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C.M.A.(MD)No.283 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2023

Pronounced on : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.283 of 2023

and

C.M.P(MD)Nos.10973 and 3436 and of 2023

United India Insurance Company Limited,
No.9/1/2, Ramakrishnapuram North,
Karur – 639 001.

...Appellant/2nd Respondent

Vs.

1.Mohamed Niyaz

2.Mohamed Rasheed

... 1st & 2nd Respondents/

Petitioners

3.Sakthivel

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award passed in M.C.O.P.No.1485 of 2017, dated 25.08.2022 on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruchirappalli and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For R1 & R2 : Mr.D.Kirubakaran

For R3 : No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award dated 25.08.2022 passed in M.C.O.P.No.1485 of 2017 by the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli.

2. The second respondent in M.C.O.P.No.1485 of 2017 is the appellant herein.

3. The petitioners/claimants are 1st and 2nd respondents herein, who filed the claim petition in M.C.O.P.No.1485 of 2017.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 1485 of 2017 is adopted hereunder.

5. The brief facts of the case:

On 29.08.2017 at about 5.30 a.m. the deceased Sahilabanu, who was the mother of the petitioners, riding bicycle along Tiruchi - Thanjavur road for doing physical exercise, while she was riding near bus stop opposite to Thiruvarambur temple, the driver of the first respondent's tarass lorry bearing registration number TN 52 D 9066 driven in a rash and negligent manner dashed behind her. Due to impact, she sustained fatal injuries and died in the hospital. The deceased was working as tailor and beautician and



was earning Rs.20,000/- p.m. Hence, the petitioners, who are dependants of the deceased Sahilabanu, filed the claim petition seeking compensation of Rs.20,00,000/-.

6. The second respondent / Insurance Company objected the claim petition by contending that the accident was happened due to negligent riding of the deceased and herself invited the accident. The driver of the first respondent's lorry is not responsible for the accident. Therefore, the petitioners are not entitled any claim from the second respondent.

7. Before the Tribunal both side adduced oral and documentary evidence. Petitioners examined two witnesses as P.W.1 and P.W.2 and marked 9 documents as Ex.P.1 to Ex.P.9. On respondents side R.W.1 and RW.2 were examined, but three documents Ex.R.1 to Ex.R.3 marked and also Ex.X.1 & Ex.X.2 were marked. After hearing both and after considering the evidences, the Tribunal has held negligence on the driver of the lorry the accident took place and awarded Rs.12,70,000/- to the petitioners with interest and cost. Aggrieved by the said award, the second respondent has preferred this Civil Miscellaneous Appeal.

8. Heard both side and perusal the records in this Civil Miscellaneous

Appeal.



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9. The learned counsel appearing for the second respondent/appellant has argued that the lorry involved in the accident was permitted only to carry goods upto 25000 kg, but at the time of accident the lorry carried 28760 kg goods and so the violated the policy condition. In this regard R.W.1 - RTO has clearly deposed about this fact. As per police document rough sketch, the accident was happened in the mid of the road and hence, the accident was happened due to negligence on the part of the deceased. Further, the driver of the lorry was acquitted from the criminal case. The Tribunal has not considered these facts and simply awarded enhanced compensation. The income of the deceased was erroneously fixed in the absence of any proof avocation. Lastly, he argued that the Court may consider the facts and circumstances of the case and order pay and recovery policy.

10. The learned counsel for the claim petitioners/1st & 2nd respondents herein, has contended that the Tribunal after considering the FIR registered against the driver of the lorry and also the evidence adduced by both sides fixed negligence on the driver. In fact as per latest settled principle of law, the income of the deceased would be fixed at Rs.12,000/-p.m., but fixed as Rs.9,000/- p.m. The goods carried by the lorry would not affect the case of the petitioners, it is the matter between the owner of the vehicle and the



Insurance Company. Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

11. On hearing both and on perusal of records, it is clear that the accident took place while the deceased was riding her bicycle, the Taras lorry bearing registration number TN 52 D 9066 driven by its driver in rash and negligent manner and dashed behind the deceased. It is the specific contention of the Insurance Company that the lorry was permitted to carry only 25000 kg goods, but it was taking 28760 kg. goods at the time of accident and so, it is a clear violation of policy conditions. The R.W.1 deposed only that the lorry was permitted to carry goods upto the weight 25000 kg. On perusal of the records, the Insurance Company has not established that only because of overweight the driver of the lorry lost control and dashed the deceased. It is not the objection of the Insurance Company before the Tribunal.

12. The next contention that the driver of the lorry was acquitted from the criminal case which was taken on cognizance based on Ex.P.1 – F.I.R. Acquittal in a criminal case would not affect the motor accident claims and it would not also lead to inference that there was no negligence on the part of driver. Much less the acquittal of the driver in the criminal case will have no bearing on the finding to be recorded by the Tribunal in



motor accident claim cases. Because, in motor accident cases the negligence need not be proved beyond reasonable doubt like criminal case. In this case Ex.P.1 – F.I.R is registered against the driver of the lorry, which would suffice to substantiate negligence. The respondents have not produced contra evidence for fixing negligence. This Court is of the considered view that the negligence concluded by the Tribunal is sustainable and there is no need to interfere in it.

13. In respect of compensation, the Tribunal arrived compensation, on the basis of settled **Sarla Varma case** reported in **2009 (2) TNMAC 1 and Pranay Sethi case** reported in **2017(2) TNMAC 609 (SC)**. There is no dispute raised regarding age of the deceased 48 years at the time of the accident. Though the petitioners claimed that the deceased was earning Rs.25,000/- by doing tailoring work and beautician, in the absence of documents, the Tribunal correctly fixed notional income as Rs.9,000/- and sanctioning 25% future prospects. There is no serious objection raised by the second respondent/Insurance Company. The second respondent/Insurance Company has not placed sufficient material to show that the Tribunal has awarded compensation at higher rate. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.



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14. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 25.08.2022 passed by the Motor Accident Claims Tribunal/Special District Court for MCOP Cases, Tiruchirappalli in M.C.O.P.No.1485 of 2017 is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1. The Motor Accidents Claims Tribunal/
Special District Court,
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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