



C.M.A(MD)No.1188 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1188 of 2009

and

M.P(MD) No.2 of 2009

New India Assurance Co.Ltd
The Divisional Office,
Through its Divisional Manager,
242, Kamarajar Salai,
Madurai-9.

... Appellant

vs.

1.S.Mahalakshmi

2.Jeyalakshmi

3.P.Saravanan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 24.07.2008 passed in MACOP No.1779 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), (Fast Track Court-II), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For R-1 and R2 : No appearance



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For R3

: Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree, dated 24.07.2008 passed in MACOP No.1779 of 2005, on the file of the Motor Accidents Claims Tribunal (Additional District Judge), (Fast Track Court-II), Madurai.

2. The case of the claimant, in nutshell, is as follows:

On 08.02.2004 at 00.15 a.m., the deceased got down from the bus in out-post bus stop and when he was walking on the left side of Jawaharlal Road, a CD two wheeler bearing Registration No.TN.58-J-5142 driven by its driver in a rash and negligent manner, dashed against the deceased. In the impact, he sustained injuries on head, chest and all over his body. Immediately, he was admitted in Government Rajaji Hospital, Madurai. Subsequently, he was transferred to Appollo Hospital and admitted in Intensive Care Unit from 08.02.2004 to 27.02.2004. Later, he was discharged from the Hospital and took treatment as outpatient. Due to internal injuries sustained in the accident, he died on



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17.03.2004. The first claimant is the mother and the second claimant is the sister of the deceased. Alleging that the accident had occurred only due to the rash and negligent riding of the rider of the two wheeler, the claimants filed claim petition before the Tribunal seeking compensation of Rs.8,00,000/-.

3.The appellant/Insurance Company contested the claim petition on all the grounds available to the insured.

4.Before the Tribunal, on the side of the claimants, ten witnesses were examined as P.W.1 to P.W.10 and nineteen documents were marked as Exs.P.1 to P.19. On the side of the Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, considering the pleadings, both oral and documentary evidence let in by both the parties, allowed the claim petition and awarded compensation of Rs.4,80,000/- along with interest at the rate of 9% per annum. Challenging the said award, the present appeal is filed by the Insurance Company.



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6. It is the case of the appellant/Insurance Company that the vehicle was not involved in the accident and the FIR was registered after 7 days from the accident. Further, the deceased met with an accident while travelling in a bike and not while crossing the road, as a pedestrian, which is proved through the evidence of P.W7 and Ex.P8. But, the Tribunal, without appreciating the evidence, erroneously passed the award against the Insurance Company.

7.A perusal of the evidence of P.W7 would show that though he has stated that the deceased had dashed against the electric post, while he was travelling in a two wheeler, admittedly, he was not in a position to say who had stated the above version, i.e., about the history of the accident. But, in the evidence of P.W.5, who is the eyewitness to the accident, he has clearly stated about the accident. The statement under Section 161 (3) Cr.P.C given by the deceased before the Investigation Officer was marked as Ex.P19, wherein, the injured himself had specifically stated that while he was walking on the road, the offending vehicle dashed against him, due to which, he was thrown out and hit the electric post and sustained injuries. It is true that there is a delay in lodging the FIR. It is settled law that merely because of the delay in



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lodging the FIR, the claim of the claimants cannot be rejected. Further, a perusal of the award passed by the Tribunal seems to be just, fair and reasonable and it needs no interference by this Court and hence, the appeal is liable to be dismissed.

8. In view of the above, the Civil Miscellaneous Appeal is dismissed by confirming the Award, dated 24.07.2008, made in M.C.O.P.No.1779 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (Fast Track Court No.II), Madurai. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of M.C.O.P.No.1779 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (Fast Track Court No.II), Madurai, less the amount already deposited, if any, from the date of claim petition till date of realization, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit being made, the respondents/claimants are entitled to withdraw their respective shares with proportionate accrued interest and costs, as apportioned by the Tribunal, less the amount



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already withdrawn, if any, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet :Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
Additional District Judge, (Fast Track Court No.II), Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN,J.

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JUDGMENT MADE IN
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