IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3263 of 2021

1. G.Latha
   W/o.Gajendran
2. G.Gajendran
   S/o.Govindasamy ... Appellants

Vs.

1. Amudha
   W/o.Mohan
2. Reliance General Insurance Co. Ltd.,
   6 Haddows Road
   Chennai-600 006. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal award passed by the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court, Chennai) dated 07.11.2019 in M.C.O.P.No.5837 of 2018.

For Appellants : Mr.S.Udhayakumar
For Respondents : Mr.P.Suresh Srinivasan
For R2
R1 - No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the petitioners/appellants challenging the Award dated 07.11.2019 passed in M.C.O.P.No.5837 of 2018 on the file of the Motor Accident Claims Tribunal Chennai.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The petitioners are the claimants, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

4. The brief facts of the case are as follows:

On 31.03.2018 at 20.20 hours, when the deceased was travelling as a pillion rider in a motor cycle bearing Registration No.TN05 BA 8452 from Tambaram to Puzhal Bye-pass Road, South to North Direction, the first respondent's Lorry bearing Registration No.TN21 BE 3681 which was proceeding in the same direction in front of the deceased's two wheeler, turned to right without any indication and which was not a "U" turn area and as a result the two wheeler was crushed in the impact and the pillion rider and the rider of the motor cycle were died. At the time of the accident, the deceased was aged about 22 years, he was working as D.S.T. Officer in Team Capital, Mumbai and was earning Rs.16,065/- per month. The petitioners/claimants are the parents of the deceased.

5. The first respondent being the owner and the second respondent being the insurer of the said vehicle remained *ex-parte* before the Tribunal.

6. To substantiate the case on the side of the claimants, the first petitioner/claimant examined herself as P.W.1 and one Mohanraj, who is eye-witness to the accident was examined as P.W.2 and 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, neither oral evidence nor documentary evidence was adduced before the Tribunal.

7. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of

Rs.15,67,000/- with future interest at 7.5% per annum from the date of claim petition till the date of realisation excluding the default period, if any with proportionate costs. The Tribunal directed the Insurance Company to deposit the entire award amount within three months time to the Tribunal's Indian Bank Account through NEFT / RTGS Mode. The Tribunal further directed that the petitioners are entitled to equal share and permitted to withdraw 50% of the award amount with proportionate interest and costs and balance amount was directed to be deposited in a Nationalized Bank for a period of three years.

8. Challenging the above Award of compensation, the petitioners/claimants have filed the present Civil Miscellaneous Appeal.

9. Mr.S.Udhayakumar, learned counsel for petitioners submitted that the accident occurred due to rash and negligent driving of the first respondent and at the time of accident, the deceased was aged about 22 years, he was employed as D.S.T. Officer in Team Capital, Mumbai and earned Rs.16,065/- per month. However, the Tribunal fixed the notional

income of Rs.10,000/- per month. Since the deceased died as a bachelor, the Tribunal, after deducting 50% towards personal expenses and adding 40% towards future prospects awarded the compensation of Rs.15,67,000/- which is very meagre. The learned counsel further submitted that the amount awarded under other heads is also very meagre and prays for enhancement of the award amount.

10. Per contra, Mr.P.Suresh Srinivasan, learned counsel for second respondent / Insurance Company submitted that the owner of the vehicle issued a cheque for insurance policy on 10.11.2017, after receipt of cheque, the policy was issued in favour of owner of the vehicle, the policy was valid from 10.11.2017 to 09.11.2018. However, the accident was happened on 31.03.2018. However, the cheque for the policy was dishonoured on 18.11.2017 and hence, the policy was cancelled on 23.11.2017, the same was communicated to the owner of the vehicle as well as Regional Transport Officer in which case, the petitioners are not entitled to any compensation amount from Insurance Company. Since there is no contract between Insurance Company and owner of the vehicle, the Insurance Company is not

liable to pay any compensation to the petitioners and prays for dismissal of the present petition.

11. The facts in the present case are not disputed. It is not in dispute that the Tribunal has fixed the notional income of Rs.10,000/- per month. It is also not in dispute that the Tribunal after deducting 50% towards personal expenses and adding 40% towards future prospects awarded the compensation of Rs.15,67,000/- to the petitioners which is just and reasonable one. The defence taken by the second respondent is that the cheque for insurance policy was issued on 10.11.2017 but the same was dishonoured on 18.11.2017 and the same was cancelled on 23.11.2017. However, the proof for cancellation of the policy was not communicated to the owner of the vehicle or Regional Transport Officer. It is seen from the records that there is no proof before this Court with regard to the acknowledgment for cancellation of policy from the Insurance Company and hence, the Insurance Company is liable to pay the compensation. Hence, the defence taken by the Insurance Company is rejected. This Court does not find any ground to interfere with the award passed by the Tribunal. The

compensation awarded by the Tribunal is very reasonable and it does not warrant interference of this Court.

12. The Insurance Company / second respondent is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

06.12.2024

Index : Yes / No
Speaking Order / Non-speaking order
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M.DHANDAPANI, J.

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To

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

2. The Section Officer,
   V.R. Section,
   High Court,
   Chennai.

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