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C.M.A.No.2730 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

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

C.M.A.No.2730 of 2024
and
C.M.P.No.21830 of 2024

The Branch Manager,
M/s.Cholamandalam MS General Insurance Co.Ltd.,
Keerthi Cloud, No.9, 3rd Floor,
1st A Cross, ST Bed, Off 80 Feet Road,
4th Block, Koramangala,
Bangalore.

C/o.
The Branch Manager,
M/s.Cholamandalam MS General Insurance Co.Ltd.,
No.9, 1st Floor, Rajaji Road,
State Bank of Travancore Upstairs,
Peramanur, Salem - 636 007.

.. Appellant

Vs.

1. Danieal S/o.Anthony
2. S.Balamma W/o.Danieal
3. L.Lizy Thangam W/o.Arun Denis Kumar
4. Darasada Reddy. M
W/o.Muni Reddy

..Respondents



C.M.A.No.2730 of 2024

WEB COPY

Prayer: The Civil Miscellaneous Petition is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree made in M.C.O.P.No.20 of 2022, dated 08.04.2024 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.M.B.Raghavan

J U D G M E N T

(The Order of the Court was made by **J.Nisha Banu, J**)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 08.04.2024 made in M.C.O.P.No.20 of 2022 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

2.The appellant is the 2nd respondent/Insurance Company in M.C.O.P.No.20 of 2022 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur. The respondents 1 to 3 herein filed the said claim petition claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Arun Denis Kumar, who died in the accident that took place on 04.06.2020.

3. The 1st and 2nd respondents are parents and the 3rd respondent



C.M.A.No.2730 of 2024

WEB COPY

is the wife of the deceased. According to the respondents 1 to 3, on the date of accident i.e., on 04.06.2020 at 7.30 p.m., while the deceased was riding his motorcycle bearing Regn.No.TN-70-AD-2043 on Denkanikottai to Hosur Road, near Muchinayakanapalli bus stop, adjacent to Venkatesh land, the driver of Mahindra Bolero Pickup light goods vehicle bearing Regn.No.KA 51-AB-1766 which belongs to the 1st respondent and insured with the 2nd respondent, came in the opposite direction from Hosur side towards Denkanikottai at high speed in a rash and reckless manner dashed against the deceased motorcycle. Due to which, the deceased fell down on the road and sustained grievous injuries and died on the spot. Therefore, the respondents 1 to 3 filed the above claim petition claiming compensation against the 4th respondent, being the owner of vehicle-Mahindra Bolero and the appellant/Insurance company.

4.The 4th respondent, owner of the vehicle-Mahendra Bolero, remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the FIR was lodged by Lizy Thangam, wife of the deceased. She had given



C.M.A.No.2730 of 2024

WEB COPY

false complaint with a view to claim compensation after one day delay by shifting the entire responsibility on the driver of the insured vehicle just to safeguard the interest of the deceased family. The alleged accident would not have occurred if the deceased had taken sufficient care and pre-caution while riding his motorcycle in the State Highway at the time of accident. In spite of care and caution taken by the driver of the impugned vehicle, the alleged accident had occurred inevitably due to the negligence of the deceased. The deceased contributed negligence by not wearing the helmet in accordance with Motor Vehicles Act and also rules and regulations. The deceased came plying his motorcycle on the opposite direction, circle from left to right, without noticing the movement of the insured vehicle and suddenly collided as head on collision due to his uncontrollable speed. The respondent does not admit the age, occupation, monthly income of the deceased. The amount of compensation and interest claimed is excessive.

6. Before the Tribunal, the 3rd respondent, wife of the deceased, examined herself as P.W.1, the eye witness was examined as P.W.2 and the employee of Instakart Service Pvt. Ltd. was examined as P.W.3 and documents Exs.P1 to P23 and Ex.X1 were marked. On the side of the



C.M.A.No.2730 of 2024

appellant/Insurance Company, there was no oral and document evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Mahindra Pickup light goods vehicle and directed the appellant Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.38,00,668/- to the claimants. Hence, the appellant/Insurance Company has filed the present appeal.

8. The learned counsel appearing for the appellant/Insurance Company would state that the award amount is excessive. He would further state that the pay slip of the deceased produced was for December 2019, i.e., more than 6 months prior to the accident. There is no acceptable record that the deceased was employed with Flipkart at the time of accident and the evidence of the employer is not acceptable in the absence of corroborative documentary evidence. Hence, he prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

10. It is the contention of the respondents 1 to 3 that the accident has occurred due to rash and negligent driving by the driver of the



C.M.A.No.2730 of 2024

Mahindra Bolero Pickup light goods vehicle which dashed against the motor cycle of the deceased. P.W.2, an eye witness had deposed that when the deceased was riding a motorcycle in a cautious manner, the goods vehicle, which was driven in rash and negligent manner, from opposite direction, dashed against the deceased and caused the accident. He has also stated that the helmet of the deceased was found near him. Neither the driver of the 4th respondent herein nor any other eye witness was examined to rebut the said evidence. The Tribunal, based on the evidence of P.W.2, found that the accident had occurred due to rash and negligent driving of the driver of the Mahindra Pickup light goods vehicle. This Court finds no error in the said finding of the Tribunal warranting interference by this Court.

11. As far as quantum of compensation is concerned, the respondents 1 to 3 have claimed that the deceased was employed in Instakart Service Pvt.Ltd., and earning Rs.30,000/- per month. Ex.P22 is the Company ID card. Ex.P23- salary slip of December 2019 showing his gross pay as Rs.21,734/- and the deduction is Rs.2,171/-. Ex.X1 shows that Watermemon Management Service Pvt.Ltd has given letter stating



C.M.A.No.2730 of 2024

WEB COPY

that the deceased has been deputed to Hosur with Instakart Service Pvt.Ltd. till 10.11.2019. Ex.P23 shows that the deceased continued the employment even in December 2019 and P.W.3, an employee of Instakart Service Pvt.Ltd had also deposed that the deceased joined on 09.09.2019 and worked till 04.06.2020 (till death). Therefore, fixing the income of the deceased as Rs.18,067/- per month, adding 50% for future prospects and applying multiplier of 17, are fair and proper.

12. Considering the date of accident, age, avocation and income of the deceased, the amount awarded by the Tribunal towards loss of dependency is not excessive and it does not warrant any interference by this Court. The Tribunal, after considering both oral and documentary evidence, awarded a total sum of Rs.38,00,663/- to the respondents 1 to 3 under different heads, which is not excessive and the same is hereby confirmed. We do not find any illegality or infirmity in the award passed by the trial Court.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.38,00,668/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the



C.M.A.No.2730 of 2024

WEB COPY

entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B,J.) (R.K.M., J.)
30.09.2024

Index : Yes / No
Internet : Yes
vsi

To

Motor Accident Claims Tribunal,
Additional District Court, Hosur.



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C.M.A.No.2730 of 2024

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

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