



C.M.A.(MD)No.406 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.406 of 2018

and

C.M.P(MD)No.5139 of 2018

United India Insurance Company Ltd.,
Rep. by its Branch Manager,
506 X, 2nd Ground Floor,
Kandan Complex,
Opposite to Bus stand,
Valiyoor.
Respondent

.. Appellant/2nd

Vs.

1.Selvarani

2.Minor Monish Kumar

3.Minor Dinesh Kumar

(2nd and 3rd respondents
represented through their
mother and natural
guardian/1st respondent)



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5.Mamasi

.. 1st to 5th Respondents/Claimants

6.R.Shinu

.. 6th Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 13.02.2018 made in M.C.O.P.No.65 of 2015, on the file of the Motor Accidents Claims Tribunal/III-Additional District Judge, Tirunelveli District.

For Appellant : Mr.N.Dilip Kumar

For Respondents 1 to 5 : Mr.I.Pinaygash

For Respondent No.6 : Mr. M.P.Senthil Kumar

JUDGMENT

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J.

This appeal has been filed by the United India Insurance Company Limited against the award passed by the Motor Accidents Claims



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Tribunal (hereinafter referred to as 'MACT'), Tirunelveli in M.C.O.P.No. 65/2015, dated 13.02.2018.

2.The claimants, viz., respondents 1 to 5 filed a petition seeking for compensation on account of the death of one Sermadurai in a motor vehicle accident which took place on 26.07.2014.

3.The case of the claimants is that on 26.07.2014, at about 8.45 p.m., the deceased Sermadurai was riding a motorcycle in Thisayanvillai-Kottaikarungaulam main road. Another motorcycle belonging to the 6th respondent herein, which was insured with the appellant Company was going in front of the vehicle driven by the deceased. It is alleged that the 6th respondent suddenly turned on the right side without any indication and stopped the vehicle abruptly and as a result, the motorcycle driven by the deceased dashed on the vehicle belonging to the 6th respondent. The deceased, who was thrown out of the motorcycle, sustained serious head injuries. Ultimately, the deceased succumbed to his injuries on



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4. The claimants claimed for a compensation of a sum of Rs. 20,00,000/- under various heads and filed the claim petition before the Tribunal.

5.The MACT, on considering the facts and circumstances of the case and on appreciation of evidence, found that the accident took place only due to the negligence of the 6th respondent. Insofar as the compensation is concerned, the Tribunal awarded a sum of Rs. 23,38,000/- as compensation along with interest at the rate of 7.5% from the date of filing the petition till the date of payment.

6. Heard Mr.N.Dilip Kumar, learned counsel appearing for the appellant/Insurance Company, Mr.I.Pinaygash, learned counsel appearing for the respondents 1 to 5/claimants and Mr.M.P.Senthil Kumar, learned counsel appearing for the 6th respondent.



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7.The learned counsel for the appellant Insurance Company submitted that the Tribunal completely disregard the evidence of the 6th respondent and went on the footing that no evidence was adduced on the side of the offending vehicle. The learned counsel further submitted that the eyewitness who was examined before the Tribunal on the side of the claimants was not trustworthy and reliable and he was not even aware about the police case or the FIR registered after the incident. The learned counsel further submitted that it was the 6th respondent, who had lodged the complaint against the deceased for rash and negligent driving and ultimately, the criminal case was closed since the deceased died and the proceedings abated. Hence, it was contended that the Tribunal went wrong in finding that the accident took place due to the negligence of the 6th respondent.

8. Insofar as the quantum of compensation is concerned, the learned counsel for the appellant submitted that it is on the higher side and it requires the interference of this Court.



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9. On carefully going through the judgment of the Tribunal, it is seen that the Tribunal proceeded on a wrong footing as if no evidence was adduced on the side of the 6th respondent, whose vehicle was insured with the appellant Insurance Company. This Court went through the original bundle and it is found that the 6th respondent was, in fact, examined as a witness on 25.04.2016 and he was also cross-examined on the same day. It is not known as to how the Tribunal completely disregarded this evidence and gave a finding as if no witness was examined on the side of the 6th respondent.

10. Considering the fact that the accident had taken place in the year 2014 and the award was passed in the year 2018, we thought it fit to assess the evidence of the 6th respondent in order to find out as to whether there is negligence on the part of the deceased.



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11. On carefully going through the evidence of the 6th respondent, it is seen that he has given his version about the accident and even in the deposition, he had stated that the deceased was driving his two wheeler behind his two wheeler and he dashed on the vehicle belonging to the 6th respondent and both of them fell down. Both of them were admitted in the hospital. At that point of time, the 6th respondent seems to have given a complaint to the police and based on the same, an FIR was registered in Crime No.247/14 for the offences under Sections 279 and 337 IPC against the deceased Sermadurai. This criminal case came to be closed on the demise of Sermadurai.

12. As against the evidence given by the 6th respondent, the evidence of P.W-2 is available and he was an eyewitness to the incident. This witness has clearly stated that the 6th respondent without giving any indication, all of a sudden, turned his vehicle to the right side and as a result of the same, the deceased was not able to stop his two wheeler and he dashed on the vehicle belonging to the 6th respondent. This evidence



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of P.W-2 has not been discredited in the cross examination.

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13. As between the evidence of the eyewitness and the evidence of the 6th respondent, this Court would naturally lean in favour of the evidence of the eyewitness, who was a third party. The evidence of the 6th respondent is more in the nature of a self-serving statement wherein the 6th respondent has given his version about the accident.

14. The Tribunal, on considering the evidence of P.W-2, has come to a categoric conclusion that his evidence is reliable and the 6th respondent had given the police complaint against the deceased only to escape from the consequences of the accident. This finding given by the Tribunal cannot be held to be perverse and hence, the same is not liable to be interfered by this Court. Accordingly, on the question of negligence, this Court concurs with the finding of the Tribunal.

15. Insofar as the amount of compensation fixed by the Tribunal,



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this Court finds that sufficient reasons have been assigned while fixing the compensation under various heads and the same is just and reasonable.

16. The learned counsel appearing on behalf of the claimants made an attempt to seek for enhancement of compensation by virtue of Order 41 Rule 33 CPC. We find that the compensation fixed by the Tribunal, does not require the interference of this Court. In fact, the claimants had claimed a compensation of Rs.20,00,000/- and the Tribunal had fixed the compensation at Rs.23,38,000/- and that by itself shows that the Tribunal has fixed a just compensation.

17. In view of the above discussion, this Court does not find any ground to interfere with the award passed by the Tribunal and accordingly, this civil miscellaneous appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

18. This Court, at the time of entertaining the appeal, directed the



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appellant Insurance Company to deposit the entire award amount along with accrued interest and accordingly, the appellant Company has also deposited the same. In view of the dismissal of this appeal, it is left open to the claimants to withdraw the compensation in the proportion as fixed by the Tribunal.

[J.N.B., J.] [N.A.V., J.]
07.09.2022

Index : Yes/No
Internet : Yes
PJL

To
The III-Additional District Judge/
Motor Accidents Claims Tribunal,
Tirunelveli District.



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