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C.M.A.No.2505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.2505 of 2024
and
C.M.P.No.19867 of 2024**

Reliance General Insurance Company Limited,
Branch Office at: Old No.15, New No.28,
3rd Floor, North Usman Road
T.Nagar, Chennai – 600 017

..Appellant

Vs.

1. Thulasiammal,
W/o Swaminathan

2. Yazhini,
D/o Swaminathan

3. Minor.Gokul,
S/o Swaminathan
(represented by his next friend & mother
Thulasiammal, 1st respondent)

4. Shakila Banu,
W/o Sheik Abdul Kadar

..Respondents



C.M.A.No.2505 of 2024

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 24.01.2024 in M.C.O.P.No.53 of 2019 on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi.

For Appellant : Mr.P.Suresh Srinivasan

J U D G M E N T

(The judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the judgment and decree dated 24.01.2024 in M.C.O.P.No.53 of 2019 on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi, by which, the Tribunal has awarded a compensation of Rs.80,69,233/- with interest at the rate of 7.5% p.a.

2. The appellant is the Insurance Company. The claimants have filed M.C.O.P.No.53 of 2019 on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi. They have filed the said claim petition claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Swaminathan in the accident that took place on 04.05.2018.



C.M.A.No.2505 of 2024

WEB COPY

3. The claim petition has been filed stating that on 04.05.2018 at about 20.30 hrs, Swaminathan went as pillion rider in a motor cycle bearing Reg.No.TN-50-AY-7102 in Kovilvenni Main Road. The said motor cycle was driven by Gunasekaran with great care and caution. At the same time, a car bearing Reg.No.TN-64-E-9236 which came in a rash and negligent manner dashed against the said motor cycle. Due to the accident, Swaminathan sustained grievous injuries. Immediately, he was taken to Thanjavur Medical College Hospital, where he was declared dead. The accident was purely due to the rash and negligent driving of the car driver. Hence, the owner of the car and the 2nd respondent, being the insurer of the car, are jointly and severally liable to pay compensation due to the claimants.

4. The 4th respondent herein/ owner of the van remained absent and therefore, set exparte before the Tribunal.

5. The appellant Insurance Company/2nd respondent therein filed counter statement, denying the averments made in the claim petition and



C.M.A.No.2505 of 2024

stated that the accident was due to the rash and negligence act of the rider of the motor cycle. There is no valid license for the rider and no valid insurance for the motor cycle at the time of accident. The amount awarded is excessive. Hence, prayed to dismiss the claim petition.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the Insurance company is liable to indemnify the owner of the car and to pay compensation to the claimants and awarded a compensation of Rs.80,69,233/- with interest at the rate of 7.5% per annum.

7. Learned counsel appearing for the appellant/Insurance Company would state that negligence has not been proved and contributory negligence should have been considered and the rider of the motor cycle is also equally negligent in the occurrence of the accident. Further, the Tribunal ought to have examined the driver of the insured vehicle to prove the negligence but have not done so. Further, the Tribunal has considered the gross salary of the deceased but only net/take home salary should have been considered. The Tribunal has not considered that the



C.M.A.No.2505 of 2024

claimants have received all terminal dues/benefits of the deceased.

Hence, the amount awarded by the Tribunal is very excessive.

8. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

9. Insofar as the negligence part is concerned, the Tribunal after carefully considering the evidence of P.W.1, Ex.P1-FIR and Ex.P3, motor vehicle inspection report had come to the conclusion that only the driver of the car was responsible for the accident and fixed the negligence on the part of the driver of the car. The Tribunal also found that since the deceased was negligent in not wearing the helmet, fixed 10% contributory negligent on the part of the deceased. Therefore, we are of the view that the Tribunal has rightly fixed the negligence on the part of the driver of the car.

10. Insofar as the annual income of the deceased is concerned, it is seen from the materials available that the deceased was working as Assistant Professor in Raja Saraboji Government College, Thanjur and



C.M.A.No.2505 of 2024

the last drawn salary is Rs.96,911/- after deducting 10% his monthly earning comes to Rs.87,220/- and adding 15% for future prospects, the annual income of the deceased comes to Rs.12,03,636/-(i.e.,1,00,202x12) and considering the age of the deceased, the Tribunal applied the multiplier 11 and deducting 1/3rd for personal expenses, had rightly concluded the loss of dependency as Rs.88,26,664/- (i.e.,12,03,636x11=1,32,39,996-44,13,332).

11. We are also of the view that the amount awarded by the Tribunal towards funeral expenses, loss of love and affection, loss of consortium and loss of estate are just and reasonable. Therefore, we find no infirmity or illegality in the award passed by the Tribunal and thus, we are not inclined to interfere with the same.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal is confirmed. No costs. Connected CMP is closed.

(J.N.B,J.) (R.K.M., J.)
10.09.2024

Index : Yes / No
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C.M.A.No.2505 of 2024

To

The Motor Accident Claims Tribunal,
Sub Court, Mannargudi.



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C.M.A.No.2505 of 2024

J. NISHA BANU, J.
and
R.KALAIMATHI,J.

vsi

C.M.A.No.2505 of 2024

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