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C.M.A.No.2127 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2127 of 2019

and

Cros.Obj.No.5 of 2022

and

C.M.P.No.8493 of 2019

C.M.A.No.2127 of 2019

The Divisional Manager,
New India Assurance Company Ltd,
Nadu Theru, Sheikpet,
Kanchipuram.

... Appellant

Vs.

1. R.Pramila
2. Divya
3. Ajith

(The respondents 2 and 3 are suo motu declared as majors vide order dated 07.11.2024 in CMA.No.2127 of 2019)

4. Visalatchi
5. R.Gopi

... Respondents

Cros.Obj.No.5 of 2021
in C.M.A.No.2127 of 2019

1. R.Pramila



C.M.A.No.2127 of 2019

2. Minor Divya

3. Minor Ajith

(The cross objectors 2 and 3 are suo motu declared as majors vide order dated 07.11.2024 in CMA.No.2127 of 2019)

4. Visalatchi

... Cross Objectors

Vs.

1. The Divisional Manager,
New India Assurance Company Ltd,
Nadu Theru, Sheikpet,
Kanchipuram.

2. R.Gopi

... Respondents

Prayer in C.M.A.: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 30th day of June 2011 made in M.C.O.P.No.366 of 2006, on the file of Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.I), Chengalpattu.

Prayer in Cros.Obj.: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the appeal in CMA.No.2127 of 2019.

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For Appellant : Mr.K.Vinod for M/s.Elveera
Ravindran

For Respondents : Mr.S.Udayakumar for R1 to R3
Died – R4
No appearance - R5



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Cros.Obj.No.5 of 2022

For Cross Objectors : Mr.S.Udayakumar

For Respondents : Mr.K.Vinod for M/s.Elveera
Ravindran

COMMON JUDGEMENT

Challenging the award passed by the Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.I), Chengalpattu in M.C.O.P.No.366 of 2006 dated 30.06.2011, the above appeal has been filed by the Insurance company.

2. The Cross Objection has been filed by the claimants seeking an enhancement of the compensation.

3. On 10.05.2005, when the deceased Ravi was walking on the extreme left side of the road, at that time an auto bearing Regn.No.TN 22 AJ 3575 belonging to the fifth respondent, insured with the appellant / insurance company driven by its driver came in a rash and negligent manner and dashed the deceased, thereby, the deceased sustained



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grievous injuries and succumbed to the same. Thereafter, the respondents 1 to 4 / claimants have filed a claim petition claiming a sum of Rs.5,00,000/- before the Tribunal in M.C.O.P.No.366 of 2006.

4. Before the Tribunal, the claimants examined four witnesses viz., P.W.1 and P.W.2 and marked 4 documents viz., Ex.P.1 to Ex.P.4. On the side of the respondents, they have examined one witness viz., R.W.1 and marked Ex.R.1. Upon considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.4,34,000/- under various heads as compensation to the claimants. Aggrieved by the same, the present appeal has been preferred by the appellant / insurance company and the cross objection has been filed by the claimants seeking enhancement by claiming that the quantum of compensation is inadequate.

5. The learned counsel appearing for the appellant / insurer of the Auto submitted that, though the accident happened on 10.05.2005, however, the deceased died on 07.08.2005 which is after a lapse of three months from the date of accident. In the absence of any proof that the deceased died only due to the injuries sustained by him at the time of



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accident, the Tribunal has awarded a sum of Rs.4,34,000/- under various head which is *per se* unsustainable. Hence, he prayed to allow the appeal filed by the Insurance company.

6. Per contra, the learned counsel appearing on behalf of the cross objectors submitted that, though the claimants failed to produce the postmortem certificate of the deceased before the Tribunal, however, as per the evidence of P.W.1 coupled with the corroborative evidence of Ex.R1, Investigation report, it is clear that the husband of the first respondent in C.M.A.No.2127 of 2019 died due to the injuries sustained by him in the said accident. At the relevant point of time, the deceased was earning a sum of Rs.5,000/- per month, however, without considering the same, the Tribunal has fixed Rs.24,000/- as annual income which is *per se* unsustainable. The compensation awarded under the other heads are also on the lower side. Accordingly, he prayed for allowing the cross objection filed by the claimants.

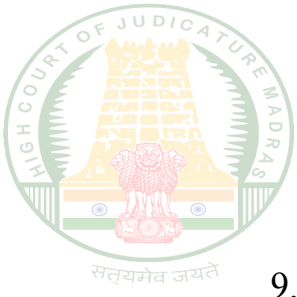
7. Heard the learned counsel appearing on either side and have perused the materials on records.



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8. It is the claim of the Insurance company that though the accident happened on 10.05.2005, however, the deceased died only on 07.08.2005 which is three months from the date of the said accident. It is further claimed that the claimants have either marked the postmortem report or the accident register before the Tribunal to prove the said delay. Though the appellant / insurance company claims as such, however, in order to prove the said claim, the evidences of P.W.1 and P.W.2 coupled with corroborative evidence of Ex.R1, Investigation report establishes that the husband of the first respondent in C.M.A.No.2127 of 2019 died only due to the said accident. However, in order to disprove the same, no independent eye witness has been examined on behalf of the appellant / insurance company. In the absence of any evidence or proof to nullify the claim of the claimants, the contention made by the learned counsel appearing on behalf of the appellant / insurance company cannot be acceded to. Upon appreciating the oral and documentary evidence, the Tribunal has rightly awarded a sum of Rs.4,34,000/- in favour of the claimants, which does not require any interference.



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9. The claim petition was filed in the year 2006, the respondents 2 and 3 in C.M.A.No.2127 of 2019 were aged about 12 and 10 years respectively. Now, they should be aged about 31 and 29 years respectively and are therefore, majors. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the respondents 2 and 3 in the appeal as majors and discharges their mother namely R.Pramila from the guardianship. The Registry shall carry out the necessary amendments.

10. For the reasons aforesaid, the appeal in C.M.A.No.2127 of 2019 filed by the appellant / insurance company and the Cross Objection in Cross Objection No.5 of 2022 stand dismissed, confirming the award passed by the tribunal in MCOP.No.366 of 2006 dated 30.06.2011 and the appellant / Insurance company is directed to deposit the compensation of **Rs.4,34,000/-** awarded by the tribunal to the credit of M.C.O.P.No.366 of 2006 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,



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within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the respondents 1 to 4 directly to their bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. The compensation amount shall be apportioned among the claimants as per the order of the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

- 1.The Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.I), Chengalpattu.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

rap

C.M.A.No.2127 of 2019
and
Cros.Obj.No.44 of 2021
and
C.M.P.No.8493 of 2019

07.11.2024