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C.M.A.No.4011 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

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

C.M.A.No.4011 of 2019

and

CMP.No.22662 of 2019

M/s. National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office, 2nd Floor,
No.110, Jawarhalal Nehru Street, Puducherry.

...Appellant

Vs.

1. P.Periyasamy (*Died*)
2. P.Anbazzhagan
3. P.Ravi

(R1 died, Respondents 2 and 3 recorded as LR's of the deceased R1,
as per the memo dated 31.03.2022 and order of this Court
dated 28.11.2022 in CMA.No.4011 of 2019)

4. T.Aanaimuthu
5. TATA AIG General Insurance Co. Ltd.,
No.1, Ethiraj Road, Egmore,
Chennai – 600 008.

6. C.Ramakrishnan

...Respondents



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Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree passed in M.A.C.T.O.P.No.663 of 2013 dated 10.04.2018 on the filed of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Ms.N.B.Surekha

For Respondent : R1 – Died
Mr.T.Gobinath, for R2 & R3
Mr.K.Vinod, for R5
No Appearance, for R4 & R6

JUDGEMENT

Challenging the judgment and decree passed by the Motor Accidents Claims Tribunal, Principal District Court, Perambalur in M.A.C.T.O.P.No.663 of 2013 dated 10.04.2018, the insurer has come up with this appeal.

2. The case of the appellant is that, the respondents 1 to 3 filed a claim petition claiming a compensation of Rs.7,00,000/- for the death of one Sellammal, who is the wife of the 1st respondent and mother of the 2nd and 3rd respondents, on the ground that, on 21.03.2013, at about 05.30 pm, when the deceased was walking on the extreme left side of Veppur – Nannal road, the 4th respondent's tractor bearing Regn.No.TN-46-F-1883, insured with the 5th



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respondent, loaded with Sugarcane in the two trailers bearing Regn.Nos.TN-31-AE-8083 and TN-46-B-2426, owned by the 6th respondent, insured with the appellant/insurance company, driven by its driver in a rash and negligent manner, came in the same direction in an uncontrollable speed, due to which, the sugarcanes loaded in the trailers lost its grip from its bundle and fell down on the said Sellammal, as a result of which, she sustained fatal injuries all over her body and died on spot. Thereby, the respondents 1 to 3/claimants, being the dependents of the deceased filed a claim petition claiming compensation for the death of the deceased Sellammal. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.3,10,000/-. Aggrieved with the said order, the present appeal has been filed by the appellant questioning the liability of the insurer of the trailer.

3. Learned counsel appearing for the appellant submitted that, the tribunal had miserably failed to consider the fact that the trailers cannot be operated without attaching the same to the riding vehicle and in the present case, the riding vehicle is the tractor insured with the 5th respondent, and as the driver of the 4th respondent's tractor drove the same in a rash and negligent



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manner, the above said accident happened, for which, fixing the entire liability as against the appellant/insurer of the trailers alone is not sustainable. Further, for the above said accident, the FIR was registered as against the driver of the 4th respondent, which itself makes it clear that the 5th respondent being the insurer of the tractor should also be made liable to compensate the claimants.

4. Per contra, learned counsel appearing for the 5th respondent submitted that, the sugarcane was loaded in the trailer insured with the appellant/insurance company, falling of which caused the above said accident and thereby, after careful perusal of all the relevant documents placed before it, the Tribunal has rightly passed the present award, fixing the entire liability as against the appellant/insurance company, which does not require any interference of this Court. Accordingly, he prayed for dismissal of the appeal.

5. On the above said contentions, heard learned counsel appearing for the 2nd & 3rd respondents and perused the material documents placed on record.



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6. Though notice was served and the names of the 4th and 6th respondents were printed in the cause list, none appeared on their behalf. Considering the period of pendency, this Court is inclined to dispose of the same based on the available materials.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the appellant is with regard to the negligence fixed by the Tribunal.

8. There could be no quarrel with the fact that the the trailers were attached to the tractor of which the trailers were insured with the appellant and the tractor was insured with the 5th respondent. The sugarcane, which were loaded in the trailers fell on the deceased due to which she succumbed to the injuries.

9. The tractor was pulling the trailer and without the tractor being handled in a rash and negligent manner, there would have been no scope for the sugarcane, loaded in the trailers to fall down. It is to be pointed out that



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without the aid of the tractor, the trailers cannot move and from this the only inference that could be logically drawn is that the tractor was driven in a rash and negligent manner which resulted in the sugarcane, loaded in the trailer, falling down on the deceased. Further, it should also not be lost sight of that the manner in which the sugarcane was loaded in the trailer could also be the cause for the accident, as the fastening of the sugarcane, if not proper, would have led to the sugarcane falling down. Therefore, both the tractor and trailer are to be involved equally in contributing to the accident. The manner in which the tractor was driven by the driver has been spoken to by P.W1 and 2, who have deposed that the tractor was driven in a rash and negligent manner, which had resulted in the sugarcane loaded in the trailer falling down. Therefore, both the insurer of the tractor as also the trailer should be equally made liable towards the accident.

10. Therefore, this Court holds that equally the 5th respondent insurer of the tractor is also liable to compensate the claimants. Appreciating the materials available on record, this Court fixes the liability equally at 50% on the part of the appellant as also the 5th respondent. Therefore, the finding of the



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Tribunal with regard to liability is set aside and this Court holds that the appellant and the 5th respondent are equally liable to compensate the claimants.

Therefore, to the extent of 50%, the 5th respondent as insurer of the tractor belonging to the 4th respondent is liable to pay the compensation to the claimants.

11. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal in respect of the quantum of compensation.

12. The tribunal had awarded a compensation of **Rs.3,10,000/-** in favour of the claimants, which shall be equally borne by the appellant and the 5th respondent to the tune of Rs.1,55,000/- each and the appellant and the 5th



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respondent are directed to deposit their share of the compensation amount to the credit of M.A.C.T.O.P.No.663 of 2013 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. The amount, if any already deposited, by the appellant shall be adjusted and the balance shall be deposited. The appellant and the 5th respondent are directed to deposit the aforesaid amount along with interest within a period of four (4) weeks from the date of receipt of a copy of this judgment. It is reported that the 1st respondent/1st claimant passed away. In such circumstances, the amount of compensation in a sum of Rs.1,55,000/- is apportioned between the 2nd and 3rd respondents. On such deposit being made by the respective insurers, the Tribunal is directed to transfer the respective share of the amount directly to the bank account of the 2nd and 3rd respondents/claimants through RTGS within a period of two (2) weeks thereafter.

13. With the above directions and modification to the impugned award passed by the tribunal in M.A.C.T.O.P.No.663 of 2013 dated 10.04.2018, this



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Civil Miscellaneous Appeal stands **allowed in part**. No costs. Consequently,
the connected Miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal, Principal District Court,
Perambalur.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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