IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.4624 of 2019
and
C.M.P.No.26187 of 2019

United India Insurance Company Ltd.,
represented by its Divisional Manager,
Katpadi Road, Vellore. ... Appellant

Vs.

1.Sangeethamala
2.Minor. Priya
3.Minor. Abitha
4.Minor. Muralidharan

(Respondents 2 to 4 are suo-motu declared as Major and their mother R-1 Sangeethamala is discharged from Guardianship of Respondents 2 to 4 vide order dated 10.12.2024 made in C.M.A.No.4624 of 2019)

5.Royal Sundaram Alliance Insurance Company Limited,
Represented by its Branch Manager,
situated at No.5, R.J.Plaza, Katpadi Main Road,
Virudampet, Vellore – 632 006.

6.Easther ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.12.2016 made in

M.C.O.P.No.16 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Tiruvannamalai.

For Appellant	:	Mr.D.Bhaskaran
For Respondents	:	Ms.A.Deepthi [R1 to R4] Mr.G.Vasudevan [R5] Notice dispensed with vide order dt. 28.11.2024 [R6]

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JUDGMENT

The Insurance Company has filed the above appeal challenging the award passed by the Motor Accidents Claims Tribunal (Special Sub Judge), Tiruvannamalai in M.C.O.P.No.16 of 2016, dated 05.12.2016, whereby, the Tribunal has fastened the liability on the appellant to pay the compensation to the respondents 1 to 4, who are the legal heirs of the deceased Chandran, who died in the accident occurred on 21.07.2011.

2. On 21.07.2011 at about 9.00 p.m., the deceased was driving the Eicher van bearing Regn.No.TN-25-H-3060 from Kilpennathur Village to Chennai. When the said Eicher van was proceeding near Maduravayal Bye-pass near Tambaram, a van bearing Regn.No.TN-74-A-4074 was parked in the middle of the road without any display or signal. Due to

this, he dashed the stationed van, thereby, he sustained multiple injuries and was admitted in the Pavathi Hospital, Chrompet, Chennai and he was referred to Madras Medical College Hospital, Chennai. On the way to M.M.C. Hospital, he died. Therefore, the claimants have filed a claim petition before the Tribunal in M.C.O.P.No.16 of 2016 claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased.

3. Before the Tribunal, the claimants have examined two witnesses P.W.1 and P.W.2 and marked 5 documents viz., Ex.P.1 to Ex.P.5. On the side of the Insurance Company, they have examined 3 witnesses viz., R.W.1 to R.W.3 and marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal had allowed the petition and awarded a sum of Rs.11,17,212/- as compensation after deducting 25% towards contributory negligence, directing the appellant/insurance company to pay the said compensation to the claimants. Challenging the liability fastened against the appellant, the present appeal has been filed.

4. Learned counsel appearing for the appellant/insurance company vehemently contended that the Tribunal has grossly erred in fixing the liability on the appellant. He further submitted that, the van insured with

the appellant was parked on the side of the road and the deceased, who is the driver of the Eicher van, had driven the same in a rash and negligent manner and without realising there was a vehicle parked on the side of the road, had dashed against stationary van and caused the accident. Therefore, the entire fault lies only on the deceased/driver of the Eicher van. It is no doubt that the stationary van was insured with the appellant and since it is only a stationary vehicle, it had no role to play in the entire accident. Further, he submitted that the Tribunal has erred in fixing the liability on the appellant/insurer of the stationary vehicle. He also drawn the attention of this Court to the pleadings in the claim petition, wherein the claimants have claimed that the deceased was responsible for the accident and they have also filed claim petition u/s 163A of the Act and they have restricted the annual income of the deceased at Rs.40,000/- p.a. However, the Tribunal was generous enough to fix the monthly income at Rs.6,500/- and thereby, awarded a sum of Rs.10,64,616/- towards loss of income. Therefore, he submitted that the appellant should be released of their liability to pay compensation and even otherwise, the compensation awarded under various heads is excessive. Accordingly, he prays for allowing this appeal.

5. Per contra, learned counsel appearing for the respondents 1 to 4 submitted that, by considering all the materials available on record, the Tribunal has rightly awarded just and reasonable compensation in favour of the respondents 1 to 4/claimants, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel for the parties and also perused the materials available on record.

7. The learned counsel appearing for the appellant was harping on the wrong quoting of the provision of law. No doubt the claimants have filed the claim petition u/s 163A of the Motor Vehicles Act and they have also pleaded that the deceased was earning a sum of Rs.40,000/- per annum. The claim petition ought to have been filed u/s 166 of the MV Act, however, the mere wrong quoting of provision of law cannot stand on the way of rendering justice. This Court and the Hon'ble Supreme Court have held in umpteen number of cases that quoting of wrong provision of law is not a hindrance to the Court to extent the justice to the affected parties. Therefore, this Court has no hesitation to strike

down the arguments of the learned counsel appearing for the appellant as regards wrong quoting of provision of law.

