THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

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

C.M.A.No. 1231 of 2023
and
C.M.P.No. 12044 of 2023

Reliance General Insurance Company Ltd.,
No.6, Reliance House, 6th Floor,
Haddows Road, Nungambakkam,
Chennai - 600 034. ...Appellant

Vs.

1.K.Padma Ramalakshmi Kannan

2.K.Sowmiya

3.K.Sriram- Minor

4.G.Chellammal

5.Madanpalli Reddappa ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2023 passed in M.C.O.P.No. 5432 of 2019 on the file of the MACT Chief Judge, Small Causes, Chennai.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.K.Balaji for R1 to R4

R3 - Minor rep. by R1

R5 - Person not for...

J U D G M E N T

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

The Insurance Company is on appeal. Challenge is to the award of the Motor Accident Claims Tribunal made in MCOP.No.5432 of 2019 granting a sum of Rs.31,03,750/- as compensation for the death of one G.Kannan in a road accident that occurred at about 11.15 hours on 09.12.2018.

2. The claimants, who are the wife, children and mother of the deceased Kannan had sought for compensation of Rs.40,00,000/-. According to the claimants, while deceased Kannan was driving a lorry bearing Registration No.TN- 01-BF-4521 in Chennai - Bangalore road from Chennai to Kanchipuram and was coming near Kumbakonam Degree Coffee shop at Senthamangalam Village, an Eicher lorry bearing Registration No.KA-07-A8352 which was going ahead of him, suddenly stopped without any signal, resulting in the lorry driven by Kannan dashing against the

Eicher lorry from behind. As a result of the collision, the driver of the Ashok Leyland lorry namely, Kannan died at the Hospital on 20.12.2018.

3. Claiming that it was the rash and negligent driving of the Eicher lorry and it its sudden stoppage without signal was the cause for the accident, the claimants sought for compensation from the Insurance Company, which is the Insurer of the Eicher lorry. The quantum was sought to be supported by claiming that Kannan was earning about Rs.30,000/- per month as a driver working in Adyar Anandha Bhavan Sweets India (P)e Limited. It was the contention of the claimants that they were completely dependent on the income of the Kannan for day to day living and due to the accident and untimely death of Kannan, they have been left without any source of income for their livelihood.

4. The claim was resisted by the Insurance Company contending that the deceased Kannan was also responsible for the accident. It was claimed that he did not maintain the required distance which resulted in the accident. It was also claimed that the driver of the Eicher lorry had to apply sudden brakes because the cow that crossed the road. The age and income particulars of the deceased were denied and the claimants were put to strict

proof of the same.

5. At trial, before the Tribunal, wife of the deceased Kannan / 1st claimant was examined as P.W1. One Abdul Karim, an eye-witness was examined as P.W.2 and one Mr.S.M.Jawahar Mohammed, Deputy Manager, Human Resources Department, Adyar Anandha Bhavan Sweets India (P) Limited was examined as P.W.3. Exs.P1 to P27 were marked. No evidence was let in on the side of the Insurance Company. On the evidence available, namely, the First Information Report which was marked as Ex.P1, the final report marked as Ex.P16 and the evidence of P.W.2, the Tribunal held that the accident occurred due to the rash and negligent driving of the Eicher lorry. The Tribunal had to believe the evidence that was available in the absence of any contra evidence on the side of the Insurance Company.

6. On the quantum, the Tribunal took the monthly income as Rs.18,500/- as evidenced by the salary register and salary certificates, which were marked as Exs.P21 & P23. Considering the age of the deceased namely, 43 years, the Tribunal adopted addition of 25% towards future prospects. Thus, the Tribunal had arrived at the monthly income of the deceased at Rs.23,125/-. It applied multiplier of 14 and adopted deduction

of 1/4 towards personal expenses. Thus, calculated the total loss of dependency at Rs.29,13,750/-. The Tribunal awarded a sum of Rs.40,000/- each to the four claimants towards loss of consortium and love and affection. A sum of Rs.15,000/- each was awarded towards loss of estate and funeral expenses. Thus, the total compensation worked out to Rs.31,03,750/-. The Tribunal also granted interest at of 7.5% per annum. Aggrieved, the Insurance Company is on appeal.

