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C.M.A.No.2314 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

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

C.M.A.No.2314 of 2024

and

C.M.P.No.18166 of 2024

The Branch Manager,
Reliance General Insurance Company Limited,
No.15, Aadhillai Nagar Main Road,
PLA Kanagu Towers,
2nd Floor, 11th Cross, Trichy,
Kodavasal, Thiruvavur District.

... Appellant

Vs.

1. Arumugam
2. Nagaveni
3. Selvaraj
4. Govindaraj

5. The Branch Manager,
M/s.Unimac Plastic Technology Pvt. Ltd.,
No.45/3, Chekkadi Street, Kundathur Main Road,
Kovur Village, Sriperumpudur Taluk,
Kanchipuram District - 602 105.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the



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Motor Vehicles Act, 1988, praying to set aside the Award dated 05.01.2024 passed in M.C.O.P.No.64 of 2019 on the file of the Exclusive Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr.P.Suresh Srinivasan
For Respondents 1 to 4 : Mr.M.Jaisingh

J U D G M E N T

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

This Civil Miscellaneous Appeal has been directed against the Award passed by the Exclusive Motor Accident Claims Tribunal, Dharmapuri (hereinafter referred to as 'Tribunal').

2. The Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself, since the disposal of this case will not affect the respondents in any manner.

3. The appellant / Insurance Company has filed this Civil Miscellaneous Appeal. For the sake of convenience, the parties will be denoted as per the rank before the Original Petition.

4. The case of the petitioners is that on 18.07.2018 at 6.00



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p.m., when the deceased - Sivaji was proceeding in his motorcycle bearing Registration No.TMF-6501 on Kundrathur - Porur Main Road towards Kundrathur, a Swaraj Mazda Lorry bearing Registration No. TN-22-CS-7066 driven in a rash and negligent manner came from opposite direction and hit the motorcycle. Due to the accident, the deceased - Sivaji sustained injuries and died on the spot. The T12 Traffic Investigation Wing, Poonamalle registered a criminal case in Crime No.865/2018 under Sections 279 and 304-A of the Indian Penal Code, 1860.

5. At the time of accident, the deceased was about 24 years old. He was working as an Assistant Director in cinema field and also engaged in Real Estate Business. He was earning a sum of Rs.50,000/- per month. The accident occurred only due to the rash and negligent driving of the driver of the first respondent's Lorry.

6. The petitioners 1 and 2 are the parents and the petitioners 3 and 4 are the brothers of the deceased. The first respondent remained *ex parte* before the Tribunal and the second respondent had contested the case by filing counter, wherein it is stated that the petitioners have to prove the manner of the accident and involvement of the first respondent's vehicle



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with documentary evidence; that the first respondent's driver drove the Lorry slowly, carefully and cautiously observing all the Traffic Rules; that the first respondent's driver is not responsible for the accident; that the deceased drove his vehicle in a rash and negligent manner and got hit by an unknown vehicle, due to which, he sustained injuries; that the first respondent's Lorry is not involved in the accident; that the rider of the motorcycle did not possess a valid driving licence; that hence, the petition is liable to be dismissed.

7. During the trial, on the side of the petitioners, the fourth petitioner was examined as P.W.1 and one Krishnamurthy was examined as P.W.2 and Ex.P1 to Ex.P17 documents were marked. On the side of the respondent, on Dhamesh, Special Sub-Inspector of Police was examined as R.W.1 and Ex.R1 to Ex.R6 were marked. After hearing both sides and perusing the evidence, placing reliance on Ex.P1, First Information Report and ocular evidence of P.W.2, the Tribunal came to a conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's Lorry. Further, the Tribunal concluded that the respondent did not adduce any contra evidence; that at the time of the accident, the first respondent's Lorry was duly insured with the second



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respondent/Insurance Company; that hence, the Insurance Company is liable to pay a compensation to the dependants of the deceased.

8. Mr.P.Suresh Srinivasan, learned Counsel appearing for the appellant/Insurance Company would state that the respondents/claimants did not produce any evidence with regard to the monthly income allegedly earned by the deceased. In this circumstance, the Tribunal without any evidence, has taken a sum of Rs.10,000/- as notional monthly income when the accident occurred in the year 2018, and the same is on the higher side. Accordingly, he prayed to allow this appeal and modify the compensation.

9. Though the Insurance Company has filed this appeal, there is no serious dispute with regard to the manner of accident. On perusal of the Award of the Tribunal, it is seen that the Tribunal, based on the evidence of P.W.1 (Ocular witness) and the First Information Report registered against the first respondent's driver, concluded that the first respondent's driver is the reason for the accident and the respondent did not adduce any contra evidence. Hence, there is no reason to deviate the findings arrived by the Tribunal in this regard.



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10. As regards quantum, the Tribunal concluded that at the time of the accident, the deceased was aged about 24 years. Though the petitioners did not adduce cogent evidence to show the income earned by the deceased while he was alive, the Tribunal has taken a sum of Rs.10,000/- as the notional income of the deceased and applied 40% towards future prospects and accordingly, arrived at the compensation as tabulated below:-

Loss of Dependency	Rs.22,68,000/-
Loss of consortium	Nil
Loss of Love and Affection (Children)	Nil
Filial consortium (Father & Mother) Rs.44,000/- x 2	Rs. 88,000/-
Loss of Estate	Rs. 16,500/-
Funeral expenses	Rs. 16,500/-
Medical expenditure	Nil
Total	Rs.23,89,000/-

11. Insofar as the contention of the learned counsel for the appellant that the Tribunal has erroneously fixed a sum of Rs.10,000/- per month as the notional income of the deceased is concerned, it is pertinent to note that the deceased was working as Assistant Director in Cine Field and also doing Real Estate Business and hence, he would have earned more



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than a sum of Rs.10,000/-. The Tribunal, considering the then prevailing cost of living and the working atmosphere of the deceased, fixed a sum of Rs.10,000/- as notional monthly income of the deceased, which in our opinion is fair and proper.

12. In view of the above, we do not find any infirmity or illegality in the said findings of the Tribunal, thus warranting no interference by this Court. Therefore, we are of the opinion that the Award passed by the Tribunal has to be confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed. The Appellant/ Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four (4) weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/respondents are permitted to withdraw the Award amount as per the order of Trial Court along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.



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(J.N.B., J.)

(R.S.V., J.)

10.12.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
asi/tk

To

The Exclusive Motor Accident Claims Tribunal
Dharmapuri.



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