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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.3959 of 2005  
and 310 of 2006

C.M.A.No.3959 of 2005

The New India Assurance Co.Ltd.,  
46, Moore Street, Madras.

... Appellant

..vs..

1. Pista Devi
2. Anitha
3. Rakhi  
(Petitioners 2 and 3 are minors  
rep.by their mother and next friend  
Pista Devi)
4. Baviya Devi
5. Hari Ram
6. T.V.Mani

... Respondents

C.M.A.No.310 of 2006

The New India Assurance Co. Ltd.,  
46, Moore Street, Madras.

... Appellant

..vs..

1. Pista Devi
2. T.V.Mani

... Respondents

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 16.09.2003 passed in M.C.O.P.Nos.87 of 1999 and 90 of 1999 on on the file of the learned Motor Accident Claims Tribunal ( Additional District Judge), FTC IV Poonamallee.



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For Appellant  
(in both CMAs)

: Mr.J.Chandran

For Respondents/  
claimants  
(in both CMAs)

: Mr.J.Mahalingam

#### COMMON JUDGMENT

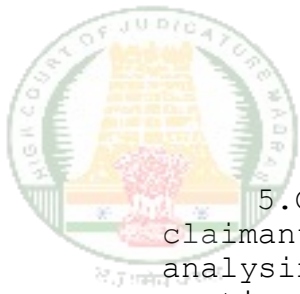
Both the appeals arise out of the common judgment dated 16.09.2003 passed by the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee, in MCOP.Nos.87 and 90 of 1999 arising out of the same accident that occurred on 30.11.1993. Hence, they were heard together and are disposed of by this common judgment.

#### 2.Brief facts:

On 30.11.1993 at about 8.30 p.m., one Madhanlal was riding his motorcycle, along with his daughter Sunitha and his friend Kanniyalal as pillion riders. When he was plying on Poonamallee National Highways, at Velappan Chavadi, a lorry bearing Regn.No.MDK-3192 insured with the appellant insurance company came in a rash and negligent manner and hit the two wheeler from behind. Due to the said accident, the pillion riders died on the spot and the rider of the two wheeler sustained grievous injuries and he died subsequently, despite treatment. Hence, the legal heirs of the deceased Madhanlal and Sunitha (minor) filed a separate claim petitions claiming compensation of Rs.10,00,000/- and Rs.1,00,000/- respectively.

3.The Tribunal, based on the witness and the documents produced before it, has awarded the total compensation of Rs.4,67,500/- and Rs.75,000/- respectively. Aggrieved over the same, the appellant insurance company has preferred the present appeals.

4.The learned counsel for the appellant/insurance company submitted that the Tribunal ought not have held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, when the deceased was also contributed to the accident by riding the two wheeler with two pillion riders. The learned counsel further submitted that the compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced substantially. The learned counsel also submitted that though the claim petitions were filed on 08.06.1994, they were numbered only during 1999 and hence, the tribunal ought not to have directed the appellant insurance company to pay interest for the compensation from the date of claim petitions.



5. On the other hand, the learned counsel for the claimants/respondents submitted that the Tribunal, after analysing the oral and documentary evidence adduced by the parties, has rightly rendered its findings on negligence and liability on the appellant insurance company and ultimately awarded the just compensation and hence, the same do not call for any interference by this Court.

6. Heard both sides and perused the records.

7. The author of Ex.P1 FIR was examined as P.W.3, according to whom, after attending a relative's marriage, he and the deceased along with others, were returning in separate two wheelers; at that time, the lorry insured with the appellant insurance company came in a rash and negligent manner and hit the motorcycle, which was riding by the deceased. The testimony of P.W.3 was supported by P.W.4/who was eyewitness to the occurrence. Though the appellant insurance company has disputed the manner of the accident and the involvement of the vehicle, the same was not substantiated by any oral and documentary evidence, except R.W.1. In the absence of any contra evidence adduced on the side of the appellant insurance company, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, which finding this Court is not inclined to interfere.

8. As regards the quantum of compensation, in MCOP.No.87 of 1999, the Tribunal has taken the monthly income of the deceased at Rs.2,000/-, after deducting 1/3<sup>rd</sup> towards his personal expenses and adopted the multiplier of 17 and quantified the loss of dependency at Rs.4,08,000/-. Apart from that, the Tribunal has awarded Rs.24,500/-, Rs.10,000/- Rs.20,000/- and Rs.5,000/- towards Medical Expenses as per Ex.P.9 medical bills, loss of Consortium, loss of love and affection to the minors and funeral expenses respectively. In MCOP.No.90 of 1999, since the deceased was a 5 year old girl, the Tribunal has awarded the total compensation at Rs.75,000/-. This Court is of the view that the quantum so arrived by the Tribunal in both the cases, is based on the evidence and materials available on record and also settled principles of law and hence, the same warrants no interference.

9. However, this Court finds some force in the contention raised on the side of the appellant that the appellant cannot be saddled with interest due to the fault on the part of the claimants in getting the claim petitions numbered belatedly. Hence, this Court is inclined to modify the award of the Tribunal with regard to payment of interest at 9%pa only from



the date of receipt of notice by the appellant insurance company, as against from the date of claim petitions as awarded by the Tribunal.

10. With the above modification, both the appeals are disposed of. No costs. The appellant / Insurance Company is directed to deposit the entire compensation amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of these judgments. It is submitted by the learned counsel for the respondents/claimants that the minor respondents in CMA.No.3959/2005 attained majority as of now. Hence, on such deposit by the appellant insurance company, the respondents/claimants in both the appeals are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rk  
To

Motor Accident Claims Tribunal, Additional District Judge,  
(Fast Track Court No.IV) Poonamallee.

Copy to

The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai 104.

+lcc to Mr.J.Chandran, Advocate Sr.46795  
+lcc to Mr.J.Mahalingam, Advocate Sr.47368

C.M.A.Nos.3959 of 2005  
and 310 of 2006

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