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C.M.A.No.2579 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2579 of 2024
and C.M.P.No.20515 of 2024

Bajaj Allianz General Insurance Co.Ltd,
Old No.276 & 277 New No.497 & 498,
Insan Katina Building, V Floor,
Poonamallee High Road, Arumbakkam,
Chennai - 600 106.

..Appellant

Vs.

1. Lokammal
2. Kuppan
3. Sarla
4. Manjula Devi

..Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988 against the Judgment and Decree dated 18.03.2024 made in MCOP No.808 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of small Causes, Chennai and pass orders.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mrs.M.Malar

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JUDGMENT

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

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the order dated 18.03.2024 made in M.C.O.P.No. 808 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. The claimants have filed M.C.O.P.No.808 of 2019 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. They have filed the said claim petition claiming a sum of Rs.90,00,000/- as compensation for the death of one Sampath, in the accident that took place on 18.01.2019.

3. The claim petition has been filed stating that on 18.01.2019, at about 01.15 a.m, while the victim was driving a TATA Sumo bearing Registration No.TN85-F-8565 from Chengalpattu to Tambaram, opposite to Bharath Petrol Bunk, near Maraimalai Nagar Municipality, GST Salai, a Lorry bearing Registration No.TN28-P-9194 came from the same direction driven in a rash and negligent manner applied sudden brake without any indication or signal



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which had resulted in the Tata Sumo of the victim hitting behind the lorry, and due to the impact, the victim sustained multiple grievous injuries all over the body, and immediately he was taken to SRM Hospital and he died on 24.01.2019 despite treatment.

4. The 4th respondent/ owner of the offending vehicle, remained *ex parte* before the Tribunal.

5. The appellant/Insurance Company, being insurer of Lorry owned by the 4th respondent, filed counter statement before the Tribunal, denying the averments made in the claim petition and stated that the accident occurred solely due to the negligence of the deceased himself, who had driven the Tata Sumo bearing Registration No.TN85-F-8565 against the Lorry, without observing any traffic rules and regulations. The amount of compensation claimed by the claimants is highly exorbitant and does not bear any legal, equitable and reasonable basis. The various heads under which the compensation is claimed are imaginary and it was made only for purpose of filing the claim petition. Hence, the claimants are not entitled for any amount of compensation as claimed by them.



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6. The Tribunal, after analysing oral and documentary evidence, held that the accident had occurred due to the rash and negligent act of the driver of the 4th respondent's vehicle and fixed the entire negligence on the part of the driver of the lorry. Challenging the same, the appellant/Insurance Company has preferred this appeal.

7. The learned counsel for the appellant stated that the Tribunal has erroneously held that the driver of the lorry drove the vehicle in a rash and negligent manner and caused the accident resulting in the death of the deceased. There was no negligence on the part of the driver of the lorry. He further stated that the accident had occurred solely due to the negligence on the part of the deceased himself, who had driven the Tata Sumo bearing Registration No.TN85-F-8565 against the Lorry, without observing any traffic rules and regulations.

8. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials placed on record.



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9. The main contention of the appellant is that there was no negligence on the part of the driver of the lorry and that the accident had occurred solely due to the negligence on the part of the deceased himself, who had driven the Tata Sumo.

10. From the materials available on record, it is seen that P.W.2, an eye witness had deposed that on 18.01.2019 at about 01.15 a.m. while the deceased was driving a TATA Sumo, opposite to Bharath Petrol Bunk and Maraimalai Nagar at GST Salai in the left side of the road i.e., south to north direction of the road, proceeding from Chengalpattu to Tambaram direction, a lorry belonging to the 1st respondent/4th respondent herein proceeding in front of the deceased vehicle in the same direction on the right side of the road near centre median, in a rash and negligent manner and without any signal and not even seeing the vehicle coming behind taken left side of the road for overtaking another vehicle which was going in front of the lorry and applied sudden break, due to which, the deceased vehicle dashed behind the left rear side of the lorry and due to the impact, the deceased sustained multiple grievous injuries all over body.



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11. From the evidence of P.W.2, it is noticed that the deceased is also responsible for the accident. The deceased was driving the TATA Sumo behind the lorry. Even assuming that the driver of the lorry drove the lorry in a rash and negligent manner without any signal, proceeded to overtake the other vehicle moving in front of the lorry, if the deceased would have driven the TATA Sumo cautiously in a normal speed, maintaining a distance from the lorry, the accident would have been avoided. The Tata Sumo dashed on the rear side of the lorry and due to the impact, the deceased sustained grievous injuries all over the body. Therefore, we are of the opinion that the deceased has also contributed to the accident by dashing on the rear side of the lorry.

12. The Tribunal, without taking into consideration the over all evidence, fixed the entire liability on the driver of the lorry. Therefore, we are of the view that fixing 15% contributory negligence on the part of the deceased is fair and proper. Accordingly, 15% contributory negligence is fixed on the part of the deceased and the compensation awarded by the Tribunal is modified as under:-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
Towards Loss of Income / Dependency Rs.21,000 x 12 x 17 x 1/2	21,41,000	21,41,000	Confirmed
Towards Loss of Estate	15,000	15,000	Confirmed
Towards Loss of Consortium (Rs.40000/- (Each) x 2	80,000	80,000	Confirmed
Towards Funeral Expenses	15,000	15,000	Confirmed
Towards Transportation Charges	10,000	10,000	Confirmed
Total	22,62,000	22,62,000	
(Less 15% contributory negligence Rs.3,39,300)		19,22,700 (Total Award Amount)	Reduced

After deducting 15% towards contributory negligence, the total compensation award amount is Rs.19,22,700/- (Rupees Nineteen Lakhs Twenty Two Thousand and Seven Hundred Only).

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed by reducing the award amount from Rs.22,62,000/- to Rs.19,22,700/- (Rupees Nineteen Lakh Twenty Two Thousand and Seven Hundred Only).



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14. The appellant is directed to deposit the compensation amount of Rs.19,22,700/- (Rupees Nineteen Lakhs Twenty Two Thousand and Seven Hundred Only) after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of M.C.O.P.No.808 of 2019 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P.No.808 of 2019 to the bank account of the claimants through RTGS within a period of one week thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.K.M., J.)
19.09.2024

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To

The Motor Accidents Claims Tribunal, Chief Judge,
Court of small Causes, Chennai



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