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C.M.A.No.873 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.873 of 2020

and

CMP.No.5585 of 2022

M/s.National Insurance Company Ltd.,
Branch Office, S.R.Complex,
Rajamani Thottam,
Salem-Bhavani Main Road,
Sankari-636 301.

...Appellant

Vs

1. Poongodi
2. Chinnasamy
3. M.Palanisamy

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 22.03.2018, passed in MCOP.No.796 of 2016 by the Motor Accidents Claims Tribunal (Special District Judge) at Dharmapuri.



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For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.J.Bharathiraja for R1 and R2

: No Appearance (R3-Served)

JUDGEMENT

The Second respondent/Insurance Company has challenged the award passed by the Motor Accidents Claims Tribunal (Special District Judge), Dharmapuri in MCOP.No.796 of 2016 on the ground of negligence.

2. The brief facts that are necessary to dispose of the above appeal are narrated as below and the parties are being referred to in the same rank as before the Tribunal.

3. The petitioners, who are the parents of the deceased Pachaiyappan, have filed the above appeal seeking compensation for a sum of Rs.20,00,000/- for the death of their son in a road accident occurred on 24.06.2016. It is their contention that on the said date the deceased



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Pachaiyappan travelled pillion along with his brother-in-law, Vijayakumar had travelled in the said Vijayakumar's motorcycle bearing Regn.No.TN-29-AD-5421. The said Vijayakumar was riding the vehicle on the Dharmapuri to Tirupathur road and was heading towards Ariyakulam, near Seerampatti bridge. At that point of time, a lorry bearing Regn.No.TN-52-F-7572 belonging to first respondent and insured with the second respondent, which came from the opposite side was being driven rashly and at high speed. This vehicle collided with the two wheeler, as a result of which, both the rider as well as the pillion rider had sustained grievous injuries and ultimately, the pillion rider succumbed to death. He further submitted that the petitioners' son was a Mason by profession and was earning a sum of Rs.20,000/- per month.

4. The first respondent remained ex-parte and the second respondent/insurance company alone has contested the claim. The learned counsel for the Insurance Company would submit that the accident had occurred only on account of the negligence on the part of the rider of the



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two wheeler who had crossed over to the extreme right hand side of the road. On seeing the rash and negligent driving of the two wheeler, the driver of the lorry had stopped the vehicle at the extreme left side of the road. However, the rider of the two wheeler who had lost the control of the vehicle had dashed against the lorry and both the rider and the pillion rider of the two wheeler had sustained fatal injuries. He further submitted that the complaint was only against the rider of the two wheeler and ultimately the FIR had been closed on account of “mistake of fact”. The second respondent is not entitled to pay any compensation, since the accident had occurred only on account of the negligence on the part of the rider of the motorcycle and not on the part of driver of insured vehicle.

5. The Tribunal below relying upon the evidence of PW2 held that the accident had occurred only on account of the negligence on the part of the driver of the lorry and ultimately awarded a compensation for a sum of Rs.11,64,000/- with the following break up details:



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Compensation for Pecuniary Loss	Rs.11,34,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.11,64,000/-

6. Aggrieved by the fact that the Tribunal below has ignored Ex.R1 which would throw light on the manner in which the accident had taken place and also the fact that the criminal action had been dropped on account of the death of the deceased pillion rider of the motorcycle would go to show that the accident was not on account of the negligence on the part of the driver of the lorry.

7. The learned counsel appearing for the second respondent/insurance company drew the attention of this Court to the cross-examination of PW2 whose evidence has been relied upon by the Court below to come to the conclusion that it was the negligence on the part of the lorry driver that has caused the accident. He would further submit that in the cross-examination of PW2 it has been stated that the two-wheeler was proceeding from South



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to North direction keeping to the extreme western side of the road and the lorry was coming on the eastern side of the road. Going by the admission of PW2, it appears that the accident would not have taken place if both the parties were keeping to their respective left hand side of the road. Further, PW2 had stated that two-wheeler has hit the lorry on the driver side. This clearly indicates that the two-wheeler has moved from the extreme left side of the road to the centre of the road without which, the accident would not have taken place, since the witness has stated that the lorry was proceeding on the eastern side of the road. Therefore, it is a clear case of collision between the two vehicles which presupposes negligence on the part of both the drivers. Had the driver of the first respondent's vehicle (lorry driver) noticed the two-wheeler, he could have avoided the accident. Further, it has to be kept in mind that the accident had occurred in the morning at around 9.30 a.m.,. That apart, Ex.R.1 which is the final report of the Sub-Inspector of Police, Krishnapuram Police Station would show that the rider of the two-wheeler was negligent and the cause for the accident. Therefore, finding of the Tribunal below fastening the entire liability on the first



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respondent's lorry is set aside and the negligence is apportioned at 50% - 50% on both the driver of the motorcycle and the driver of the first respondent's lorry.

8. The quantum of compensation that has been granted appears to be very reasonable. Therefore, considering the above findings, the second respondent/insurance company shall be liable to pay only 50% of the award amount together with interest at the rate of 7.5 % from the date of the petition till the date of the award.

9. In the result, the appeal filed by the second respondent/Insurance Company is partly allowed. In view of the above modification, the Insurance Company is directed to deposit 50% of the modified award of Rs.5,82,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the



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respondents 1 & 2/claimants are permitted to withdraw the amount so deposited with proportionate accrued interest and costs, by making necessary applications. The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. Consequently, connected miscellaneous petition is closed. No costs. In case, the Insurance company has deposited the entire award amount, the Insurance Company shall be entitled to re-fund of 50% amount together with proportionate interest and costs.

24.11.2022

vv/dpq

Index : Yes/No

Speaking order/non-speaking order

To,

1. The Motor Accidents Claims Tribunal
Special District Court, Dharmapuri
2. The Section Officer,
VR Section, Chennai.

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P.T.ASHA, J.,

Vv/dpq

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