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C.M.A.No.1328 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1328 of 2013

- 1.P.Kaliappan (Died)
- 2.Saraswathi
- 3.K.Balasubramanian

(Sole appellant died. Appellants 2 and 3 brought on record as L.Rs. of the deceased sole appellant viz.P.Kaliappan vide Court order dated 23.03.2023 made in C.M.P.Nos.20880, 20882, 20885 & 20888/21 in CMA No.1328/13 by AANJ)

... Appellants

Vs.

- 1.Kalayarasi
- 2.United India Insurance Co. Ltd.,
12 A, Coimbatore Road,
Karur District.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree passed by the Motor Accidents Claims Tribunal/ Fast Track Court III, Judge at Dharapuram made in M.C.O.P.No.22 of 2005 dated 23.05.2008 fastening contributory negligence of 40% on the part of the appellant/ claimant and awarding lesser compensation of Rs.1,20,000/- is



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concerned.

For Appellant : Mr.K.Kishore Kumar
for M/s.N.S.Sivakumar

For Respondents : R1 – Unserved
Mr.M.J.Vijaya Raghavan for R2

J U D G M E N T

The claimant before the Motor Accidents Claims Tribunal is the first appellant herein. This appeal has been filed seeking to set aside the order dated 23.05.2008 passed by the Motor Accidents Claims Tribunal/ Fast Track Court III, Dharapuram in M.C.O.P.No.22 of 2005.

2.The brief facts of the case is that on 30.09.2004 at about 7p.m., when the first appellant was riding his TVS 50 bearing Registration No.TN 33 P 5149 along Coimbatore – Kangayam Main Road near Alapichagoundanpudur, a lorry bearing Registration No.TN 47 J 5679 which was going in front of the motor cycle driven by the first appellant suddenly stopped negligently without making any signals, due to which, the motor cycle dashed against the lorry on its rear portion and the first appellant sustained injuries.

3.Thereafter, the injured first appellant filed claim petition



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before the Motor Accidents Claims Tribunal/ Fast Track Court III, Dharapuram, claiming compensation of Rs.4 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.1,20,000/- with interest at the rate of 7.5% p.a. and directed the second respondent to pay the compensation. Being not satisfied with the compensation awarded by the Tribunal, the claimant has come before this Court for enhancement of compensation.

4.The learned counsel appearing for the appellants submitted that the Tribunal arrived at the conclusion that the total compensation works out to Rs.2 Lakhs, however, fixed 40% liability on the part of the first appellant claimant and after deducting 40% from Rs.2 Lakhs awarded compensation of Rs.1,20,000/- to the claimant, which is not sustainable one and further submitted that the claimant is entitled for enhancement in compensation.

5.The learned counsel appearing for the second respondent Insurance Company submitted that admittedly the lorry was going in front of the motor cycle. The first appellant claimant drove the motor cycle in a rash and negligent manner and dashed against lorry and hence, the Tribunal fixed 40% liability on the part of the injured



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claimant and awarded a sum of Rs.1,20,000/- as compensation to the claimant which is just and reasonable and warrants no interference.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts in the present case is not in dispute. Admittedly, the injured claimant dashed against the lorry which was proceeding in front of him. It is the duty cast upon the claimant to prove before the Tribunal that he drove the motor cycle cautiously, however, he has not done so. The Tribunal adjudicated the issue properly and fixed 40% liability on the part of the injured claimant and awarded a sum of Rs.1,20,000/- as compensation to the claimant which is just and reasonable and warrants no interference.

8.The civil miscellaneous appeal stands dismissed. The Judgment and Decree passed in M.C.O.P.No.22 of 2005, dated 23.05.2008 by the Motor Accidents Claims Tribunal/ Fast Track Court III, Dharapuram, is confirmed.

9.The second respondent/ Insurance Company is directed to



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deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the appellants 2 and 3/ legal heirs of the deceased first appellant/ claimant are permitted to withdraw the entire compensation amount with accrued interest and costs in equal share, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants 2 and 3/ legal heirs of the deceased first appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal and for the period of delay, if any, in filing the petition to set aside the abatement caused on account of death of the first appellant.

10.The civil miscellaneous appeal is dismissed. No costs.

10.10.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal/
Fast Track Court III,

5/6



Dharapuram.

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M.DHANDAPANI,J.
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