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C.M.A.No.145 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.145 of 2023
and
C.M.P.No.1297 of 2023**

Reliance General Ins.Co.Ltd.
Reliance House, 5th Floor,
No.6, Haddows Road,
Chennai - 600 006

..Appellant

Vs.

1. S.Deepa,
W/o Late Sudharshan

2. Minor S.Mahalakshmi,
D/o Late Sudharshan

3. Minor.A.S.Arushi,
D/o Late Sudharshan

4. A.Devakumari
W/o Anantharaman

5. C.J.Anantharaman,
S/o Janakiraman

6. Vinayagam

..Respondents



C.M.A.No.145 of 2023

Prayer:

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Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 15th February 2022 passed in M.C.O.P.No.6801 of 2016 by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.K.Varadhakamaraj
for R1 to R5

J U D G M E N T

(The judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the judgment and decree dated 15.02.2022 made in M.C.O.P.No.6801 of 2016 on the file of Motor Accidents Claims Tribunal Chennai (In the II Court of Small Causes, Chennai), by which, the Tribunal has awarded a compensation of Rs.67,52,500/- with interest at the rate of 7.5% p.a. from the date of the petition till the date of realisation.

2. The appellant is the Insurance Company. The claimants have filed M.C.O.P.No.322 of 2019 on the file of Motor Accident Claims Tribunal,(Subordinate Judge) at Dharapuram. They have filed the said



C.M.A.No.145 of 2023

WEB COPY

claim petition claiming a sum of Rs.1,25,00,000/- as compensation for the death of one Sudharshan in the accident that took place on 19.07.2016.

3. The claim petition has been filed stating that on the date of accident i.e., on 19.07.2016 at about 04.30 a.m., while the deceased was travelling in a Tempo Traveller Van bearing registration No.TN-11-S-0193 on Chennai to Trichy Highway and when it reached near Erainji, the driver of the van drove it in a rash and negligent manner and hit against the bus bearing registration No.TN-23-BA-6927 which was proceeding in front of van and thereby the deceased sustained grievous injuries and died in the hospital on 23.07.2016. The driver of the van is responsible for the accident. The 6th respondent herein is the owner of the van and the said van has been insured with the appellant insurance company. Therefore, the 6th respondent as the owner of the van and the appellant Insurance Company are jointly and severally liable to pay the compensation to the claimants.

4. The 6th respondent/ owner of the van remained absent and therefore, set exparte before the Tribunal.

5. The 2nd respondent/appellant Insurance Company filed counter



C.M.A.No.145 of 2023

statement, denying the averments made in the claim petition and stated that the the accident was due to the rash and negligence act of the driver of the bus. The claimants have to prove that they are the legal heirs of the deceased with proper documentary evidence and also denied the age, avocation and alleged income of the deceased. The claimants have to prove the existence of valid insurance policy, RC book, fitness certificate, permit driving license, badge etc. in respect of the driver of the van and his vehicle at the time of the accident and that the claimants have to prove beyond reasonable doubt that the deceased has sustained fatal injuries due to a road accident. Hence, prayed to dismiss the claim petition.

6. Before the Tribunal, the 1st respondent/wife of the deceased examined herself as P.W.1, One Thennavan was examined as P.W.2 and Mr.Krishnan, Human Resources Personnel of a private limited company where the deceased was working as P.W.3. and marked twenty one documents as Exs.P1 to P21. On the side of the Insurance Company, no oral evidence adduced and no exhibits were marked.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the Insurance company is liable to indemnify the owner of the van and to pay compensation to the claimants and awarded



C.M.A.No.145 of 2023

a compensation of Rs.67,52,500/- with interest at the rate of 7.5% per annum.

8. Learned counsel appearing for the appellant/Insurance Company would state that negligence has not been proved and contributory negligence should have been considered. Further, the Tribunal ought to have examined the driver of the tempo traveller to prove the negligence but have not done so. The Tribunal has erred in relying on Form 16 of the deceased for investment under 80C of the Income Tax Act and it should have called for the IT returns filed by the deceased.

9. Learned counsel appearing for the claimants would state that P.W.2 has categorically deposed that it was the driver of the tempo traveller van who drove in a rash and negligent manner and hit on the bus which was proceeding in front of the van and caused the accident. No contra evidence was let in by the Insurance company. Further, the motor vehicle inspection report of the van and the bus was marked as Ex.P8 which reveals that the damages were noted on the back side of the bus and front side of the van which correlates the accident theory mentioned in the First Information Report-Ex.P1. He would further state that Form -16 for the assessment year 2016-2017 was produced before the



C.M.A.No.145 of 2023

WEB COPY

Tribunal and the Tribunal, only after analysing the same, came to the conclusion that the deceased was in the habit of saving tax under 80C and arrived at the total tax payable as Rs.36,000/- and that the actual annual income as Rs.5,94,000/-. Therefore, he would state that the award passed by the Tribunal need not be interfered with and prayed to dismiss the appeal.

10. Heard the learned counsel appearing for the appellant/Insurance Company as well as learned counsel appearing for the respondent 1 to 5 and perused the entire materials available on record.

11. Insofar as the negligence part is concerned, P.W.2, a third part witness has categorically stated that it was the driver of the tempo traveller van who drove in a rash and negligent manner and hit on the bus which was proceeding in front of the van and caused the accident and there was no contra evidence let in before the Tribunal. Further, the motor vehicle inspection report of the van and the bus was marked as Ex.P8 which reveals that the damages were noted on the back side of the bus and front side of the van which correlates the accident theory mentioned in the First Information Report-Ex.P1. Therefore, it is proved that only the van had hit on the backside of the bus and the accident had occurred



C.M.A.No.145 of 2023

only due to the negligent act of the driver of the van.

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12. Insofar as the annual income of the deceased is concerned, P.W.3 Human Resources Personnel of New Era Media Corporation Chennai Private Limited, where the deceased worked was examined and he has specifically stated that the employment of the deceased is permanent in nature. Further, Ex.P9 and P19, the salary slip of the deceased was produced to prove that the gross earnings of the deceased as Rs.37,500/-. Further, Form -16 for the assessment year 2016-2017 of the deceased was produced before the Tribunal and the Tribunal, only after analysing the same, came to the conclusion that the deceased was in the habit of saving tax under 80C and arrived at the total tax payable as Rs.36,000/- and that the actual annual income as Rs.5,94,000/-. Applying the multiplier for the age group between 36 to 40 years as 15 and deducting 1/4th of his income for personal expenses, the Tribunal had rightly calculated a sum of Rs.66,82,500/- as loss of income, with which, we are not inclined to interfere with.

13. Therefore, we are of the view that the Tribunal had rightly fixed negligence on the part of the driver of the van and had taken the gross salary of the deceased as Rs.37,500/-. We find no infirmity or



C.M.A.No.145 of 2023

WEB COPY

illegality in the award passed by the Tribunal and thus, we are not inclined to interfere with the same.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal is confirmed. No costs.

(J.N.B,J.) (R.K.M., J.)
05.09.2024

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

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



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C.M.A.No.145 of 2023

vsi

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