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C.M.A.No.366 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.366 of 2016
and
C.M.P No.2721 of 2016

United India Insurance Company Ltd.,
Rep. by its Manager,
No.1170, Mettur Road, 2nd Floor
Muthiah Complex, Erode-638 011

.. Appellant

Vs.

1.M.Shanthi
2.G.Natarajan
3.Saravanan

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.07.2015 made in MCOP No.542 of 2014 on the file of the Motor Accident Claims Tribunal/ Special Sub Judge, Dharmapuri.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.M.Selvam for R1



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J U D G M E N T

The appeal on hand is filed against the Award and decree dated 16.07.2015 passed in MCOP No.542 of 2014, on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Dharmapuri.

2. The United India Insurance Company Limited has filed this appeal questioning the quantum of compensation.

3. The accident occurred on 31.12.2007 at 4.00 p.m., at Namakkal to Salem Main Road, near Mallur Co-operative Agricultural Bank. The Mallur Police Station registered a case in Crime No.1 of 2008. While the injured/claimant namely Venkatesh, after delivering a dead body at Namakkal, was proceeding in a Ambulance Maruthi van bearing Registration No. TN-28-J-5783 belonging to the 2nd respondent from south to north, on seeing the lorry coming very near opposite to the van, he turned the van to the left of the mud road and unfortunately it dashed against a Tamarind Tree on the left side of the road. The injured/claimant, due to the



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accident sustained grievous injuries and thereafter, the claim petition was filed by him. During the pendency of the said claim petition, the injured/claimant died and subsequently, the mother of the deceased was impleaded in the claim petition and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.2,50,000/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. He further submitted that originally the claim application has been filed under Section 163(A) of MV Act and subsequently, the legal heir of the deceased was brought on record. The Tribunal failed to consider that the injured/claimant died after the accident and hence the claim petition itself has become infructuous. The Tribunal failed to consider the fact that as per Ex.P1 FIR, the deceased was a tortfeasor and he is not entitled to claim any compensation. There was no



postmortem done to prove that the injured viz., Venkatesh died due to the injuries sustained at the time of accident. When the claim application filed and the claimant died during the pending proceedings, especially under Section 163(A) MV Act, the second schedule to be followed and the claimant is entitled only maximum medical expenses, transportation and disability. The compensation of Rs.1,50,000/- awarded towards permanent disability and future prospects is not correct. The compensation awarded under the heads of pain and suffering, transportation and nutrition is highly excessive and based on that, the appellant/Insurance Company has chosen to file the present appeal. For the aforesaid reasons, the award is liable to be dismissed.

5. The learned counsel for the 1st respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.



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6. It is contended by the learned counsel for the appellant/Insurance company that the deceased was a tortfeasor and he is not entitled to any compensation. A perusal of records would reveal that while the deceased Venkatesh was working as Ambulance van driver under the 2nd respondent, the accident had occurred. As per the Workmen Compensation Act or 163(A) of Motor Vehicles Amendment Act 1988, the deceased has right to file a claim petition and accordingly, he made a claim under Section 163(A) of MV Act. Considering the said factors, the Tribunal has rightly held that the deceased is entitled to compensation for the injuries sustained by him and there is no scope for interference in this regard.

7. From the materials available on record, it could be seen that after the accident, the injured/claimant namely Venkatesh had sustained fracture of left leg femur bone and initially, he was admitted in Dharmapuri Government Hospital and thereafter, he was transferred to Salem Kurinji hospital for further treatment, where a surgery was done to him. The accident occurred on 31.12.2007 and after 2 years and 9 months, the injured



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Venkatesh died i.e on 12.09.2010. But, there is no oral and documentary evidence to indicate that he suffered permanent disability and despite the treatment, died due to the injuries. Hence the Tribunal based on the documents available on record, especially Ex.P10 legal heir certificate, had decided to award the compensation to the mother of the deceased namely Shanthi.

8. Insofar as the compensation awarded towards disability and future prospects is concerned, in the absence of any material evidence for the disability sustained by the deceased, the compensation of Rs.1,50,000/- awarded under the said head is highly excessive and therefore, this Court is inclined to reduce the same to Rs.1,00,000/-.

9. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.



10. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Permanent disability and future prospects	1,50,000/-	1,00,000/-
Medical expenses including bills	15,000/-	15,000/-
Pain and suffering	40,000/-	40,000/-
Transport Expenses including bills	10,000/-	10,000/-
Extra Nourishment and damages to articles	10,000/-	10,000/-
Attender charges	25,000/-	25,000/-
Total	2,50,000/-	2,00,000/-

11. In the result,

(i) This appeal is partly allowed and the Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.2,00,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the



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amount already deposited, if any, to the credit of MCOP.No.1933 of 2015 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

14.06.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Dharmapuri.

2.The Section Officer,
V.R Section,
High Court, Madras.

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A.A.NAKKIRAN, J.
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