IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3168 of 2021
and
C.M.P.No.17935 of 2021

The Divisional Manager,
The United India Insurance Company Limited,
46-51, T.K.M.Complex,
Katpadi Road,
Vellore – 4. ... Appellant

Vs.

1.Savithiri
2.Munirathinam
3.Akheel Ahmed ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment in O.P.No.986 of 2016 dated 10.12.2020 passed by the Sessions Judge – Fast Track Mahila Court, Vellore.

For Appellant : Mrs.R.Rathna Thara

For Respondents : Mr.C.Prabakaran [R1 & R2]
No appearance [R3]

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JUDGMENT

The Insurance Company has filed the above appeal challenging the award passed by the Motor Accident Claims Tribunal, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore in M.C.O.P.No.986 of 2016 on the grounds of negligence as well as quantum of compensation.

2. The facts, which are necessary to appreciate the reasons for the appeal is herein below narrated :-

On 26.09.2016 at about 5.30 p.m., at Katpadi to Vallimalai Road, Pallikuppam near R.R. Nagar name board, when the deceased Pushparaj was riding motorcycle bearing Regn.No.TN-22-BB-2569 on the left side of the road, in the opposite direction, a car bearing Regn.No.TN-23-BZ-2013, belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner and also endangering human life without following the traffic rules and dashed against the deceased, which resulted the deceased sustaining grievous injuries and died on the spot. Therefore, the claimants have filed a claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of the deceased.

3. Before the Tribunal, the claimants examined two witnesses

P.W.1 and P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the 2nd respondent/insurance company, no witness was examined, but marked 1 document viz., Ex.R.1. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.30,94,000/- as compensation to the claimants. Aggrieved by the same, the present appeal has been filed by the insurance company.

4. Learned counsel appearing for the appellant/insurance company submitted that, as per Ex.R.1/Copy of M.V.I. Report, at the time of accident, the deceased was not wearing helmet and therefore, contributory negligence has to be fixed on the deceased, however, the Tribunal failed to do so. Hence, this Court may fix reasonable percentage of contributory negligence on the deceased. Further, he submitted that the Tribunal was not justified in fixing the notional income at Rs.20,000/-, since the deceased was only pursuing his under graduation and he was not an earning member of the family. Therefore, according to the learned counsel, fixation of Rs.20,000/- as notional income, addition of 40% towards future prospects had resulted in compensation being boosted up. Accordingly, he prays for allowing this appeal.

5. Per contra, learned counsel appearing for the respondents 1 and 2/claimants submitted that, the Tribunal was justified in rejecting the contention of the appellant/insurance company with regard to fixation of contributory negligence on the deceased for not wearing the helmet at the time of accident, since the appellant/insurance company has not placed any evidence to show that the deceased was also one of the reasons for contributory negligence for the accident. By relying upon the judgment passed by this Court in the case of ***Royal Sundaram General Insurance Co. Ltd. Vs. R.Kavitha & Ors.*** in C.M.A.No.1576 of 2020, dated 03.12.2021, the learned counsel submitted that, the Tribunal was justified in fixing the notional income at Rs.20,000/-. Accordingly, he prays for the dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing on behalf of the respondents 1 and 2/claimants and also perused the materials available on record.

7. Insofar as the contention relating to negligence is concerned, the main grievance espoused by the appellant/insurance company is that the deceased was not wearing helmet and, therefore, the Tribunal has failed

to fix contributory negligence with respect to the deceased and, therefore, necessary interference is warranted with the said finding.

8. Though such a contention has been advanced, it is to be pointed out that there is no material placed by the appellant/insurance company to infer that the deceased was not wearing helmet at the time of the accident, thereby contributing to the accident. When there is no material evidencing that the accident had happened due to the negligent act of the deceased, the contention of the appellant/insurance company relating to contributory negligence cannot be accepted. Further, to make out an act of contributory negligence, there should be material, which clearly establishes such an act on the part of the deceased and it could not be taken by way of mere inference. Therefore, the said finding on negligence recorded by the Tribunal does not deserve any interference.

9. On the quantum of compensation, the Tribunal had taken Rs.20,000/- as notional income. Admittedly, at the time of accident, the deceased was studying 3rd year B.E. Course in the Kingston Engineering College and he has not completed the course and he was only aged 19 years. His parents have been deprived of their only son because of the

accident. If the deceased has completed his course, he would have definitely joined in anyone of the company and he can earn more than Rs.20,000/- per month. Considering the pain of the respondents 1 and 2/parents of the deceased and the fact that the deceased was aged about 19 years at the time of accident, I do not think that the Tribunal could be faulted for taking the notional income at Rs.20,000/- per month. Therefore, considering the uncertainities involved, I do not think that the fixation of Rs.20,000/- as monthly income could be said to be on the higher side. Further, the Tribunal has taken 40% for future prospects, deducted 50% towards personal expenses and awarded compensation towards other heads also, which has resulted in the respondents 1 and 2/claimants being awarded a sum of Rs.30,94,000/- and the same cannot be termed as high or excessive. Hence, I do not see any reason to interfere with the award of the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the impugned award passed by the Motor Accident Claims Tribunal, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore in M.C.O.P.No.986 of 2016, dated 10.12.2020 is confirmed. The Appellant-Insurance Company is directed to deposit the award amount to the credit

of M.C.O.P.No.986 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the share of the respondents 1 and 2/claimants as per the apportionment of the Tribunal, directly to their bank account through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

02.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Motor Accident Claims Tribunal, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore.

M.DHANDAPANI, J.,

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C.M.A.No.3168 of 2021

02.12.2024