



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.02.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.942 of 2010

and

C.M.P(MD)No.2 of 2010

National Insurance Co., Ltd.,
Branch Office - II,
Jerome Building
Fort Station Road,
Trichy -2.

.. Appellant/Respondent No 2

vs.

1.Palaniammal
2.V.Justin Prem Kumar

.. Respondent/Petitioner
.. Respondent/Respondent No 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the fair and decretal order dated 16.06.2009 made in MCOP No.554 of 2006 on the file of the Motor Accident Claims Tribunal (District Judge) at Karur.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondent : Mr.M.Karthikeya Venkitachalapathy
No 1

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, District Judge, Karur, in M.C.O.P.No.554 of 2006 dated 16.06.2009, the Insurance Company has filed this appeal.

2.It is the case of the fatal accident. It is the case of the claimant that on 05.05.2003 at 1.30 p.m, the deceased Balammal was standing on the Karur-Salem N.H.7 main road near Manmangalam Bus stop. At that time, a Bajaj Boxer motorcycle bearing registration No.TN-45-R-7962 came from north to south in a rash and negligent manner and dashed against the deceased. In the accident, the deceased sustained head injury and multiple abrasion and grievous injuries all over the body. Immediately, she was taken to Government Hospital, Karur, where she was inpatient till 02.06.2003. Even after discharge from the hospital, the deceased was bedridden in her home and continued treatment. Thereafter, on 09.09.2003, she was died. The claimant is the daughter of the deceased. Alleging that the accident had taken place due to the rash and negligent



driving of the rider of the motorcycle, the claimant laid a petition, claiming compensation of Rs.5,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

4.The claim petition was tried by the Tribunal and to substantiate the case, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the appellant/Transport Corporation, R.W.1 was examined and Ex.R1 was marked.

5.The Tribunal, after considering the oral and documentary evidence held that both the rider of the motorcycle and the deceased are responsible for the accident and fixed 70% negligence on the part of the rider of the motorcycle and 30% negligence on the part of the deceased and awarded compensation of Rs.56,500/- along with interest at the rate of 7.5% p.a. Assailing the award, the appellant Insurance Company has filed the present appeal.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The appellant Insurance Company has filed this appeal challenging the quantum and the manner of accident.

8.A perusal of the judgment of the Tribunal would show that the Tribunal after considering Ex.P.5-Charge Sheet, Ex.P.6 Extract of the STC Register, Ex.P.3 Rough Sketch and Ex.P.4 M.V. Report held that both the rider of the motorcycle and the deceased are responsible for the accident and fixed 70% liability on the part of the rider of the motorcycle and 30% liability on the part of the deceased. Further, a perusal of the judgment of the Tribunal would show that the Tribunal after considering the evidence of the claimant awarded Rs.56,500/- with interest at the rate of 7.5% per annum to the claimant as compensation. Though the learned counsel for the appellant Insurance Company has contended that the award is on the higher side and it requires reduction and disputed the manner of the accident, this Court is of the view that the Tribunal has awarded a just and reasonable compensation and rightly fixed liability at 70:30.

9.In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if



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any, together with proportionate interest and costs. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

To

- 1.The District Judge,karur
The Motor Accident Claims Tribunal,
- 2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-6042[F] dated 18/02/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-6399[F] dated 22/02/2021)

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and

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18.02.2021

SSS (CO)

KB(30.03.2021) 3P 6C