



C.M.A.(MD)No.1088 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.1088 of 2015

and

M.P(MD)No.1 of of 2015 and

C.M.P(MD)No.2328 of 2019

National Insurance Company Limited,

Represented by its Branch Manager,

North Car Street, Nagercoil Village,

Agastheeswaram Taluk,

Kanyakumari District.

.. Appellant/2nd Respondent

Vs.

1.M.Sujatha

2.Minor P.S.Athulya

[R2 represented by her mother 1st respondent]

3.Gangadaran Nair

4.Chandralekha

.. Respondents 1 to 4 /Petitioners

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5.Gopalakrishnan

.. Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 31.10.2014 made in M.C.O.P.No.98 of 2013, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Kanyakumari District at Nagercoil.

For Appellant : Mr.J.S.Murali

For Respondents 1 to 4 : Mr.K.K.Ramakrishnan

For Respondent No.5 : Mr.T.Selvakumaran

JUDGMENT

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J.

This Appeal has been filed against the award of the Motor Accident Claims Tribunal (MACT)/Chief Judicial Magistrate Court, Kanyakumari District at Nagercoil, whereby the Tribunal has directed the appellant Insurance Company to pay 50% out of the total

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compensation of Rs.13,36,000/- with interest at the rate of 7.5% from the date of petition to the date of actual payment, to the claimants.

2. The claimants filed a claim petition before the Tribunal stating that the deceased was a pillion rider in a two wheeler that was driven by the 5th respondent and when the vehicle was going towards Perumal Nagar from Krishan Kovil via Parvathipuram on 10.07.2010 at about 6.50 p.m., the driver of the two wheeler applied sudden break and as a result, the tempo van that was following the vehicle, dashed on the two wheeler and as a result, the deceased sustained severe head injuries. The tempo van was driven away from the scene of occurrence and it remained unidentified till the end. The deceased ultimately succumbed to injuries on 14.07.2010.

3. In view of the above, the claimants filed a claim petition against the 5th respondent and the Insurance Company in which the two wheeler was insured and sought for compensation. The Tribunal, on considering



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the facts and circumstances of the case and after appreciating the evidence available on record, found that there was contributory negligence on the part of the two wheeler driven by the 5th respondent as well as the tempo van which remained unidentified. As a consequence, the compensation was determined under various heads and the total compensation was arrived at Rs.13,36,000/- along with interest and 50% of the compensation was directed to be paid by the Insurance Company. Aggrieved by the same, the present appeal has been filed before this Court.

4. Heard Mr.J.S.Murali, learned counsel for the appellant/Insurance Company, Mr.K.K.Ramakrishnan, learned counsel for the respondents 1 to 4 and Mr.T.Selvakumaran, learned counsel for the 5th respondent.

5. The main ground that has been raised by the learned counsel for the appellant is that there was absolutely no negligence on the part of the



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two wheeler and hence, the Tribunal ought not to have fastened the liability on the Insurance Company to an extent of 50% out of the total compensation. The learned counsel also questioned the compensation fixed on the ground that it is on the higher side.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The Tribunal, while considering the issue of negligence, considered the stand taken by the 5th respondent in the counter affidavit and also the other evidence available on record and came to a conclusion that the accident had taken place since the 5th respondent had suddenly applied brakes to his two wheeler and the tempo van which was coming behind had hit the motor vehicle causing serious head injuries to the deceased.



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8. In motor accidents cases, the Tribunal is expected only to take a holistic view on the available evidence. The standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts. Considering the fact that the Motor Vehicles Act is a beneficial legislation, hypertechnical approach must be avoided. Some discrepancies in the evidence of the witnesses should not be put against the claimants and a Tribunal *stricto sensu* is only expected to satisfy itself that an accident took place and accordingly grant compensation.

9. In the present case, the stand taken by the 5th respondent in the counter affidavit with regard to the incident sounds very unnatural and it is quite curious that the 5th respondent was not even examined in this case. The Insurance Company ought to have atleast examined the 5th respondent to substantiate that there was no negligence on his part. Unfortunately, that was not done in this case. Hence, the Tribunal on the available materials, rightly attributed contributory negligence and



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directed the Insurance Company to pay 50% out of the total compensation amount to the claimants. This Court does not find any illegality or infirmity in the finding of the Tribunal which warrants the interference of this Court.

10. Insofar as compensation is concerned, the Tribunal has fixed a very reasonable compensation under various heads and there is no ground to interfere with the same.

11. In the result,

(i) This Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

(ii) When this appeal was entertained, the Insurance Company was directed to deposit the entire award amount along with accrued interest and the said order has been complied with. In view of confirming the award passed by the Tribunal, the appellant Insurance Company will be



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entitled to withdraw 50% out of the total compensation amount deposited along with accrued interest. Insofar as the balance 50% of the compensation amount along with accrued interest, it will be left open to the claimants to withdraw the same in the manner prescribed by the Tribunal.

[J.N.B., J.] [N.A.V., J.]
15.09.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
The Chief Judicial Magistrate/
Motor Accident Claims Tribunal,
Kanyakumari District at Nagercoil.

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