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C.M.A.No.22 of 2024

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 10.01.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

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and

C.M.P.No.171 of 2024

United India Insurance Co. Ltd.,
Divisional Office,
No.139, Kumaran Road, Tirupur,
Branch Office No.82, Sri Lakshmi Complex,
Sathyamangalam Taluk, Erode District.
Now at Regional Office,
No.178, Dr.Nanjappa Road,
Coimbatore – 641 018.

... Appellant

Vs.

1. Ponnuthai,
2. D.Manoj Kumar
3. D.Ranjani
4. M/s.Chithra Transports,
No.4/276, Gandhipuram Gandhi Nagar Post,
Udumalpet Taluk, Tirupur District – 642 154.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 08.12.2022 made in M.C.O.P.No.329 of 2019, on the file of the Motor Accident Claims



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Tribunal/Subordinate judge, Sathyamangalam.

For Appellant : Mr. R.Rajesh
Respondents 1 -3 : Mr.R.Nalliyappan

JUDGEMENT

Challenging both Liability and Quantum of Compensation, the present Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company.

2. On 16.07.2019, at about 02.30 p.m. when the deceased was riding a two wheeler, viz., TVS XL Super Moped, bearing Regn.No.TN 41-Y-7646, he was hit by a bus, bearing Regn. No.TN-41-V-4579, which came behind the back of the deceased, and due to the said accident, the deceased sustained serious head injury and died on the same day at 5.35 p.m.

3. Mr.R.Rajesh, learned counsel appearing for the appellant contended that at the time of the accident, rider of the two wheeler was under the influence of alcohol and hence, he lost control over the vehicle and invited the accident, however, the said aspect was not considered by



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the Tribunal and the Tribunal merely based on the evidence of P.W.1, P.W.2 and F.I.R./Ex.P.1 has come to the wrong conclusion that the accident occurred due to the rash and negligence on the part of the driver of the Bus and fastened 100% liability on the driver of the Bus. Therefore, the learned counsel submitted that the Tribunal ought to have fixed contributory negligence on the part of the deceased, for having ridden the two wheeler in an inebriated way.

3.1 The learned counsel appearing for the appellant also challenged the quantum of compensation. At the time of the accident, according to the appellant, the deceased was aged about 55 years and in fact, as per Ex.P.5, Accident Register, the brother of the deceased has given deposition that the age of the deceased as "55 years" at the time of the accident, however, the Tribunal has taken the age of the deceased as '49' based on Ex.P.8, viz., Post Mortem Certificate, which is incorrect. Further, the learned counsel contended that the deceased was only a Coolie, whereas, the Tribunal regardless of the same, taken the notional monthly income of the deceased at Rs.15,000/-, which is excessive. Therefore, the learned counsel



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contended that wrong fixation of the age and income of the deceased by the Tribunal has resulted in awarding such an exorbitant sum of Rs.19,50,000/- under the head "Loss of Dependency". Therefore, the learned counsel prayed for appropriate reduction.

4. Per contra, Mr.R.Nalliyappan, learned counsel appearing for the respondents 1 to 3 would submit that the award passed by the Tribunal both under the negligence aspect as well as quantum are just and fair and requires no interference.

5. I have given due consideration to the submissions made by the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and perused the materials available on record.

Liability :-

6. As far as the contention of the learned counsel appearing for the appellant in regard to the liability aspect is concerned, I do not find any force in the submission made by the learned counsel for the appellant, since



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only based on the evidence of P.W.1, P.W.2 and Ex.P.1, the Tribunal has categorically come to the conclusion that the accident occurred due to the rash and negligent act of the driver of the Bus and fixed 100% negligence on the part of the driver of the Bus, and when the same remains unchallenged and as long as there is no rebuttal evidence with regard to the negligent aspect, this Court does not find any infirmity in the findings rendered by the Tribunal with respect to the negligent aspect. Therefore, I do not find fault in the process of decision making on the part of the Tribunal in fastening 100% liability against the Driver of the Bus and hence, the findings of the Tribunal with regard to Liability aspect is confirmed.

Quantum of Compensation :-

7. Even the contention of the learned counsel for the appellant with regard to the Quantum of Compensation determined by the Tribunal merits no consideration, inasmuch as, the appellant has not taken any steps to cross-examine the Doctor, who issued the Post Mortem Certificate, Ex.P.8, neither questioned the Tribunal as regards the basis, on which, the Tribunal



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has fixed the age of the deceased at 49 years, and in the absence of any steps taken by the appellant disputing the age fixed by the Tribunal, this Court do not find any fault on the part of the Tribunal in fixing the age of the deceased at 49 years based on the Post-Mortem Report/Ex.P.8. Though it is the contention of the learned counsel for the appellant that as per Ex.P.5, Accident Register, the brother of the deceased has deposed that the age of the deceased as '55 years', the same cannot be taken into consideration as an authentic or exact statement, since, any person, while deposing evidence could not be expected to give accurate fact but could normally come out only with an approximate statement, and therefore, the evidence given by the brother of the deceased cannot be given much weightage.

7.1 As far as the contention of the learned counsel for the appellant that the Tribunal has fixed the income of the deceased at Rs.15,000/-which is on the higher side, since the deceased was only a Coolie worker, this Court does not find any infirmity in the decision of the Tribunal in fixing the notional income at Rs.15,000/- since the accident occurred in the year, 2019. In fact, the Hon'ble Supreme Court, in the case of **Syed Sadiq Vs.**



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United India Insurance Company, reported in 2014 (1) TNMAC 459

(SC), wherein, even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/- by applying the multiplier based on the cost inflation method. Therefore, when the Hon'ble Apex Court took notional income of a vegetable vendor at Rs.6,500/- who met with an accident in the year 2008, in the case on hand, the notional income fixed by the Tribunal at Rs.15,000/-, for a Coolie, who met with the accident occurred in the year 2019 does not appear to be on the higher side. Hence, I do not find any infirmity with regard to the quantum of compensation awarded by the Tribunal and therefore, award passed by the Tribunal under all other heads are also confirmed.

8. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount as determined by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1 to 3



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are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. No costs. Connected M.P. is closed.

10.01.2024

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To

The Subordinate judge,
Motor Accident Claims Tribunal, Sathyamangalam.



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Krishnan Ramasamy,J.,
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