



C.M.A.No. 2096 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

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

C.M.A.No. 2096 of 2024

and

C.M.P.No. 16024 of 2024

Reliance General Insurance Company Ltd.,
Having Branch Office at,
Sree Lakshmi Complex, 1st Floor,
Omalar Main Road, Bharathi Street,
Swarnapuri, Salem.

...Appellant

Vs.

1.Kavitha

2.Minor Mohit
(2nd res. Minor represented by
1st respondent Mother Kavitha)

3.Indirani

4.Rajendiran

5.M/s.S.R.S.S.Travels and Logistics Pvt. Ltd.,
Prop, K.T.Rajashekar,
Residing at, No.34, Rajiv Gandhi Nagar,
Near OMR Egattur, Thiruporur Taluk,
Kalambakkam, Chengalpattu,
Kanchipuram.



6.M.Prakash

7.M/s.Acko General Insurance Co. Ltd.,
Having Office at No.31,
Mohammed Hussain Street,
Barathi Salai, Royapettah,
Chennai.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 01.11.2023 passed in MCOP.No. 438 of 2021 on the file of the MACT Special District Judge, Salem.

For Appellant : Mr.P.Suresh Srinivasan

J U D G M E N T

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

The Insurance Company is on appeal, challenging the award granting compensation of Rs.44,65,000/- for the death of one Radhakrishnan in a road accident that occurred on 05.10.2020 at about 7.15 hours.

2.According to the claimants, when the deceased was riding a two wheeler bearing Registration No.TN-03-Y-2298 on the Thiruvetriyur main road, the bus bearing Registration No.TN-11-X-9765 driven by its driver in a rash and negligent manner came from behind and hit the two wheeler. As result of the impact, the rider / Radhakrishnan suffered grievous injuries and



died on the spot. Contending that the deceased was aged about 33 years and was earning about Rs.60,000/- per month as an Employee of Piramal Enterprises Limited, the claimants sought for a compensation of Rs.2,00,00,000/-.

3. As usual, owner of the bus remained exparte. The Insurance Company resisted the claim contending that the driver of the bus did not possess a valid driving license and the bus also did not have valid permit and fitness certificate therefore, it is absolved on the liability. It was also contended that the said Radhakrishnan was not having a driving license and he was driving the two wheeler without helmet. The 4th respondent / Insurer of the two wheeler claimed that Radhakrishnan cannot be treated as a third party and therefore, he cannot make a claim for compensation.

4. At trial, before the Tribunal, the 1st claimant / Kavitha, wife of the deceased was examined as P.W.1 and one Ramakrishnan, Employee of Piramal Enterprises Limited, who was authorized to depose was examined as P.W.2. Exs.P1 to P24 were marked and Exs.X1 to X4 were marked. The copy of the First Information Report was marked as Ex.P1. Copy of the



driving license of the driver of the bus was marked as Ex.P20 and a copy of the driving License of the deceased was marked Ex.P23. The pay slip, appointment order and attendance register were marked as Exs.X2 to X4.

The Insurance Company did not chose to let in any evidence either oral or documentary.

5. On the evidence available, the Tribunal concluded that the accident occurred due to rash and negligent driving of the driver of the bus. The First Information Report has been filed against the bus driver. In the absence of contra evidence, the Tribunal had to go by the First Information Report. On the quantum, the Tribunal took the monthly income of the deceased at Rs.30,000/- including future prospects. The salary certificate disclosed that he was earning about Rs.30,000/- per month. The Tribunal applied a multiplier of 16 and a deduction of 1/4, considering the number of the dependents and arrived at the total loss of dependency at Rs.43,20,000/-. It also granted Rs.80,000/- towards loss of love and affection to the children and the parents, Rs.40,000/- towards loss of consortium for the wife and Rs.25,000/- towards funeral expenses. Thus, total compensation worked out to Rs.44,65,000/-.



6. We have heard Mr.P.Suresh Srinivasan, learned counsel for the appellant.

7. The learned counsel for the appellant would contend that the Tribunal ought to have apportioned certain amount towards contributory negligence and also claimed that the compensation awarded is on the higher side. We are unable to accept the submissions of the learned counsel. Contributory negligence is the question of fact and has to be decided only on the evidence available. We find that there is no evidence on the part of the Insurance Company. Ex.P1 / First Information Report which stands uncontroverted. There is no other evidence regarding the manner in which the accident occurred. Therefore, the Tribunal was justified in going by the First Information Report and concluding that the accident occurred due to the rash and negligent driving by the driver of the bus.

8. On the quantum, the Tribunal has taken a very fair amount as income. Though there was evidence to show that the claimant was earning Rs.30,000/- per month, the Tribunal taken into account that the dependents



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would have received a retiral benefits of the deceased and has fixed the income including future prospects at Rs.30,000/-. We do not see a case for reduction of the said fixation made by the Tribunal. Hence, we find no merit in the appeal. This Civil Miscellaneous Appeal is therefore, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

9. The learned counsel for the appellant would submit that the claimants have filed a petition for condonation of delay in filing the appeal in CMA Sr.No.70265 of 2024 and the delay has been condoned. We make it clear that the dismissal of this Appeal will not have bearing on the appeal filed by the claimants.

(R.S.M., J.) (R.S.V., J.)
30.07.2024

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Internet: Yes / No

Index: Yes / No

Speaking / Non-speaking order

Nuetral Citation : Yes / No



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To:-

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



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

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