



C.M.A.No.1174 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1174 of 2012

And

M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
Divisional Office 712 000,
No.69/70, Sheikpetnadu Street,
Kancheepuram.

... Appellant

Vs.

1.Amulu
2.Minor.Manimegala
3.Minor.Prasand

(2nd and 3rd respondents are minors
rep. by their mother 1st respondent Mrs.Amulu)

4.Muniyammal
5.D.Ravi
6.Perumal
7.K.Venkatesan

8.United India Insurance Co. Ltd.,
Vadapalni Divisional Office,
Chennai – 600 026.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988, to set aside the judgment and decree



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dated

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14.03.2011 made in M.C.O.P.No.3 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Judge) at Madurantakam.

For Appellant : Mr.C.Ramesh Babu

For Respondents : R1 to R4, R7 – No Appearance
R5 & R6 – NRN (Not Ready Notice)
Mr.P.Sankaranarayanan for R8

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed seeking to set aside the order dated 14.03.2011 passed by the Motor Accidents Claims Tribunal (Sub Judge) at Madurantakam, in M.C.O.P.No.3 of 2006.

2.The brief facts of the case is that on 18.09.2005 at about 06.30 hours, the deceased Ramesh travelled in a motor cycle bearing Registration No.TN 09 AJ 7403 driven by one Perumal from Chennai to Mel Athipakkam near Achiruppakkam Anna Nagar GST Road. At that time, a lorry bearing Registration No.TAR 6350 owned by the fifth respondent and insured with the appellant was parked in the middle



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of the road without any signal and a bus came behind the motor cycle

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and the said Perumal in order to give way to the bus dashed against the stationed lorry, due to which, the deceased died on the spot.

3. Thereafter, the dependants of the deceased Ramesh/ respondents 1 to 4 filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded compensation of Rs.6,19,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of payment and costs. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4. The learned counsel appearing for the appellant submitted that as per the complaint made before the law enforcing agency, the deceased was riding the motorcycle owned by the seventh respondent. At that time, ARS passenger bus came from backside and in order to avoid collision, the driver of the motorcycle dashed against the vehicle insured with the appellant on the rear side and thereby lost his life. However, the Tribunal fastened the entire



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liability against the vehicle insured with the appellant which is not sustainable one. The Tribunal ought to have fixed contributory negligence on the part of the rider of

the motorcycle. The learned counsel further submitted that at the time of death, the deceased was 27 years and the correct multiplier to be adopted is 17, however, the Tribunal adopted the multiplier 18 and awarded compensation.

5. Heard the learned counsel appearing for the appellant. There is no representation for the claimants. Considering the pendency of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

6. On 18.09.2005 at about 06.30 hours, the deceased Ramesh travelled in a motor cycle owned by the seventh respondent and driven by the sixth respondent from Chennai to Mel Athipakkam near Achiruppakkam Anna Nagar GST Road. At that time, the lorry owned by the fifth respondent and insured with the appellant was allegedly parked in the middle of the road without any signal and a bus came behind the motor cycle and the sixth respondent in order to give way



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to the bus dashed against the stationed lorry, due to which, the deceased died on the spot.

7.Perusal of records reveal that at the time of accident, the deceased was working as Mason under the seventh respondent and in order to bring labourers for construction work, the seventh respondent sent the deceased and the sixth respondent in his motor cycle.

8.In the present case, the driver of the vehicle owned by the seventh respondent dashed against the stationed vehicle, however, parking vehicle in the National Highways is contrary to the National Highways Rules since there is a parking bay specifically earmarked for parking the vehicle and the vehicle insured with the appellant was parked on the road, which is impermissible one. Hence, the Tribunal fastened the liability as against the appellant and fifth respondent, which cannot be interfered with.

9.Now coming to the question of quantum of compensation, though the Tribunal has wrongly adopted the multiplier 18 instead of 17, the amount awarded under the other heads in the opinion of this



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Court is low and hence, this Court is not inclined to interfere with the impugned judgment.

10.The civil miscellaneous appeal stands dismissed. The judgment and decree passed in M.C.O.P.No.3 of 2006, dated 14.03.2011 by the Motor Accidents Claims Tribunal (Sub Judge) at Madurantakam, is confirmed.

11.The appellant/ Insurance Company is directed to 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, less the amount if any, already deposited. On such deposit being made, the respondents 1 and 4 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The claimants/ respondents 2 and 3 are permitted to withdraw their respective share as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to their majority. If the claimants/ respondents 2 and 3



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are still minors, their shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain

majority and the interest derived from out of the said share of the minors shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minors.

12.The civil miscellaneous appeal is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

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

To

1.The Motor Accidents Claims Tribunal
(Sub Judge) at Madurantakam.



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M.DHANDAPANI,J.
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