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C.M.A.No.839 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.839 of 2021

and

C.M.P.No.4838 of 2021

The Authority Signatory,
S B I General Insurance Company Ltd.,
Puducherry.

... Appellant

Vs.

1.Tamilarasi
2.Prabu
3.Preethi
4.Chinnammal
5.Suresh

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 29th day of March, 2019, made in M.C.O.P.No.1126 of 2016 on the file of Motor Accident Claims Tribunal (II Additional District Court), Puducherry.

For Appellant : Mr.K.Vinod

For Respondents : Mr.R.Veeramani [R1 to R3]
Died [R4]
Not Ready in Notice [R5]



C.M.A.No.839 of 2021

JUDGEMENT

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2. Briefly stated that on 22.09.2016, at about 16.00 hours when the deceased was returning home after his personal works at Valavanur in his Hero M Passion X Pro motorcycle bearing Regn.No.PY-01-CJ-5035 keeping extreme left side of the road, at that time, the lorry bearing Regn.No.TN-32-H-5404 belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, dashed against the motorcycle of the deceased, due to which, the deceased sustained grievous head injuries and died on the spot. Therefore, the claimants filed a claim petition before the Tribunal claiming a sum of Rs.56,00,000/- for the death of the deceased.

3. The first respondent despite of service of notice, remained *ex-parte*. The second respondent resisted the claim of the claimants stating that, at the time of the accident, the deceased without the head gear rode his motorcycle bearing Regn.No.PY-01-CJ-5035 carrying mechanical spare parts, without



following the traffic rules and regulations and caused the accident. Hence, the deceased contributed to the accident and compensation has to be awarded according to the rate of contributory negligence. The first respondent, owner-cum-insured had violated the policy conditions in allowing his driver to drive the vehicle without permit. Therefore, the first respondent alone is liable to pay the compensation to the claimants. The further submission of the second respondent is that the compensation claimed by the claimants are excessive and therefore, the claim petition is liable to be dismissed.

4. The Tribunal based on the above pleadings formulated the following points for consideration :-

- 1. Who is negligent for the accident ?*
- 2. Who is liable to pay compensation ?*
- 3. Whether the petitioners are entitled to compensation ? If so, what is the quantum ?*
- 4. What other relief if any ?*

5. The Tribunal based on the materials placed before it came to the conclusion that the driver of the offending vehicle is responsible for the accident and accordingly, awarded a sum of Rs.15,86,000/- as compensation with interest and costs. Assailing the same, the insurance company is on appeal.



C.M.A.No.839 of 2021

6. Mr.K.Vinod, learned counsel appearing for the appellant/insurance company would submit that the accident occurred due to the gross negligence of the deceased. His further contention is that the Tribunal erroneously awarded a sum of Rs.1,50,000/- and Rs.75,000/- towards loss of love and affection and loss of consortium, which is against the principles laid down in the case of *Magma General Insurance Company Limited Vs. Namu Ram alias Chuhru Ram & Ors.* reported in *2018 SCC OnLine SC 1546*. Therefore, the same requires interference by this Court.

7. On the other hand, Mr.R.Veeramani, learned counsel appearing on behalf of the respondents 1 to 3/claimants would submit that the Tribunal considering the oral and documentary evidence, has rightly come to the conclusion that the accident has taken place due to the negligent driving of the driver of the fifth respondent's vehicle. He would submit that the Tribunal also considering the materials available on record rightly awarded just compensation and there is no reason to interfere with the same.

8. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing on behalf of the respondents 1 to 3/claimants and also perused the materials available on record.



C.M.A.No.839 of 2021

9. Insofar as negligent aspect is concerned, before the Tribunal, the first claimant was examined as P.W.1. The first information report was marked as Ex.P.1. One Manikandan was examined as P.W.2, eye-witness to the said accident. The evidence of P.W.2 was not discredited on the side of the respondents. That apart, a criminal case was registered only against the driver of the offending vehicle. To prove the negligence on the part of the deceased, no other material is available on record to show that the deceased contributed to the accident. Considering the above circumstances, the Tribunal has rightly held that the accident had taken place only due to the rash and negligent driving of the driver of the fifth respondent's vehicle and there is no error in it.

10. The Tribunal awarded a sum of Rs.1,50,000/- towards loss of love and affection to claimants 2 and 3 (children of the deceased) and a sum of Rs.50,000/- to the fourth claimant (mother of the deceased). The Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited Vs. Namu Ram alias Chuhru Ram & Ors.*** reported in ***2018 SCC OnLine SC 1546*** held that the minor children are entitled for parental consortium of Rs.40,000/- each and the parents also entitled for filial consortium of Rs.40,000/- each. Applying the said principles laid down in the above judgment, the 2nd and 3rd claimants



C.M.A.No.839 of 2021

are entitled to get Rs.40,000/- each towards parental consortium and the 4th claimant is entitled to get Rs.40,000/- towards filial consortium.

11. Considering the above facts, this Court modifies the award of the Tribunal by enhancing the compensation, as under :-

<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	13,16,250/-	13,16,250/-
2	Loss of consortium to claimant 1	40,000/-	40,000/-
3	Loss of love and affection to claimant 2 and 3/parental consortium	1,50,000/-	80,000/- (reduced)
4	Loss of love and affection to claimant 4/filial consortium	50,000/-	40,000/- (reduced)
5	Towards funeral expenses	15,000/-	15,000/-
6	Loss of estate	15,000/-	15,000/-
	Total	15,86,250/-	15,06,250/-
	Rounded off	15,86,000/-	15,06,000/-

12. Since the offending vehicle did not possess valid permit at the time of accident, the Tribunal has rightly ordered for pay and recovery.



C.M.A.No.839 of 2021

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified, reducing the compensation amount from **Rs.15,86,000/-** to **Rs.15,06,000/-**. The appellant/insurance company is directed to deposit the modified amount to the credit of M.A.C.T.O.P.No.1126 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 award amount directly to the bank account of the claimants as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter. Therefore, the appellant/insurance company is at liberty to recover the said amount from the fifth respondent/owner of the offending vehicle, in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No
Speaking order / Nonspeaking order
Neutral Citation Case : Yes / No
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C.M.A.No.839 of 2021

K.GOVINDARAJAN THILAKAVADI, J.,

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To

- 1.The Motor Accident Claims Tribunal (II Additional District Court),
Puducherry.
- 2.The Section Officer, VR Section, Madras, High Court.

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