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C.M.A.No.1688 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1688 of 2020

And

C.M.P.No.12434 of 2020

M/s.Bajaj Allianz General
Insurance Company Limited
Rep. by its Branch Manager,
M.R.V.Complex, III Floor,
No.5, Second Line Beach Road,
Chennai – 600 001.

... Appellant

Vs.

1.Sivapunniyam (Died)
2.Anandh (Died)
3.Prem Anandh
4.Rajeshwari
5.Vijay Anand
6.M/s.Royal Sundaram Alliance
General Insurance Co. Ltd.,
Represented by its Branch Manager,
No.3, Khader Nawaz Khan Road,
Nungambakkam,
Chennai – 600 034.

(Respondents 1 and 2 Died.
Respondents 3 and 5 (who are
already on record) are LR's of the
deceased R1 viz., Sivapunniyam
& R2 viz., Anandh as per memo
dated 22/7/24 and vide court order
dated 28/11/2024 made in
CMA 1688/2020 by MDIJ (recorded))

... Respondents



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Prayer:

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 27.11.2019 passed in M.C.O.P.No.173 of 2014, by the Hon'ble Motor Accidents Claims Tribunal (In the Court of Subordinate Judge), at Mannargudi.

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.D.Lakshmipathy for R1 and R2
R3 & R5 – No Appearance
Ms.Niranjana for R4
for M/s.P.Srividhya
Mr.G.Vasudevan for R6

J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 27.11.2019 passed by the Motor Accidents Claims Tribunal, (In the Court of Subordinate Judge), at Mannargudi, in M.C.O.P.No.173 of 2014.

2.The learned counsel appearing for the appellant submitted that the first respondent is the husband of the deceased Vasuki, second respondent is the son of the deceased, third respondent is the son of the deceased, fourth respondent is the owner of the vehicle bearing Registration No.TN 07 AD 3294 insured with the Bajaj Allianz General



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Insurance Company Limited, fifth respondent is the son of the deceased and owner of the vehicle bearing Registration No.TN 22 BU 5973 insured with the Royal Sundaram Alliance General Insurance Company/ sixth respondent. The respondents 1 and 2 died during the pendency of this appeal.

3.The learned counsel appearing for the appellant further submitted that the respondents 1 to 3/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs alleging that on 06.08.2010 at about 19.30 hours, the deceased Vasuki travelled as a passenger in the Car bearing Registration No.TN 22 BU 5973 in Chennai to Kumbakonam Road near Fathima Nagar. At that time, the Car bearing Registration No.TN 07 AD 3294, which came in a rash and negligent manner dashed against the Car in which the deceased travelled, due to which, the deceased lost her life. After adjudication, the Tribunal awarded a sum of Rs.10,82,897/- as compensation to the claimants and third respondent therein along with interest at 7.5% p.a. from the date of petition till the date of deposit with costs and directed the appellant to deposit the amount.



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4.The learned counsel appearing for the appellant further submitted that the driver of the car in which the deceased travelled, drove the car in a rash and negligent manner and dashed against the vehicle insured with the appellant, thereby the accident happened, however, the law enforcing agency registered the case as against the driver of the vehicle insured with the appellant and hence the Tribunal fastened the entire negligence as against the driver of the vehicle insured with the appellant, which is not sustainable one. Even bare perusal of Ex.R3 – rough sketch and the deposition of R.W.2 makes it clear that the entire fault is on the side of the driver of the car in which the deceased travelled.

5.The learned counsel appearing for the appellant further submitted that the deceased is a retired Government Doctor and she was receiving a sum of Rs.11,371/- as pension and further submitted that at the time of accident, the deceased was 61 years old and after 61 years future prospectus ought not to have been given while awarding compensation, however, the Tribunal awarded 40% future prospectus and fixed the income of the deceased as Rs.15,919.4 and awarded compensation for loss of income which is highly excessive. The learned counsel further submitted that the respondents 1 and 2



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died during the pendency of this appeal and the respondents 3 and 5 are married and they are not dependants of the deceased and hence awarding compensation by adopting multiplier method may not arise in this case.

6.The learned counsel appearing for the fourth respondent submitted that already the fourth respondent sold the car to third party and without impleading the third party purchaser, the appellant impleading the fourth respondent is not sustainable one.

7.The learned counsel appearing for the sixth respondent submitted that the first respondent/ husband of the deceased travelled along with the deceased in the car and he is the eye witness and he examined himself as P.W.1 and he deposed the manner in which the accident happened and to disprove the same, neither the fourth respondent nor the appellant examined any independent eye witness and hence, the Tribunal accepted the deposition of P.W.1 and passed the award, which warrants no interference.

8.Heard the arguments advanced on either side and perused the materials available on record.



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9. Admittedly, the deceased who was practicing as a Doctor after her retirement travelled along with husband in the Car owned by the fifth respondent/ son of the deceased and insured with the sixth respondent. At that time, it is alleged that the vehicle owned by the fourth respondent and insured with the appellant came in a rash and negligent manner and dashed against the vehicle in which the deceased travelled. In order to prove the case, the husband of the deceased examined himself as P.W.1 and he deposed the manner in which the accident happened and to disprove the same, neither the fourth respondent nor the appellant examined any independent eye witness, thereby, the Tribunal fastened the entire liability as against the appellant, which warrants no interference.

10. Insofar as the quantum of compensation is considered, admittedly, the deceased is a Doctor by profession and after her retirement, she was receiving a sum of Rs.11,371/- as pension and after retirement, this Court presumes that she may earn more than Rs.20,000/- per month by private practice. Though the Tribunal inadvertently added 40% future prospectus, even without adding 40% future prospectus, the deceased may earn more than Rs.20,000/- per



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month by private practice. Hence, the Tribunal fixed a reasonable sum as the monthly income of the deceased and rightly adopted the multiplier of 7 and awarded compensation for loss of income and the amount awarded under the other heads are also just and reasonable and the appeal is mis-conceived.

11.The civil miscellaneous appeal is dismissed. The judgment and decree dated 27.11.2019 passed by the Motor Accidents Claims Tribunal, (In the Court of Subordinate Judge), at Mannargudi, in M.C.O.P.No.173 of 2014, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

05.12.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
(In the Court of Subordinate Judge),
at Mannargudi.

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M.DHANDAPANI,J.
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