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C.M.A.No.2573 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2573 of 2024

and

CMP.No.20486 of 2024

The Manager,
Reliance General Insurance Company
Limited, No.6, Haddows Road,
Reliance House, Nungambakkam,
Chennai - 600 006.

... Appellant

Vs.

1. Gowri
2. Durga
3. Kalaiyarasi
4. K.Masilamani
S/o Kanniyappan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 31.08.2023 made in M.C.O.P.No.4403 of 2018 on the file of Motor Accident Claims Tribunal in the court of Small Causes, Chennai.



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For Appellant : Mr.K.Vinod
For Respondents : Mr.V.Velu
for R1 to R3
R4-exparte

JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the order and decretal order dated 31.08.2023 made in MCOP.No.4403 of 2018 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, by which, a sum of Rs.21,15,000/- was granted as compensation to the respondents/claimants herein.

2. The case of the claimants in the claim petition is that on 03.04.2018, at about 20.30 hours, while the deceased was riding the Motor Cycle bearing registration No.PY-01-BZ-4738 at ECR Road, Near Thahagadu Bridge from Pondicherry to Chennai direction, at that time, the Eicher Lorry bearing Registration No.TN-19-L-1533 which was coming from Chennai to Pondicherry direction, was driven by its driver in rash and negligent manner and dashed against the deceased motor cycle.



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Due to which, the deceased sustained multiple injuries and died on the spot. The above accident occurred only due to rash and negligent driving of the driver of Eicher Lorry. The claimants claimed a sum of Rs.50,00,000/-. The first respondent is the owner and the second respondent is the insurer of the Lorry bearing Registration No.TN-19-L-1533 and both are vicariously and statutorily liable to pay the compensation to the claimants with 15% interest per annum from the date of petition till the date of realisation.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of Eicher Lorry and awarded a sum of Rs.21,15,000/- as compensation to the claimants and as the 1st respondent/ owner of the said lorry had insured with the 2nd respondent Insurance Company/appellant herein, the Insurance Company was directed to pay the award amount to the claimants/respondents.

4. Challenging the said award dated 31.08.2023 made in M.C.O.P.No.4403 of 2018, the appellant-Insurance Company has come



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out with the present appeal.

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5. The learned counsel for the appellant submitted that the Tribunal erred in coming to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Eicher lorry. He would further state that the Tribunal erred in assessing the loss of dependency at Rs.19,50,000/- without any basis. Learned counsel would further state that the Tribunal having found that the claimants did not file the income tax returns and other relevant documents to prove the income of the deceased, went wrong in fixing Rs.15,000/- per month as the income of the deceased. Learned counsel would further state that to prove the avocation and income of the deceased, no independent witness was examined. Hence, the award passed by the Tribunal is against the principles laid down by this Hon'ble Court and the Hon'ble Apex Court. Hence, he would pray to set aside the order passed by the Tribunal.

6. Per contra, the learned counsel for the claimants would state that Ex.P1 FIR clearly reveals that it was the driver of the Eicher Lorry who drove the Eicher Lorry in a rash and negligent manner and caused the



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accident. Therefore, the driver of Eicher Lorry is solely responsible for the accident. As far as the avocation of the deceased is concerned, learned counsel would state that the deceased was working as a Carpenter cum Timber owner and was earning a sum of Rs.50,000/- per month. However, the Tribunal had fixed only Rs.15,000/- as notional income.

7. Heard the learned counsel for the appellant as well as the learned counsel for the 1st to 3rd respondents and perused the materials available on record. The 4th respondent herein/driver/1st respondent before the Tribunal, was set exparte before the Tribunal.

8. The appellant Insurance Company has filed this appeal questioning the negligence and quantum of the award passed by the Tribunal.

9. Insofar as negligence is concerned, the Tribunal relied on Ex.P1 FIR and also the evidence of P.W.1 wife of the deceased and P.W.2 eye witness to the occurrence who have spoken about the way and manner in which the accident had taken place on 03.04.2018. The complaint was



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given by one Nargunam and on the basis of the said complaint F.I.R.- Ex.P1 was registered. The Tribunal has also found that there was no reason to disbelieve the contents of FIR. The Tribunal had found that that though the appellant Insurance company contended that the deceased invited the accident due to his rash and negligent driving, there is no evidence available on record to prove the same. Hence, the Tribunal concluded that the accident took place only due to rash and negligence on the part of the driver of the 1st respondent/owner of the vehicle and we find no infirmity in the said findings and thus, we are not inclined to interfere with.

10. As far as the quantum awarded by the Tribunal is concerned, the appellant Insurance Company has claimed that the assessment made under the head of loss of dependency at Rs.19,50,000/- is without any basis. As per the claimants, the deceased was working as a Carpenter cum timber owner and was earning a sum of Rs.50,000/- per month. However, the Tribunal has given a finding that the claimants have failed to examine any independent witness with regard to the avocation and monthly income of the deceased and fixed a notional income of



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Rs.15,000/- as per the judgement in Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited reported in 2014(1) TNMAC 450(SC). Since there are three dependants, the Tribunal deducted 1/3 for his personal expenses and considering his age of 49 years, applied the multiplier of 13 and adding 25% future prospects i.e., $\text{Rs.15,000} \times 25\% = 18750$ ($15000+3750$), calculated the award of compensation as Rs.19,50,000/- ($\text{Rs.18,750} \times 12 \times 13 \times 2/3$). The award passed by the Tribunal is fair and reasonable. We do not find any infirmity or illegality in the said finding of the Tribunal, warranting interference by this Court. Therefore, we are of the opinion that the award passed by the Tribunal has to be confirmed.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.21,15,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the



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respondents 1 and 3/claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B, J.) (R.S.V., J.)
13.11.2024

Index: Yes/No
Speaking/Non-speaking order
vsi

To

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



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

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