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C.M.A.No.2240 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2240 of 2016

and

C.M.P.No.15886 of 2016

National Insurance Company Limited,
Represented by its Branch Manager
Branch Office:
11/1272- 1273, Palaniappa Complex,
Mettur Road, Erode.

... Appellant

Vs.

1. Revathy
2. Minor Lingeswaran
Rep. by its mother and natural guardian
3. Kannammal
4. T.R.Perumal
5. Murugesan
6. Branch Manager,
Sri Ram General Insurance Company Ltd.,
Branch Office : No.1003, E.8, Ricko Industries,Eriyur,
Chittapuram, Cheyyur, Rajasthan District – 022.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, 1988, judgment and decree dated 16th December 2015 made in M.C.O.P.No.110 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge at Krishnagiri.



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For Appellant : M/s.K.Padmanabhan

For Respondents : No Appearance [R1, R2, R6]

Exparte vide Tribunal [R4 & R5]

R3 Died (No legal heir vide court order dated 30.03.2023)

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against judgment and decree dated 16th December 2015 made in M.C.O.P.No.110 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge at Krishnagiri.

2. It is the case of the claimant that on 15.04.2010 at about 11:00 p.m.a tanker lorry bearing registration No.TN 33 J 8699 driven by its driver in a rash and negligent manner dashed against the lorry bearing registration No.KA 01 AB 5959 as a result of which the cleaner of the lorry sustained grievous injuries and died on the spot claiming compensation for the death of the deceased the claim petition was preferred.

3. Before the Tribunal, the claimant examined two witnesses viz., P.W.1 and P.W.2 and marked 6 documents viz., Ex.P.1 to Ex.P.6. On the side of the respondents, they have examined two witness viz., R.W.1 and R.W.2



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and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal had allowed the petition in part and awarded a sum of Rs.9,75,000/- as compensation in favour of the claimants. Aggrieved over the same, the appellant / insurance company has filed the present appeal.

4. The learned counsel appearing for the appellant submits that the compensation awarded under various heads are highly excessive. The learned counsel further submits that it is only the fourth respondent who is liable to pay the compensation. Therefore, this Court may set aside the order passed by the Tribunal.

5. Heard the learned counsel for the appellants and perused the materials placed before this Court.

6. The accident is not in dispute. The appellant who is the insurer of the vehicle belonging to the first respondent who is the offending vehicle, the fourth respondent who is the insurer of the stationary vehicle belonging to the third respondent. The Tribunal has fastened the liability on the appellant / insurance company and fourth respondent jointly and severally to be paid by the



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appellant as the insurer of the vehicle on the finding that the driver of the first respondent had driven the vehicle in a rash and negligent manner. P.W.2 who is the eye witness to the occurrence has spoken in unequivocal terms that the offending vehicle was driven in a rash and negligent and it came and dashed against the stationary vehicle which was parked for repair in which the deceased who was the cleaner sustained injuries and died. The F.I.R., Ex.P1 has also been lodged against the driver of the offending vehicle and similar statement has been recorded in the F.I.R. The appellant has not produced any contra evidence to suggest that the first respondent vehicle was not driven in a rash and negligent manner.

7. Further, it transpires from the record that the vehicle which was parked for repair was also displaying the tail light which was glowing and therefore no negligence can be fastened on the parked vehicle. From the above stated materials it is implicitly clear that it is only the offending vehicle which was driven in a rash and negligent manner which has caused the accident leading to the death of the deceased and therefore, the finding recorded by the Tribunal on the said aspect does not warrant interference. There is no quarrel about the fact that the first respondent's vehicle was insured with the appellant /



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insurance company and the appellant is liable to indemnify the insured. Though the appellant claims that the compensation awarded by the Tribunal under various heads is excessive, this Court has gone through the order impugned and also the manner in which the compensation has been arrived at by the Tribunal. The Tribunal following the ratio laid down by the Hon'ble Apex Court in fixing the notional income in adopting multiplier and adopting the percentage and future prospects has rightly computed the compensation which cannot be said to be excessive. Accordingly, the impugned award passed by the Tribunal is just and reasonable and therefore no interference is warranted.

8. With the above observation, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2023

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Speaking Order/ Non Speaking Order: Yes/No

Index : Yes/No

NCC : Yes/No

M.DHANDAPANI,J



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To

1. Motor Accident Claims Tribunal, Special District Judge at Krishnagiri.
2. The Section Officer, V.R. Section, High Court, Madras.

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