8. The Tribunal has taken into consideration that the deceased has also contributed to the accident and the offending van namely the stationary van was parked on the side of the road. The Sub Inspector of Police, Traffic Investigation Wing, Poonamallee was examined as R.W.2, who deposed that the offending van was parked on the side of the road. However, there was a service road, which is adjacent to the road. The offending van could have very well been parked in the said service road. The parking of the offending van in a such haphazard manner had resulted in the accident. At the same time, the Tribunal has not lost site of the fact that the deceased had driven the Eicher van in a rash and negligent manner. Had the Eicher van been driven at a average speed, definitely, on noticing the stationary van parked just ahead of him, the deceased could have time to react by applying brakes, thereby to avoid the accident, however, the deceased driven the vehicle in a rash and negligent manner and lost control of the vehicle, which had resulted in the accident. Therefore, the Tribunal had fixed 25% contributory negligence on the part of the deceased/driver of the Eicher van and 75%

negligence on the part of the driver of the stationary van. Accordingly, though the Tribunal had arrived a total compensation of Rs.14,89,616/-, deducting 25% towards contributory negligence on the part of the deceased, had granted only a sum of Rs.11,17,212/- as compensation in favour of the claimants. Therefore, this Court does not find any infirmity in the apportionment of the negligence on both the vans and the same is sustained.

9. Though the learned counsel appearing for the appellant contented that the Tribunal was generous enough to award compensation in favour of the claimants, from a perusal of the award passed by the Tribunal, it could be seen that the claimants claims that, at the time of accident, the deceased was working as a driver and earning a sum of Rs.40,000/- p.a. However, no documents have been filed to substantiate the monthly income of the deceased. In such a scenario, the Tribunal has fixed the notional income at Rs.6,500/- by following the ratio laid down by the Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459*** and added future prospects at 30% as held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in

2017 (16) Supreme Court Cases 680, the total income per month was arrived at Rs.8,450/- and after reducing 1/4th towards personal expenses, the income to the deceased was arrived at Rs.6,337/- per month. Further, by applying the ratio laid down by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the Tribunal has adopted the multiplier of 14 and awarded a sum of Rs.10,64,616/- towards loss of income to the family, which is perfectly in order and the same is confirmed.

10. Further, the Tribunal has granted a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent/wife of the deceased and Rs.3,00,000/- towards loss of love and affection to the respondents 2 to 4/children of the deceased. There is no basis on which, the Tribunal has arrived at such amounts to be paid under such heads. Therefore, this Court reduces the same to a sum of Rs.40,000/- and Rs.1,20,000/- respectively under the said heads. It is noticed that the Tribunal has not granted any amount towards loss of estate, therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The Tribunal has granted a sum of Rs.25,000/- towards funeral expenses, which in the opinion of the Court is high and the same is reduced to Rs.15,000/-.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

S. No.	***Description***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Loss of income	10,64,616/-	10,64,616/-
2	Loss of consortium to the 1st petitioner/wife of the deceased	**1,00,000/-**	**40,000/- (reduced)**
3	Loss of love and affection of the minor petitioners 2 to 4/children of the deceased	**3,00,000/-**	**1,20,000/- (reduced)**
4	Funeral expenses	**25,000/-**	**15,000/- (reduced)**
5	Loss of estate	**-**	**15,000/- (granted)**
	Total	**14,89,616/-**	**12,54,616/-**
	Total compensation after deducting 25% towards contributory negligence	**11,17,212/-**	**9,40,962/-**

12. When the claim petition was filed in the year 2016, the claimants 2 to 4/respondents 2 to 4 were aged about 17, 15 and 11 years. Now, they should be aged about 26, 24 and 20 years and are therefore,

major. 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 claimants 2 to 4/respondents 2 to 4 as major and discharges their mother Sangeethamala from the guardianship. The Registry shall carry out the necessary amendments.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned award is modified, reducing the compensation amount from **Rs.11,17,212/-** to **Rs.9,40,962/-**. The appellant/insurance company is directed to deposit the modified compensation amount to the credit of M.C.O.P.No.16 of 2016 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, within a period of four (4) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned among the respondents 1 to 4/claimants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share of the respondents 1 to 4/claimants, directly to their bank accounts, through RTGS within a

period of two (2) weeks thereafter. No costs. Consequently, the connected civil miscellaneous petition is closed.

10.12.2024

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

The Motor Accidents Claims Tribunal (Special Sub Judge), Tiruvannamalai.

M.DHANDAPANI, J.,

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C.M.A.No.4624 of 2019

10.12.2024
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