



C.M.A.No.340 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.340 of 2022

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C.M.P.No.2343 of 2022

The New India Assurance Co. Ltd.,
Having Divisional Office at T.P.Hub,
Sedhu Krishja Trade Centre,
No.133/31-A, Trichy Main Road, Gugai,
Salem – 636 006.
...Appellant

Vs

1.Kamala

2.Vijayan

3.B.Baskaran

... Respondents



C.M.A.No.340 of 2022

WEB COPY

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 01.09.2021 made in M.C.O.P.No.1116 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : No Appearance

JUDGEMENT

The Insurance Company has challenged the award passed by the Special District Judge, MCOP Tribunal, Salem in M.C.O.P.No.1116 of 2020 both on the ground of negligence as well as on the ground of quantum. The brief facts which are necessary for disposing of the appeal are as follows. The parties are referred to in the same rank as in the claim petition.



C.M.A.No.340 of 2022

WEB COPY

2. The parents of the deceased Sureshkumar had filed the above claim petition seeking compensation of a sum of Rs.40,00,000/- on account of the death of their son Sureshkumar in a road accident. It is the case of the petitioners that the said Sureshkumar was working in building construction, engaged in welding and fitting work. The said Sureshkumar was earning a sum of Rs.24,000/- per month and was aged about 30 years.

3. It is the case of the petitioners that on 25.07.2020 at about 21.00 hours, when the deceased Sureshkumar was riding an Apache motor cycle keeping to the left side of the road and proceeding on the Dharmapuri to Salem Main road, the Ashok Leyland lorry belonging to the 1st respondent and insured with the 2nd respondent was parked in a dark area without any warning lights or keeping the requisite caution boards. Since it was dark, the deceased was unable to notice the same and consequently hit the lorry from behind and due to

3/7



C.M.A.No.340 of 2022

WEB COPY

sudden impact, he died on the spot. Therefore, the petitioners had come forward with the above claim.

4. The Insurance Company had taken out a plea that the deceased Sureshkumar had also contributed for the accident as he had not worn his helmet and that he was driving his bike in a rash and negligent manner. Had he driven his vehicle carefully, he would have definitely noticed the lorry which is parked on the extreme left side of the road as per traffic rules. Therefore, the deceased Sureshkumar had contributed to the said accident.

5. The Tribunal on considering the evidence of P.W.2, the eye witness and taking into consideration Ex.P.1, the FIR came to the conclusion that the accident had occurred only on account of negligent parking of the lorry without the caution boards. The Tribunal fixed a notional income of Rs.12,000/- and ultimately granted a compensation



C.M.A.No.340 of 2022

WEB COPY

of Rs.16,97,000/-. Challenging the said award, the 2nd respondent Insurance Company is the appellant before this Court.

6. Heard the learned counsel appearing for the 2nd respondent Insurance Company. The petitioners though served had not entered appearance either in person or through counsel.

7. P.W.2, who is the eye witness has deposed that the lorry was negligently parked on the road and since it was the night time, the danger to the other users of the road is much more. The FIR was also registered only against the 1st respondent lorry and the 2nd respondent has not taken any steps to examine the driver of the 1st respondent lorry. Therefore, the negligence as held by the Tribunal is only upon the driver of the 1st respondent vehicle. As regards quantum, the same appears to be very reasonable and I see no reason to interfere with the same.

5/7



C.M.A.No.340 of 2022

WEB COPY

8. Accordingly, the Civil Miscellaneous Appeal is dismissed.

The 2nd respondent Insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.No.1116 of 2000.

On such deposit, the petitioners are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

29.06.2022

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Index : Yes/No

Speaking order/non-speaking order

To,

The Motor Accidents Claims Tribunal
(Special District Court),
Salem.

6/7



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C.M.A.No.340 of 2022

P.T.ASHA, J.,

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C.M.A.No.340 of 2022

29.06.2022