



C.M.A.(MD).No.50 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.12.2023

PRONOUNCED ON : 08.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.50 of 2020

Reliance General Insurance Company Ltd.,
Rep. By its Manager,
Plot No.HIG 55, First Floor,
Sri Meenakshi Plaza,
Anna Nagar 80 Feet Road,
Madurai 625 020.

... Appellant

Vs.

1.R.Manoharan
2.M.Krishnaveni
3.M.Sudha Devi
4.The Oriental Insurance Co. Ltd.,
Simmakkal Saratha Shopping Complex,
Madurai 625 001.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 29.04.2019 made in M.C.O.P.No.55 of 2017 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Madurai.



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For Appellant	: Mr.S.Srinivasa Raghavan
For R5	: Mr.E.Chandra Sekaran
For R1, R3 and R7	: Mr.C.Vakeeswaran
For R6 & R4	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal, Special District Judge, at Madurai in M.C.O.P.No.55 of 2017 dated 29.04.2019.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.55 of 2017.

3.The factual matrix of the present case, briefly stated, are as under:-

The deceased Selvaraj along with his brother in law and the first respondent who is the owner of the vehicle travelled in a Tata Ace goods vehicle bearing registration No.TN-58-U-2341 by sitting in the front side from Madurai to Nagercoil on 22.08.2009 in which, he loaded his household articles for shifting from Madurai. At about 2.15 a.m., while



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the said Tata Ace proceeded from south to west, near Pullalakottai Vilakku road, Bypass Road, Virudhunagar, a lorry bearing registration No.TN-33-X-6977 stood in the middle of the left side road. The driver of the Tata ace in a uncontrollable speed without seeing the lorry parked in the middle of the road, hit against the said lorry and as the result of which, the deceased Selvaraj was crushed in between two vehicles and sustained crush injury to major neck vessels and hemorrhage shock in all vessel organs, and multiple grievous injuries and resulted in his death on the spot. The other persons who travelled along with him also sustained grievous injuries. The deceased person was 22 years old at the time of death. The petitioners 1 and 2 are the parents of the deceased and the third petitioner is the unmarried sister of the deceased and the fifth respondent is his wife. Seeking compensation for the death of the deceased, the petitioners filed the claim petition in M.C.O.P.No.55 of 2017.

4.The second respondent is the insurance company with which the Tata Ace goods vehicle was insured and the third respondent is the owner of the lorry bearing registration No.TN-33-X-6977 and the fourth



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respondent is the insurance company with which the said lorry was insured. Counters have been filed by the second and fourth respondents before the learned Tribunal refuting each and every allegations set forth with the claim petition.

5.The learned Tribunal had framed four issues and three witnesses were examined P.W.1 to P.W.3 and Ex.P1 to Ex.P16 were marked on the side of the petitioners and neither witnesses nor document was marked on the side of the respondents. The respondents 1, 3 and 5 were called absent and were set exparte. The learned Tribunal on perusing the oral and documentary evidence and on the basis of the arguments put forth by the parties, concluded that the accident had happened not only due to the negligence of the driver of the Tata ace but also due to the contributory negligence of the lorry driver, who had parked the vehicle in the middle of the left side of the road and thereby, fixing contributory negligence to the tune of 70% on the driver of the Tata Ace and 30% on the driver of the lorry. Tata Ace was insured with the second respondent insurance company and lorry was insured with the fourth respondent insurance company.



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6.The learned Tribunal further concluded that in view of the vicarious liability on the part of the respondents 1 and 3 and contractual liability on the part of the respondents 2 and 4, they are entitled to pay compensation as awarded by the Tribunal to the petitioner. The learned Tribunal on the basis of evidence deposed by Syed Mohammed, Part Time Manager, Chennai as P.W.3 through whom Ex.P11 appointment order and Ex.P12 salary receipt of the deceased has been marked concluded that the monthly salary of the deceased was Rs.13,400/-. Considering the fact that the deceased person was 25 years old at the time of death, following the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited v. Praney Sethi and others* reported in *AIR 2017 SCC 5157* for future prospects 40% has been added and the monthly income as calculated by the learned Tribunal is Rs.18,760/- and the yearly income was calculated as Rs.2,25,120/- (Rs. 18,760 x 12). 10% of the yearly income has been deducted towards taxable income and after deduction of the taxable income, the income of the deceased is fixed as Rs.2,25,120/- [Rs.2,25,120 – 22,512 (Rs. 2,25,120 x 10% = 22,512)] Thereafter, 1/4th of the income is deducted



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towards personal expenses and thus loss of income was arrived as Rs.

