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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No. 1271 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

Divisional Manager,
The New India Assurance Co. Ltd.,
No.106, Big Street, Tiruvannamalai. ... Appellant/2nd Respondent

Vs.

1.Santhi
2.Minor Abirami
3.Minor Arulmurugan
Minors represented by their mother
& guardian Santhi
4.Govinda Gounder(died)
5.Viruthambal
6.Prabu

R4 died, R1 to R3 & R5 are recorded
as legal representatives of the deceased R4
viz., Govinda Gounder vide order of this Court
dated 14.07.2020 made in C.M.A.No.1271 of 2011
and M.P.No.1 of 2011 as per memo
dated 14.07.2020 are recorded

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.1141 of 2003, dated 16.12.2010, on the file of the Motor Accidents Claims Tribunal, District Judge, Tiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: No appearance for R1 to R3, R5 & R6
R4-died

JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 16.12.2010 passed by the Motor Accidents Claims Tribunal, District Judge, Tiruvannamalai in M.C.O.P.No.1141 of 2003.



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2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,71,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition (10.12.2003), till the date of payment (16.12.2010).

3. The Tribunal after considering the evidences on record has awarded the aforesaid compensation under the following heads:-

Sl.No	Heads of Compensation	Amount awarded by the Tribunal
1.	Loss of Earning (Rs.2000/-x12x17)	Rs.4,08,000/-
2.	Loss of Consortium	Rs. 20,000/-
3.	Loss of Love and Affection (Rs.10,000/- x4)	Rs. 40,000/-
4.	Funeral Expenses	Rs. 2,000/-
5.	Transport Charges	Rs. 500/-
6.	Damage to cloth and articles	Rs. 500/-
	Total	Rs.4,71,000/-

4. The case of the Insurance Company in this appeal is that the Tribunal erred in awarding the aforesaid compensation in as much as in Ex.P1-F.I.R dated 26.03.2003, name of the vehicle involved in the accident has been given as unknown vehicle and therefore the Tribunal erred in awarding compensation to the claimants who are the respondents No.1 to 5 (since R4 died) in this appeal. It is further submitted that there is a delay in filing of the F.I.R on 26.03.2003 though the accident had taken place on 20.03.2003 and that the insured motor cycle bearing Registration No.TN-25-D-5625 (Bajaj Pulsar) was inspected by the Motor Vehicle Inspector only 3 months after the alleged involvement in the accident and that the respondents/claimants have not explained Ex.P1-F.I.R as to how the insured motor cycle was identified as the vehicle involved in the accident on 20.03.2003 with the motor cycle driven by the deceased (Elumalai) bearing Registration No.TN-25-D-4542 (Hero Honda CD-100)

5. Though this case was argued on several occasions, there has been no representation on behalf of the respondents/claimants. Therefore, it was listed under the caption "for orders" hoping that the learned counsel for the respondents would appear atleast today. However, today also there is no representation on behalf of the respondents/claimants. Since no adverse orders are proposed to



be passed against the respondents, I take up this appeal and dispose the same on merits.

6. I have considered the arguments on behalf of the learned counsel for the appellant/Insurance Company. I have also perused the impugned Judgment & decree dated 16.12.2010 passed by the Tribunal and the evidences on record.

7. It is noticed that the appellant/Insurance Company had questioned the involvement of the insured motor cycle in the accident and to this effect they had also filed a CBCID complaint pursuant to which the prosecution proceedings were initiated against the respondents/claimants and the owner of the insured motor cycle bearing Registration No.TN-25-D-5625. The Tribunal has found that the said proceedings resulted in acquittal. This order of acquittal has not been challenged further by the insurance Company.

8. Since the findings of facts arrived by the Tribunal cannot be disturbed in the appellate proceedings, I am of the view that the impugned order passed by the Tribunal cannot be disturbed. Consequently, the appeal filed by the appellant/Insurance Company is liable to be dismissed and accordingly, it is dismissed.

9. The entire amount awarded by the Tribunal has already been deposited. The 1st & 5th respondents/1st & 5th claimants are entitled to withdraw their respective share, together with interest accrued thereon at 7.5%, less any amount already withdrawn, by filing suitable application before the Tribunal. If the 2nd & 3rd respondents/2nd & 3rd claimants have attained the age of majority during the pendency of this appeal, they are permitted to file appropriate application for recording the age of majority to withdraw their respective share together with interest, before the Tribunal.

10. With the above observation and direction, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous petition is closed.

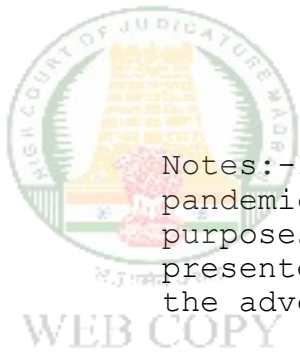
Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Motor Accidents Claims Tribunal,
District Judge, Tiruvannamalai.
- 2.The Section Officer,
VR Section, High Court,
Madras-600 104.

C.M.A.No.1271 of 2011
and
M.P.No.1 of 2011

CNR (CO)
CB(17/08/2021)