



CMA No.1319 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.1319 of 2020
and C.M.P. No.9551 of 2020

Judgment reserved on 31.01.2024	Judgment pronounced on 11.3.2024
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M/s.IFFCO-TOKKIO General
Insurance Company Limited
'Tulsi Chamber' 3rd Floor,
No.195, T.V.Swamy Road,
R.S.Puram, Coimbatore.

..

Appellant

Vs.

1.Kalaiselvi
2.Suganthi
3.Sudha
4.Chinnammal
5.Krishnan
Rajavelu (Died)

..

Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15-10-2019 made in MCOP.No.271 of 2010 on the file of the Motor Accidents Claims



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Tribunal, Sub Court, Sangagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.T.S.Arthanareeswaran
for R1 to R4

No appearance for R5

J U D G M E N T

The Insurance company is the appellant herein challenging the award passed by the Tribunal dated 15-10-2019 made in MCOP.No.271 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sangagiri on the ground of liability as well as quantum.

2. The respondents 1 to 4 are the legal heirs of the deceased Rajavelu who sustained injuries in the road transport accident happened on 06.04.2009 and died due to the accidental injuries. Hence, they filed claim petition claiming compensation against the 5th respondent and the appellant/insurance company.

3. Both the vehicles involved in the accident are insured with the very same IFFCO-TOKIO Insurance Company and hence a common counter



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affidavit has been filed by the appellant/Insurance Company. In the said counter affidavit, the contributory negligence was attributed on the deceased Rajavelu. It remains to be stated that no plea was raised challenging that the cause of death of Rajavelu was not due to the injuries sustained by him in the accident seeks significance.

4. During the trial, the second respondent examined herself as PW1 and one Chinnamayil - occurrence witness was examined as PW2. Ex.P1 to P16 were marked. On behalf of the Insurance Company, Sub Inspector of Police was examined as RW1 and one Krishnan rider of the offending vehicle was examined as RW2. Exs.R1 to R4 were marked. Ex.R4 is the copy of the claim petition filed in MCOP No.40 of 2010 by the rider of the offending vehicle wherein the matter has been settled between the parties in the Lok Adalat and Ex.R4 was marked to substantiate the same.

5. Based upon the oral and documentary evidence, the claim petition filed by the respondents 1 to 4 was partly allowed and a sum of Rs.7,66,000/- was awarded as compensation to the respondents 1 to 4. Hence, the appeal



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by the appellant/Insurance Company.

WEB COPY 6. Heard the learned counsel for the appellant/Insurance Company as well as the respondents 1 to 4 and perused the materials available on record. Though notice has been served on the fifth respondent and his name has been printed in the cause list, there is no representation for him either in person or through counsel.

7. After perusing the evidence of PW2, it is seen that he had admitted in the cross examination that he had travelled in the two wheeler driven by the deceased. On behalf of the appellant/Insurance Company, RW2, the driver of the four wheeler was examined. He had admitted in the cross examination that Rajavelu (deceased) was coming in the opposite direction and he saw him at 60 feet distance. Though he saw him on the 60 feet distance, he had not applied brake and accordingly, on proper appreciation of the evidence of PW2 (occurrence witness) and RW2 – driver of the offending vehicle, the Tribunal has rightly come to the conclusion that both the persons have attributed to the accident and accordingly fixed contributory negligence on the part of the deceased at 30% and RW2 at 70%. On re-appreciation of



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the evidence of PW2 & RW2 alongwith respective cross examination, coupled with Ex.R2 – rough sketch and Ex.P1 – FIR, this Court is of the considered view that the contributory negligence ratio fixed by the Tribunal is just and fair and does not require any modification by this Court. This point is answered accordingly.

8(a) Mr.J.Michael Visuvasam learned counsel for the appellant/Insurance Company would contend that in the absence of any positive evidence to show that the deceased died due to the injuries sustained by him in the accident, the compensation awarded by the Tribunal at Rs.7,66,000/- is not sustainable.

8(b) As stated supra, no such plea was raised by the appellant / Insurance Company either in the counter statement filed before the Tribunal or during the cross examination of PW1. Hence, I find that such plea cannot be raised now for the first time in the appeal. Had there been such plea either in the pleadings in the counter statement or during the cross examination, the respondents 1 to 4 would have, had an opportunity to advance necessary



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documents.

8(c) Be that as it may, it is seen from the documents filed before the Tribunal that Exs.P4 & P5 are discharge summaries. Ex.P9 is the death certificate issued by the concerned Corporation. After perusing Exs.P4, P5 & P9, I find that as per Ex.P4 the deceased sustained the following injuries -

*“compound crush injury T/loss of III, IV toe DPX,
laceration II toe R foot,
Neck & back of V Metacarpal L,
dislocation of Carpo Metacarpal joints L III, IV finger”.*

8(d) As per Ex.P5 – discharge summary, the deceased was admitted in the hospital on 28.06.2009 and died in the hospital on 07.09.2009 wherein Road Transport Accident namely RTA was clearly mentioned. As in the history sheet assumes significance, I find that in view of the presence of Exs.P4 & P5 and in the absence of any such plea, as discussed supra, such a plea cannot be entertained in the appeal. However, Exs.P4 & P5 goes to show that the deceased was taking continuous treatment and he died in the hospital. Hence, the plea raised on behalf of the appellant/insurance company stands negatived.



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9. On the point of quantum of compensation, based upon the death certificate, the Tribunal fixed the age of the deceased as 50 years. As per the judgment of the Hon'ble Supreme Court in ***SARLA VERMA & OTHER v. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC (1) SC***, the Tribunal applied multiplier 13 and granted 25% enhancement towards future prospects as per judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others reported in 2017 (2) TNMAC 609***. In the absence of any documentary evidence to prove the avocation and income of the deceased, the Tribunal has rightly fixed the notional income at Rs.7,000/- per month. After deducting 1/4th towards personal expenses of the deceased, since there are four dependents, the Tribunal rightly awarded a sum of Rs.7,66,000/- as compensation to the respondents 1 to 4 after deducting 30% contributory negligence on the deceased which appears to be just and reasonable. Accordingly, this Court has no hesitation to hold that the compensation awarded by the Tribunal is just and fair and does not warrant any interference by this Court at this appellate stage.



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10. In fine,

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(i) this Civil Miscellaneous Appeal is dismissed confirming the compensation awarded by the Tribunal dated 15-10-2019 in MCOP.No.271 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sangagiri.

(ii) the appellant/Insurance Company is directed to deposit the award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the respondents 1 to 4 are permitted to withdraw their share of the award amount on the basis of apportionment fixed by the Tribunal, less the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) No costs. Consequently, connected Miscellaneous Petition is closed.

11.03.2024

rgr

Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/no



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RMT.TEEKAA RAMAN.J,

rgr

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sangagiri.
2. The Section Officer,
V.R.Section, High Court,
Madras.

Judgment made in
C.M.A.No.1319 of 2020

11.03.2024