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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.297 of 2022

and

C.M.P.No.2032 of 2022

United India Insurance Company Ltd.,
Divisional Office-4, 19-19/1-Floor,
No.2, South end Road, Basavangudi,
Bangluru, Karnataka-560 004.

... Appellant/2nd Respondent

Vs

1. Uma

2. Minor Sindhuja

3. Minor Kaviya

(Minors 2 & 3 are rep. by their next friend/1st
respondent/mother Uma)

4. Seerangai

(4th respondent name amended as per order in I.A.No.157/2020,
dated 22.01.2020)

5. Madaiyan

... Respondents/Petitioners

6. K.G.Shivaram

... Respondent/1st Respondent

PRAYER: Petition filed under Section 173 of Motor Vehicle Act,
against the award and decree dated 13-10-2020 made in M.C.O.P.
No.208 of 2018 on the file of the Motor Accidents Claims
Tribunal (Special District Court), Dharmapuri.

For Petitioner : M/s.D.Bhaskaran

For Respondents : Mr.M.Selvam for [R.1, R.4 & R.5, R.2
& R.3, Minors are rep. by R.1]

: No Appearance [R.6] (Served)



J U D G E M E N T

The 2nd respondent/insurance company has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (Special District Court), Dharmapuri. in MCOP No.208 of 2018. The facts in brief necessary for disposing of this appeal are as follows:

2. On 25.01.2017 the deceased Ganapathi was proceeding in his Motor Cycle bearing Registration No. TN 29 AH 8128. When he neared the MGR Nagar Bus stop, Erranahalli, at 3.00 p.m the Honda City car bearing Registration No. KA 02 ML 3116 belonging to the 1st respondent and insured with the 2nd respondent came from the opposite direction. The car was driven in a rash and negligent manner and dashed against the two wheeler. The Said Ganapathi was seriously injured and was rushed to the Government Hospital Palacode. After giving the initial first aid he was transferred to the K.J. Hospital at Dharmapuri where he was treated as an inpatient and had to be shifted to the NIMHANS Hospital, Bangalore for further treatment where he remained as an inpatient till 25.10.2017. Once again he was brought back to the Government Mohan Kumaramangalam Medical College Hospital, Salem as an inpatient and there he passed away on 26.10.2017. The wife, children and mother of the said Ganapathi had filed MCOP No.208 of 2018 claiming compensation for his death.

3. It is their contention that he was running a hotel and earning a sum of Rs.50,000/- per month and was aged about 30 years. They had claimed a total compensation of Rs.50,00,000/-. The 1st respondent remained absent and was set ex parte. The 2nd respondent/ insurance company had contested the claim stating that the accident had occurred only on account of the negligent driving of the two wheeler and not the Honda City car as alleged by the claimants. The FIR was also registered only against the deceased and therefore, the insurance company was not liable to pay any compensation to the claimants. That apart, they had contended that the deceased did not possess a driving licence and also the two wheeler was not insured. Therefore, they had sought for the dismissal of the claim petition.

4. The Tribunal below relying solely on the evidence of P.W.2 and P.W.3 who claimed to be the eye witnesses, came to the conclusion that it was only on account of the negligence of the driver of the 1st respondent's car that the accident had taken place. The Tribunal thereafter proceeded to award a sum of Rs.19,64,200/- to the appellants. The insurance company is aggrieved by the fact that the Tribunal has failed to consider the evidence of R.W.1, the Sub Inspector of Palacode police station who had adduced evidence about the FIR and the fact that



accident. As rightly pointed out by the counsel for the insurance company P.W.2 and P.W.3 who have adduced evidence as the eye witnesses to the accident have neither lodged the FIR nor had they accompanied the deceased to the Hospital. The two appear to be witnesses who have been planted for the sake of buttressing the claim that the accident was the result of the rash and negligent driving of the Honda City car.

10. The insurance company had examined the Investigating Officer who has stated that the FIR and the sketch would show that the negligence on the part of the deceased and Ex.R.1 would show that the investigation has been closed only on account of the death of the deceased Ganapathi. Though the Tribunal has made a reference to the said evidence, however, the Tribunal has chosen to ignore the statement made by the Special Sub Inspector and relied totally on the interested evidence of P.w.2 and P.w.3. The sketch clearly shows that the deceased Ganapathi has contributed for the accident.

11. Further, the claimants by making the FIR on their side has tacitly admitted the veracity of the same. Further they have not filed any objection to the manner in which the accident has been described to have taken place in the FIR and as the negligence being held only against the deceased Ganapathi in the FIR. Therefore, due weightage has to be given to the FIR marked as Ex.P.1. However, it has to be taken note that the accident happened at 3 P.M. therefore, it has taken place in broad day light. The driver of the Honda City Car should have driven the car in full speed rashly and negligently as otherwise he would have noticed the deceased and could have applied the brakes and avoided the accident. Therefore, the driver of the car has also contributed to the accident. The negligence on the part of the deceased Ganapathi can be fixed at 40% and 60% on the driver of the Honda City car. Therefore, the award is modified to the extent of mulcting the deceased Ganapathi with 40% contributory negligence, with reference to the quantum of compensation there is no modification. However, the petitioners would now be entitled to only a sum of Rs.11,78,520/- being the 60% contributory negligence on the respondent.

12. Therefore, the above Civil Miscellaneous Application is allowed and the award amount payable by the appellant/2nd respondent is reduced from Rs.19,64,200/- to Rs.11,78,520/-. The insurance company is directed to deposit the entire amount payable by them within a period of 6 weeks from the date of receipt of the copy of the Judgment. The major claimants are permitted to withdraw their proportion of the award amount as fixed by the Tribunal below. The minor's share shall be invested in a fixed deposit in any nationalised bank until they gain



majority. The 1st claimant shall be permitted to withdraw the interest on minor's deposit quarterly. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Special District Court), Dharmapuri.
2. The Section Officer,
V.R.Section,
Madras High Court.

+1cc to Mr.M.Selvam, Advocate, S.R.No.25662

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.25596

C.M.A. No.297 of 2022
and
C.M.P.No.2032 of 2022

SR-II (CO)
SU (07/06/2022)