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C.M.A.(MD)No.1363 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.04.2021

Delivered On : 26.04.2021

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A. (MD) No.1363 of 2013

and

M.P. (MD) No.1 of 2013

The Branch Manager,  
The New India Assurance Company Ltd.,  
No.43 A/2, Juman Centre,  
Promenade Road,  
Cantonment,  
Tiruchirappalli.

..Appellant/2<sup>nd</sup> Respondent

Vs.

1.V.Amudha

2.Muralikrishnan

3.Minor V.Janani  
(Minor Rep. By R1, the mother and  
Natural Guardian)

4.K.Veerabadhran ... 1<sup>st</sup> to 4<sup>th</sup> Respondents/Petitioners

5.N.Govindaraj ... 5<sup>th</sup> Respondent/1<sup>st</sup> Respondent

6.M.Padmavathi ... 6<sup>th</sup> Respondent/3<sup>rd</sup> Respondent

7.The Branch Manager,  
M/s.National Insurance Company,  
No.33, Promenade Road,  
Cantonment,  
Tiruchirappalli. ..7<sup>th</sup> Respondent/4<sup>th</sup> Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 30.11.2012 made in M.C.O.P.No.720 of 2010 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Tiruchirappalli.

<https://hcservices.ecourts.gov.in/hcservices/>



|                                |                             |
|--------------------------------|-----------------------------|
| For Appellant                  | : Mr.B.Vijay Karthikeyan    |
| For Respondents 1 to 4         | : Mr.T.Senthil Kumar        |
| For 7 <sup>th</sup> Respondent | : Mr.R.Srinivasan           |
| For 5 <sup>th</sup> Respondent | : Given Up                  |
|                                | Vide order dated 05.12.2017 |
| For 6 <sup>th</sup> Respondent | : No Appearance             |

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**JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.720 of 2010 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Trichirappalli.

2.The appellant is the second respondent, the respondents 1 to 4 are the claimants, the fifth respondent is the first respondent, the sixth respondent is the third respondent and the seventh respondent is the fourth respondent in the claim petition. The respondents 1 to 4 have filed a petition in M.C.O.P.No.720 of 2010, claiming compensation for the death of one Venkatraman in a road accident that took place on 25.12.2009. The Tribunal has awarded compensation to be paid by the appellant. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.720 of 2010 is as follows:

On 25.12.2009 at about 15 hours, when the deceased Venkatraman was travelling in TVS XL Super bearing Registration No.TN-49-AY-0817 along the Trichy-Tanjore main road, keeping left side of the road, at that time a lorry bearing Registration No.TCQ-8326 that belong to the fifth respondent herein was driven by its driver in a rash and negligent manner came from the back side of the two wheeler and hit against two wheeler. As a result of which, the deceased was thrown out and had fallen down on the ground and at that time, a private bus bearing Registration No.TN-45-AC-1144 that belong to the sixth respondent herein came from the opposite direction in a rash and negligent manner and run over the legs of the deceased and the deceased died due to the injuries. The age of the deceased was 49 years and he was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. The claimants claimed a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as compensation.

4.The brief substance of the counter filed by the appellant herein is as follows:

The lorry was driven by its driver in a normal speed in careful and cautious manner. The deceased had driven the vehicle in a rash and negligent manner on the middle of the road in front of the lorry and suddenly turned the vehicle without showing any sign. At that time, a private bus bearing Registration No.TN-45-AC-1144 was driven in a rash and negligent manner and dashed against the



deceased. The accident was not due to rash and negligent driving of the appellant's vehicle driver. Only the deceased and the driver of the bus were the cause for the accident. Hence, the appellant is not liable to pay any compensation.

5.The brief substance of the counter filed by the 7<sup>th</sup> respondent herein is as follows:

The deceased was riding the motor vehicle carelessly and he was knocked down by the lorry driver. The deceased was thrown out of the vehicle to the extreme right of the vehicle. The driver of the bus could not anticipate the falling of the deceased in front of the bus. In spite of applying the brake, the accident had occurred. There is no negligence on the part of the bus driver. The entire negligence is on the part of the appellant and the deceased.

6.After trial, the Tribunal has awarded a sum of Rs.5,93,640/- (Rupees Five Lakhs Ninety Three Thousand Six Hundred and Forty only) as compensation.

7.On the side of the appellant, it is stated that the deceased overtake the lorry and tried to turn the vehicle in a rash and negligent manner and that the lorry hit from the back side of the deceased and he fell in front of the opposite vehicle. The bus, which was driven in a rash and negligent manner, hit against the two wheeler and only the deceased and the bus driver were responsible for the accident and that contributory negligence is to be fixed against the deceased and prayed the appeal to be allowed.

8.On the side of the respondents 1 to 4, it is stated that the Tribunal has not considered the future prospects. The accident took place in the year 2009. Till now the claimants are not having any relief. The Tribunal has awarded Rs.10,000/- (Rupees Ten Thousand only) towards love and affection and only notional income was taken for fixing compensation. There should be an enhancement of compensation. The lorry and bus owners and their insurance companies are liable to pay compensation.

9.Ex.P1, FIR is against both the drivers. P.W.2 was examined as eye witness. Both R.W.1 and R.W.2 were the drivers of the lorry and bus that involved in the accident and their evidence cannot be taken as genuine. Only after being hit by the lorry, the deceased fell down and was dashed by the mini bus. Hence, it is decided that the respondents 6 and 7 are not liable to pay the compensation to the claimants. While overtaking the lorry, the deceased was hit by the lorry from the back side, obviously the lorry's driver is responsible for the accident.

10.In the above circumstances, it is decided that the accident took place only due to rash and negligent of the lorry driver. There is no dispute regarding the validity of the insurance



policy. Since the accident took place due to rash and negligent of the lorry driver, the appellant is liable to indemnify the owner of the lorry and in turn to pay compensation for the claimants. The claimants have not filed any appeal for enhancement of compensation. The quantum fixed by the Tribunal is reasonable.

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11.Hence, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.720 of 2010 on the file of the Motor Accidents Claims Tribunal, (I Additional District Court), Trichirappalli. Hence, this Civil Miscellaneous Appeal is dismissed. Consequently connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : 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,  
I Additional District Judge,  
Tiruchirappalli.

Copy to

The Section Officer, V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 copies)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate ( SR-17417[F] dated 26/04/2021 )

C.M.A. (MD)No.1363 of 2013

**26.04.2021**

KMK (CO)

TR(19.05.2021) 4P 5C