1,51,956/- [Rs.2,02,608-50,652(2,02,608x1/4=50,652)] and the same was

multiplied with multiplier '18' as per Sarala Varma case, the loss of

dependency was arrived as Rs.27,35,208/- (Rs.1,51,956x18). Later, the

learned Tribunal had passed award under following heads:-

Head	Compensation awarded
(i) Loss of Dependency:	Rs.27,35,208/-
(ii) Spousal Consortium of fifth respondent:	Rs.40,000/-
(iii) Loss of love and affection for petitioners 1,2, 3:	Rs.1,20,000/-
(iv) Funeral Expenses:	Rs.15,000/-
(v) Transportation:	Rs.15,000/-
Total compensation awarded:	Rs.29,25,208/- with interest @ 7.5 % from the date of the claim petition until the realization and costs.

7.Challenging 30% of contributory liability fixed on the fourth respondent and the quantum of the award, this Civil Miscellaneous Appeal came to be filed by the appellant/fourth respondent insurance company.



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8.The learned counsel for the appellant/fourth respondent vehemently submitted that the apportionment of 30% of contributory negligence on the fourth respondent is *per se* illegal. The learned Tribunal failed to consider that the lorry is parked in the left side of the road and it is only the Tata ace goods carrier bearing registration No.TN-58-U-2341 driven in a rash and negligent manner dashed against the parked lorry on 22.08.2009 and as a result of which, the accident had happened. The learned Tribunal ought not to have observed that the respondents have failed to prove either by oral and documentary evidence that the lorry which had been parked on the left side road was duly parked with the required parking lamps. It is further observed that had the lorry been parked due to break down, the other precautionary parking cones ought to have been properly affixed around the vehicle. The third respondent miserably failed to prove that the parked vehicle was duly parked cautiously in the right direction with proper lighting facilities. Such an observation is unwarranted in the absence of pleadings of the petitioners. Hence, pressed for passing an order of apportionment of 100% negligence on the driver of the Tata Ace goods carrier. The learned counsel for the appellant/fourth respondent also submitted that



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the compensation awarded under the head loss of income is exorbitant without any basis.

9.Per contra the learned counsel for the petitioners vehemently submitted that the various compensation awarded by the learned Tribunal under various heads are full based on appropriate oral and documentary evidence and the same need not be interfered.

10.The learned counsel for the fifth respondent/second respondent submitted that the apportionment of 30% contributory negligence on the part of the lorry bearing registration No.TN-33-X-6977 is fully justified and hence, it is not necessary to interfere with the award passed by the learned Tribunal.

11.Heard Mr.S.Srinivasa Raghavan, learned counsel for the appellant, Mr.E.Chandrasekaran, learned counsel for the fifth respondent and Mr.C.Vakeeswaran, learned counsel for the respondents 1 to 3 and perused the materials available on record.



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12.In the instant case, FIR had been registered as against the first respondent driver in Crime No.711 of 2009 before Virudhunagar Police station. However, a critical perusal of the available materials in record would clearly reveal that the respondents failed to produce any documentary evidence and also did not examine any witness on their side. It is case of the petitioners that the lorry bearing registration No.TN-33-X-6977 was parked in the middle of the left side road. It is not the case of the petitioners that the said lorry was duly parked in the extreme left of the left side of the road and the same is corroborated by the evidence of the petitioners' witness. Hence, I do not find any merit in interfering in the award passed by the learned Tribunal.

13.Accordingly, the Civil Miscellaneous Appeal stands dismissed.
There shall be no order as to costs.

08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(Special District Judge), Madurai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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