District Court, Villupuram in M.C.O.P.No.39 of 2019 on the grounds of negligence as well as quantum of compensation.

2. On 16.06.2018 at about 9.30 p.m., at Maduranthakam to Chennai Bypass Road, when the deceased was riding motorcycle bearing Regn.No.TN-19-AD-8033 on the left side of the road, a car bearing Regn.No.PY-01-BC-1131, belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner and dashed against the deceased, which resulted the deceased sustaining grievous injuries and inspite of the treatment given, he died. Therefore, the claimants have filed a claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of the deceased.

3. Before the Tribunal, the claimants examined two witnesses P.W.1 and P.W.2 and marked 19 documents viz., Ex.P.1 to Ex.P.19. On the side of the 2nd respondent/insurance company, one witness was

examined viz., R.W.1 and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.31,74,000/- as compensation to the claimants. Aggrieved by the same, the present appeal has been filed by the insurance company.

4. Learned counsel appearing for the appellant/insurance company submitted that, the car owned by the 4th respondent, insured with the appellant, was parked on the right side of the road due to heavy rain. Without noticing the same, the deceased driven the motorcycle and dashed against the rear side of the car. In order to prove the same, the appellant had examined R.W.1 and marked the Ex.R.1. However, the Tribunal fixed the entire negligence on the part of the driver of the offending vehicle without fixing any contributory negligence on the deceased. Hence, this Court may fix reasonable percentage of contributory negligence on the deceased. Further, he submitted that the Tribunal was not justified in fixing the notional income at Rs.20,000/-, since the claimants have not produced any documents with the income of the deceased. Therefore, according to the learned counsel, fixation of Rs.20,000/- as notional income, addition of 40% towards future prospects had resulted in compensation being boosted up. Accordingly,

he prays for allowing this appeal.

5. Per contra, learned counsel appearing for the respondents 1 to 3/ claimants submitted that, the Tribunal was justified in rejecting the contention of the appellant/insurance company with regard to fixation of contributory negligence on the deceased, since the appellant/insurance company has not examined any independent eye-witness before the Tribunal to show that the deceased was also one of the reasons for contributory negligence for the accident. Further, she submitted that, the Tribunal was justified in fixing the notional income at Rs.20,000/-. Accordingly, she prays for the dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing on behalf of the respondents 1 to 3/claimants and also perused the materials available on record.

7. Insofar as the contention relating to negligence is concerned, the main grievance espoused by the appellant/insurance company is that the deceased had dashed against the offending vehicle, which was parked on the right side of the road due to heavy rain, and, therefore, the Tribunal has failed to fix contributory negligence with respect to the deceased and,

therefore, necessary interference is warranted with the said finding.

8. Though such a contention has been advanced, it is to be pointed out that there is no material placed by the appellant/insurance company to infer that the deceased had dashed the stationed offending vehicle, thereby contributing to the accident. When there is no material evidencing that the accident had happened due to the negligent act of the deceased, the contention of the appellant/insurance company relating to contributory negligence cannot be accepted. Further, to make out an act of contributory negligence, there should be material, which clearly establishes such an act on the part of the deceased and it could not be taken by way of mere inference. Therefore, the said finding on negligence recorded by the Tribunal does not deserve any interference.

9. On the quantum of compensation, the Tribunal had taken a sum of Rs.20,000/- as notional income. Though it is claimed by the respondents 1 to 3/claimants that, at the time of accident, the deceased was working as IT Developer in G Work Mobile Technology Company and earned a sum of Rs.30,000/- per month, however, in order to prove the income of the deceased, no documents has been filed by the

claimants. By considering the fact that the deceased had studied well in the college, the Tribunal had fixed a sum of Rs.20,000/- as notional income, which cannot be said to be excessive. Further, the Tribunal has taken 40% for future prospects, deducted 50% towards personal expenses and awarded compensation towards other heads also, which has resulted in the respondents 1 to 3/claimants being awarded a sum of Rs.31,74,000/- and the same cannot be termed as high or excessive. Hence, I do not see any reason to interfere with the award of the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the impugned award passed by the Motor Accidents Claims Tribunal, Special District Court, Villupuram in M.C.O.P.No.39 of 2019, dated 30.09.2020 is confirmed. The Appellant-Insurance Company is directed to deposit the award amount to the credit of M.C.O.P.No.39 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount as per

the apportionment of the Tribunal, directly to bank account of the respondents 1 to 3/claimants through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

06.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Motor Accidents Claims Tribunal, Special District Court, Villupuram.

M.DHANDAPANI, J.,

sp

C.M.A.No.2302 of 2021

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