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CMA.(MD)No.940 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/04/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 940 of 2021

and

CMP (MD) No. 8807 of 2021

Branch Manager,
Sriram General Insurance Company Limited.
No.66, Second Floor, City Centre Complex,
Thirumalaipillai Road,
Chennai-17.

: Appellant/Respondent No.2

Vs.

1.Sumithira
2.Ramaiaya
3.Nagalakshmi
4.Valliammal
5.Muthulakshmi
6.Balakrishnan

: R1 to R5/Petitioners
: 6th Respondent/R1

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 02/11/2018 passed in MCOP No.254 of 2013 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Pudukottai.

For Appellants : Mr.V.Sakthivel

For R1 to R5 : Mr.K.C.Maniyarasu

For 6th Respondent : No appearance



CMA.(MD)No.940 of 2021

JUDGMENT

This Appeal is filed seeking to set aside the judgment and decree, dated 03/11/2018 passed in MCOP No.254 of 2013 by the Motor Accident Claims Tribunal/Additional District Judge, Pudukottai.

2.The facts in brief:-

On 06/09/2012 at about 08.30 pm, the deceased Balasubramanian was riding his two wheeler bearing registration No.TN-49-AV-2057 on Pudukottai to Perumanadu road from west to east direction. At that time, the Tipper lorry bearing registration No.TN-21-J-6179 was driven by its driver in the rear direction in a rash and negligent and hit the two wheeler. Due to it, the deceased died on the spot.

3.Seeking compensation, the petition was filed by the petitioners namely the first petitioner who is his wife and 2nd petitioner who is the son, the petitioners 3 to 5 who are his sisters. Total compensation amount claimed is Rs.30,00,000/-.

4.That was resisted by the appellant herein stating that the occurrence took place because of the negligence



CMA.(MD)No.940 of 2021

on the part of the deceased. Without noticing the stationed vehicle, the deceased driven his two wheeler in a rash and negligent manner and hit on the rear side portion and invited the accident. Apart from that, it is also contended that the vehicle which was driven by the deceased had no proper fitness certificate and there was no proper licence for the deceased.

5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 5 documents marked. On the side of the Insurance Company, one witness was examined and 4 documents marked.

6.At the conclusion of the enquiry process, the Tribunal fixed the negligence at 80% on the part of the bus driver and 20% on the part of the deceased and awarded a total compensation amount of Rs.14,56,800/-.

7.Against which, this appeal is preferred by the Insurance Company. The owner of the vehicle was set ex-parte before the tribunal.

8.Heard both sides.



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9.The learned counsel appearing for the appellant would submit that the deceased was not having any proper licence and not wearing helmet. Even the vehicle driven by him has no fitness certificate and registration certificate, etc. Having known that Lorry is stationed, without noticing the same, the deceased driven the vehicle in a rash and negligent manner and invited the accident. Apart from that, it is contended that the petitioners 3 to 5 in the main petition are not dependents and so, they are not entitled for any compensation.

10.Per contra, the learned counsel appearing for the respondents 1 to 5 would submit that the vehicle was stationed without any proper signal that was the main reason for the occurrence. So, no negligence can be fastened upon the deceased.

11.Regarding the negligent aspect, the Tribunal has concluded that there is contributory negligence by the deceased also. It was fixed at 20% negligence on the part of the deceased and the first respondent vehicle was fixed at 80%. Whether this is proper is the prime question for consideration.



WEB COPY



CMA.(MD)No.940 of 2021

12.As mentioned above, the learned counsel appearing for the appellant would submit that in the circumstances of the case, 50% of the contributory negligence must be fixed upon the deceased.

13.During the course of enquiry, it was found that the case was registered only against the deceased for the occurrence and later after investigation, it was closed as abated. But considering the claim petition, the investigation by the police can be taken only to some extent and it cannot be relied in entirety. Only the nature of the accident, manner of the accident must be taken into consideration while considering the claim petition. Only on that point, it appears that the learned counsel appearing for the appellant has submitted that 50% of the contributory negligence has to be fixed on the side of the deceased.

14.No doubt that the deceased was not wearing helmet. There was no driving licence for him also. The vehicle driven by him has no proper document. Whether this contributed to the negligence is the matter for consideration and not wearing the helmet contributed to it. But in the absence of driving licence and other documents, the vehicle would have been contributed to the negligence.



WEB COPY



CMA.(MD)No.940 of 2021

15. So, for not wearing the helmet and not noticing the stationed vehicle, 20% of the negligence fixed by the Tribunal on the deceased. I am of the considered view that it is proper. Major contribution is only made by the first respondent vehicle. Had been there any warning signal, the accident would not have happened at all. It was not possible for the deceased to anticipate any stationed vehicle without any signal in the highways. Stationed the subject vehicle without any signal was the main reason for the occurrence. So, the fixing the 80% negligence on the part of the first respondent vehicle driver, I am of the considered view that it is proper. No interference is called for.

16. Regarding fixation of the monthly income, the Tribunal has fixed a sum of Rs.7,500/- per month, taking into account his age of 25, which cannot be construed as excessive in nature. Taking into account the future prospectus, the total amount monthly income was arrived at Rs.10,500/- after deducting the usual amount, By taking account the multiplier at 18 had fixed the total loss of estate at Rs.1701,000/-. The amount fixed in respect of other conventional heads are reasonable. I find no reason to interfere into the quantum of compensation fixed by the Tribunal.



WEB COPY



CMA.(MD)No.940 of 2021

17.In respect of the claimants 2 to 5, loss of love and affection is estimated at Rs.10,000/- each, which they are naturally entitled. Even if the petitioners 3 to 5 are sisters, they are not depending upon the income of the deceased. But only 5% of the total amount of compensation has been given to them. If at all only the claimants 1 and 2 can make any objection and certainly not the Insurance Company. So, this ground is also not available to the appellant herein.

18.In the result, this Civil Miscellaneous Appeal stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

17/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Additional District Judge,
Pudukottai.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)No.940 of 2021

G.ILANGO VAN, J

er

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