7. We have heard Mr.P.Suresh Srinivasan, learned counsel for the appellants and Mr.K.Balaji, learned counsel for R1 to R4.

8. Mr.P.Suresh Srinivasan, learned counsel for the appellant / Insurance Company would vehemently contend that from the manner of the accident, it could be seen that the deceased was also negligent therefore, the Tribunal should have apportioned certain amount of negligence on the deceased also. The learned counsel would also point out that the income adopted is on the higher side. We have heard the rival submissions.

9. Contending contra, Mr.K.Balaji, learned counsel for the respondents would submit that the evidence of P.W.2, that First Information

Report and the final report filed as Exs.P1 & P16 would demonstrate that the entire negligence was on the part of the Eicher lorry. He would also fault the Insurance Company for not having examined the driver of the Eicher lorry or placing any evidence to show contributory negligence. According to the learned counsel, the manner in which the accident occurred as spoken to by the P.W.2 and as evidenced by two documents namely, First Information Report and final report would demonstrate that entire negligence was on the part of the driver of the Eicher lorry.

10. On the quantum, the learned counsel would submit that there is unimpeachable evidence in the form of salary certificates to show that the deceased was drawing Rs.18,500/- as monthly income at the time of the accident. The addition made towards future prospects at 25% is in accordance with the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680.*** Therefore, according to the learned counsel for the claimants, the Tribunal has awarded just compensation and the award does not call for interference at our hands.

11. As far as the question of negligence is concerned, we find from the

evidence of P.W.2 and two documents namely, Exs.P1 & P16 that the entire negligence has been attributed to the driver of the Eicher lorry. The Insurance Company has not let in any evidence to contradict the evidence that is available on record. Contributory negligence is a question of fact and the same has to be proved as any other question of law. The best evidence that was available was the evidence of the driver of the Eicher lorry. Having not examined the driver of the Eicher lorry and having failed to place the best evidence before the Court by examining the driver of the Eicher lorry, the Insurance Company cannot claim that we must assume contributory negligence on the part of the deceased.

12. Merely because a vehicle dashed with another vehicle from behind, we cannot conclude that the driver of the vehicle which came from behind was negligent. Some evidence is required to show that there was negligence on the part of the driver of the vehicle which came from behind. Such evidence is absent in the case on hand. We are therefore, unable to fault the Tribunal for having fixed the entire negligence on the part of the Eicher lorry. On the quantum, we find that the evidence is available in the form of Exs.P21, 23 & 24 and 25 to show that the deceased was a regular employee and was paid a salary of Rs.18,500/- per month after all

deductions.

13. The Tribunal has only taken that amount as the monthly income. The addition of 25% towards future prospects and application of 14 as multiplier does not call for any interference at our hands. The Tribunal has deducted 1/4 towards personal expenses of the deceased, since there are four claimants who are dependent on the deceased. The said deduction is also cannot be faulted. The conventional damages that have been awarded towards consortium, funeral expenses and loss of estaet are also in tune with the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***. We do not see any reason to interfere with the award of the Tribunal. This Civil Miscellaneous Appeal fails, and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

14. It is stated that the entire award amount has been deposited. The claimants have withdrawn 50% of the award amount. The claimants 1, 2 & 4 are permitted to withdraw their share of the compensation. The Tribunal is directed to invest the share of the minor claimant in an interest earning fixed deposit till he attain majority and the same will be paid over to him on his

attaining majority.

(R.S.M., J.) **(R.S.V., J.)**
12.07.2024

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Speaking
Nuetral Citation : No

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

KKN

To:-

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

C.M.A.No. 1231 of 2023
and
C.M.P.No. 12044 of 2023

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