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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.859 of 2013 and
MP.No.1 of 2013

M/s.National Insurance Co.Ltd.,
No.751, Anna Salai, 2nd Floor,
Chennai - 600 002

... Appellant/2nd Respondent

Versus

1.I.Rajeswari
2.Minor I.Amuthavalli
3.Minor Velmurugan
(Minors 2 & 3 rep. by guardian
the first respondent mother)
4.N.Durai

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.3845 of 2008 on 20.04.2012 on the file of the learned Motor Accident Claims Tribunal (XVIII Additional District and Sessions Judge) at Chennai District.

For Appellant : Mr.J.Chandran

For Respondents: No Appearance

J U D G M E N T

This appeal has been laid as against the judgment and decree passed in M.C.O.P.No.3845 of 2008 on 20.04.2012 on the file of the learned Motor Accident Claims Tribunal (XVIII Additional District and Sessions Judge) at Chennai District, thereby awarded the compensation to the tune of Rs.9,72,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 05.09.2008, when the deceased was riding bicycle from Perungudi to Thoraipakkam along Old Mahabalipuram Road south to north direction, the motorcycle which was driven in rash and negligent manner dashed



against him from behind. As a result, he sustained severe injuries and died during the course of treatment. Hence, the claimants filed claim petition seeking compensation at Rs.12,00,000/-

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4. Resisting the same, the second respondent / appellant filed counter stating that the rider of the motorcycle / first respondent does not possess valid driving licence. That apart, the accident happened only due to rash and negligent riding of the bicycle by the deceased. Therefore, the second respondent is not held to be liable for any compensation to the claimants and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 to and P.W.3 and marked Ex.P.1 to Ex.P.5. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened negligence on the part of the rider of the motorcycle and awarded compensation of Rs.9,72,000/- payable by the respondents jointly and severally. Aggrieved by the same, the second respondent came forward with the present appeal in respect of quantum of compensation.

6. The learned counsel for the appellant would submit that the deceased was aged about 38 years at the time of accident. Even then, applied multiplier at 16, which is highly excessive and exorbitant. The accident took place only on the rash and negligent riding of the cycle by the deceased and as such the claimants are entitled only under the head of no fault liability. He further submits that the claimants failed to prove that the deceased was Mason at the time of accident and was earning a sum of Rs.350/- per month.

7. Heard Mr.J.Chandran, learned counsel appearing for the appellant / second respondent.

8. On 05.09.2008, when the deceased was riding bicycle from Perungudi to Thoraipakkam, the motorcycle owned by the first respondent was driven in a rash and negligent manner and dashed behind the bicycle. Due to which, the deceased sustained grievous injuries and died. Though the claimants averred that the deceased was earning a sum of Rs.350/- per day, the Tribunal had taken into consideration, the notional income at Rs.5,000/- per month and rightly applied multiplier at 16. Insofar as other heads are concerned, the Tribunal awarded just and reasonable compensation and as such this Court finds that the award passed by the Tribunal does not warrant any interference.



9. In view of the above discussion, the following orders are passed:

(i) The appellant/Insurance Company is directed to deposit the total compensation of Rs.9,72,000/- with accrued interest as determined at by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited.

(ii) On such deposit, the first respondent herein is permitted to withdraw her share of the award amount as apportioned by the Tribunal, less the amount if any already withdrawn by her, by filing proper application before the Tribunal.

(iii) The share of the 2nd and 3rd respondents herein /minors are directed to be deposit in any one of the nationalized bank till they attain majority. The first respondent herein /Mother of the 2nd and 3rd respondents herein is permitted to withdraw the accrued interest once in three months..

10. With the above directions, this civil miscellaneous appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-

Deputy Registrar(Spl cell CJ conf)

//True Copy//

Sub Assistant Registrar

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To

1.The XVIII Additional District and
Sessions Judge,
Motor Accident Claims Tribunal at Chennai District

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.26873

C.M.A.No.859 of 2013

PA(CO)
CB(20/10/2021)