

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2799 OF 2013

&

M.P.NO.1 OF 2013

National Insurance Company Limited,
Divisional Office 1, 930 Sathy Road,
Gandhipuram, Coimbatore

... Appellant/
3rd Respondent

vs.

1.Loganayagi
2.Minor Maalini
(minor represented by her guardian and mother)

... 1st and 2nd Respondent/Claimants

3.Rajendran
4.Sivabaghyam

... 3rd and 4th Respondents/
1st and 2nd Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.04.2013 and made in MCOP.No.210 of 2012 on the file of the Motor Accident Claims Tribunal cum 3rd Additional District Court, Coimbatore.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.Ma.P.Thangavel for R1 & R2

R3 - No such address

R4 - left

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JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the insurance company challenging the award dated 30.04.2013 passed by the Motor Accident Claims Tribunal (3rd Additional District Judge, Coimbatore) in MCOP.No.210 of 2012.

2. Heard Mr.S.Vadivel, learned counsel for the Appellant and Mr.Ma.P.Thangavel, learned counsel for the respondents 1 and 2.

3. The Appellant insurance company has challenged the impugned award on the following grounds namely (a) There is contributory negligence on the part of the deceased also, since the deceased who was the driver of the lorry had parked the lorry in the main road. According to them, the insured vehicle which was coming from behind collided with the said lorry only due to the negligence of the deceased who had parked in the main road without any proper signal and (b) the quantum of compensation awarded by the Tribunal under the impugned award is excessive.

4. The Tribunal under the impugned award has directed the Appellant insurance company as well as the respondents 3 & 4 jointly and severally to pay the claimants who are the respondents 1 and 2 a sum of Rs.14,87,194/- as compensation together with interest and cost as detailed hereunder.

Heads	Award Amount (Rs.)
Loss of income	12,48,000/- (12000 x 12 x 13 x 2/3)
Loss of love and affection	15,000/-
Loss of consortium	15,000/-
Damages to cloth and articles	2,000/-
Transportation	2,000/-
Medical Expenses	2,05,194/-
Total	14,87,194/-

5. Before the Tribunal, the claimants have filed 15 documents which were marked as Ex.A1 to Ex.A15 and two witnesses were examined on their side namely the first respondent/first claimant herself as PW1 and an eyewitness to the accident as PW2. On the side of the Appellant insurance company, one document was filed which was marked as Ex.B1 and one witness was examined namely RW1.

6. Insofar as the first contention raised by the Appellant is concerned, the same has been properly considered by the Tribunal under the impugned award. FIR Ex.A1 has been registered only against the driver of the insured vehicle. PW2, an eyewitness to the accident has also deposed before the Tribunal

that only due to the rash and negligent driving by the driver of the insured vehicle which was coming from behind, the accident had happened.

7. Eventhough the driver of the bus (insured vehicle) was examined as RW1 before the Tribunal, he cannot be considered as an independence witness. The FIR has been registered against the driver of the bus (insured vehicle) and an eyewitness to the accident who is an independence witness has deposed that only due to the fault of the bus, the accident had happened which has more weightage and therefore, will have to be necessarily accepted. The Tribunal has rightly accepted the evidence of PW2 and has also relied upon the contents of the FIR.

8. Any adjudication before the Tribunal is based on preponderance of probability. It is clear from evidence available on record that the preponderance of probability is that the driver of the bus (insured vehicle) alone was responsible for the cause of the accident. The Tribunal has rightly considered all these aspects and found that the driver of the insured vehicle is alone responsible for the cause of the accident. Therefore the first contention raised by the Appellant before this Court is rejected.

9. Insofar as the quantum of compensation assessed by the Tribunal is concerned, the same is a just compensation in the considered view of this Court. In fact, the Tribunal has not awarded any compensation towards loss of future prospects. Since the respondents 1 and 2/claimants have not preferred any appeal aggrieved by the quantum of compensation, the quantum fixed by the Tribunal stands confirmed. If loss of future prospects was granted, the respondents 1 & 2 would have obtained much higher compensation than what was fixed by the Tribunal. The compensation awarded by the Tribunal under various heads cannot be considered as excessive Therefore, the second contention raised by the Appellant challenging the quantum of compensation awarded by the Tribunal is also rejected.

10. For the foregoing reasons, there is no merit in this Appeal. Accordingly, this Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. It is represented by the learned counsel for the Appellant that the entire award amount has already been deposited by the Appellant. In the view of the said submission, the Tribunal is directed to transfer the respective shares of award amount along with accrued interest lying to the credit of MCOP.No.210 of 2012 to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. Since the second respondent is a minor, her

respective shares of award amount shall be deposited in fixed deposit in any one of the Nationalised bank till she attains majority and the mother/guardian of the minor who is the first respondent herein is permitted to withdraw the interest alone once in six months for the welfare of the minor. If the minor attains majority, it is open for her to file a formal petition before the Tribunal to declare her as a major.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Coimbatore.

Copy To

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.28219

C.M.A.No.2799 of 2013

SSI (CO)
CS/03/05/2021

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