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C.M.A.No.2479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

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

C.M.A.No.2479 of 2024
and C.M.P.No.19684 of 2024

The Divisional Manager,
Reliance General Insurance Company Limited,
No.141/373, Sarathi Nagar, Vellore.

..Appellant

Vs.

1. Thilagavathi
2. Saisurya
3. Priyadharshini
4. Chinnaponnu
5. Nethaji

..Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 19.03.2024 made in M.C.O.P.No.188 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyatham.



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For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.C.Prabakaran

J U D G M E N T

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

This appeal has been filed by the Insurance Company, challenging the judgment and decree dated 19.03.2024 made in MCOP.No.188 of 2017 passed by the Motor Accident Claims Tribunal, Sub-Court, Gudiyatham, awarding a compensation of a sum of Rs.23,10,300/- to the respondents/claimants.

2. The appellant Insurance Company is the 2nd respondent in M.C.O.P.No.188 of 2017, on the file of the Motor Accident Claims Tribunal, Sub Court,Gudiyatham, Vellore District. The respondents 1 to 4 / claimants filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Venkatesan, who died in the accident that took place on 21.09.2017.

3. The case of the claimants is that on 21.09.2017 at about 04.00 p.m., the deceased Venkatesan was riding his two wheeler Bajaj CD 100 bearing Reg.No.TN-10-K-1910. While the deceased was coming in Vaduganthangal to Alanganeri Road near Anchaneya Temple, at that



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time, a Swaraj Mazda bearing Reg.No.TN-20-AC-5695 driven by its driver in a rash and negligent manner, dashed against the deceased and in the result, the deceased sustained grievous injuries on his head and all over the body and died on the spot.

4. The 1st respondent is the wife, the 2nd & 3rd respondents are son and daughter and the 4th respondent is the mother of the deceased. The 5th respondent is the owner of the Swaraj Mazda Van. The respondents 1 to 4 filed the said claim petition claiming compensation against the 5th respondent and appellant, being the owner and insurer of the Swaraj Mazda bearing Registration No.TN 20 AC 5695 respectively.

5.The 5th respondent - owner of the Swaraj Mazda bearing Registration No.TN 20 AC 5695 remained exparte before the Tribunal.

6. The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to appellant, the accident occurred due to rash driving of Bajaj CD 100 bearing Reg.No.TN 10 K 1910. There is no negligent or rashness driving on the part of the driver of the Swaraj Mazda van. Due to rash and negligent driving of the Bajaj CD 100 of the deceased only the accident had occurred. The owner of Bajaj CD 100 bearing



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Reg.No.TN 10 K 1910 and its Insurance Company are alone liable to pay the compensation. The Insurance company of Swaraj Mazda bearing Reg.No.TN 20 AC 5695 is not liable to pay any compensation. The deceased has no valid driving license at the time of accident. In any event, the quantum of compensation claimed by the respondents 1 to 4 is highly exaggerated and fanciful and prayed for dismissal of the claim petition filed as against the appellant.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Mathiazhan, eyewitness to the accident was examined as P.W.2 and 15 documents were marked as Exs.P1 to P15. The appellant examined one Kasthuri, as R.W.1, and marked 3 documents as Exs.R1 to R3.

8. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the Swaraj Mazda belonging to 5th respondent and directed the appellant-Insurance Company to pay a sum of Rs.23,10,300/- as compensation to the respondents 1 to 4.

9. Aggrieved over the said award dated 19.03.2024, made in M.C.O.P.No.188 of 2017, questioning the quantum and negligence, the



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appellant Insurance Company has filed the present appeal.

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10. The learned counsel appearing for the appellant-Insurance Company contended that the deceased was riding a two wheeler without licence and caused the accident and that the Tribunal ought to have fixed at least 50% of the negligence on the part of the deceased. The income of the deceased fixed at Rs.13,000/- is without any basis and 40% future prospectus is unwarranted. The claimants did not file any documents, such as attendance registers, bank statements to prove the avocation and income of the deceased but the Tribunal had erroneously fixed a sum of Rs.13,000 per month as notional income of the deceased which is excessive. The amount awarded for loss of love and affection i.e., Rs.40,000/- is highly excessive. The award of the Tribunal fixing the liability on the appellant is erroneous and prayed for setting aside the award of the Tribunal.

11. The learned counsel appearing for the respondents 1 to 4 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant – Insurance Company as well as the learned counsel appearing for the



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respondents 1 to 4 and perused the entire materials on record.

13. From the materials on record, it is seen that it is the case of the respondents 1 to 4 that on the date of accident, while the deceased Venkatesan was riding his two wheeler Bajaj CD 100 bearing Reg.No.TN 10 K 1910 in Vaduganthangal to Alanganeri Road near Anchaneya Temple, at that time, a Swaraj Mazda bearing Reg.No.TN 10 AC 5695 driven by its driver, drove the same in a rash and negligent manner and dashed on the two wheeler driven by the said Venkatesan and caused the accident. Due to the injuries sustained in the accident, the said Venkatesan died on the spot. To substantiate their case, the 1st respondent examined herself as P.W.1 and one Mathiazhan, eyewitness to the accident was examined as P.W.2.

14. Further, the respondents 1 to 4 also marked the FIR as Ex.P1, which was registered against the driver of the Swaraj Mazda bearing Reg.No.TN 20 AC 5695 belonging to 5th respondent. P.W.2 deposed that the accident occurred only due to the rash and negligent driving by the driver of the Swaraj Mazda bearing Reg.No.TN 20 AC 5695 belonging to 5th respondent. Thus, the Tribunal has rightly fixed the liability on the owner of Swaraj Mazda van and the insurer, the appellant herein and has



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also rightly deducted 10% from the total compensation for violation of motor vehicle rules on the deceased as he was not having driving license.

Therefore, We are not inclined to interfere with the said finding.

15. As regards the contention of the appellant that fixation of a sum of Rs.13,000/- per month as notional income of the deceased is excessive is concerned, the deceased was working as Welder and was earning R.25,000/- per month, but no documentary evidence was produced to prove the same. However, the Tribunal considering the age and year of accident was inclined to fix a sum of Rs.13,000/- per month as notional income and granted 40% towards future prospects, which in our opinion, is just and proper and therefore, the same need not be interfered with.

16. As regards the amount awarded under the head of love and affection Rs.10,000/- each, totally, Rs.40,000/- is concerned, We are of the view that the said amount is also proper and reasonable. Therefore, we find no infirmity or illegality in the award passed by the Tribunal and thus, we are not inclined to interfere with the award passed by the Tribunal.

17. In the result, this Civil Miscellaneous Appeal is dismissed and a



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sum of Rs.23,10,300/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.188 of 2017, on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyatham, Vellore District. On such deposit, the respondents 1 & 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

(J.N.B,J.) (R.K.M., J.)
25.10.2024

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accident Claims Tribunal,



C.M.A.No.2479 of 2024

Sub Court, Gudiyatham,
Vellore District.

**J. NISHA BANU, J.
and
R.KALAIMATHI, J.**

vsi

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