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CMA.No.1005 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1005 of 2023 and
CMP.No.9492 of 2023

The Branch Manager,
Reliance General Ins.Co.Ltd.,
II Floor, Global Plaza, Opp to New Railway Platform,
Vanchikkulam Road, P.O. Poothole, Thrissur,
Kerala 680 004

... Appellant

Vs

1.Dhilshath
2.Minor Abiba
3.Minor Athira
R2 & 3 represented by n.f. and mother Dilshath
4.Chanbebe
5.K.R.Santosh Kumar

... Respondents

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 16.08.2019 passed in MCOP.No.443 of 2014 by the Motor Accident Claims Tribunal, Special District Judge Court at Dharmapuri.

For Appellant : M/s.C.Bhuvanasundari

JUDGMENT

This appeal is filed against the award and decree dated 16.08.2019 passed in MCOP.No.443 of 2014 by the Motor Accident Claims



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Tribunal, Special District Judge Court at Dharmapuri. The Insurance Company has filed this appeal challenging the quantum of compensation awarded by the Claims Tribunal.

2. The parties are referred to as per their rankings before the Tribunal.

3. On 30.04.2013, when the deceased was riding as pillion in a pulsar motor cycle, the bus belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner, hit the two wheeler. As a result of which, the deceased sustained severe injuries and later succumbed to the accident. The deceased was aged 30 years and was a mango seller. According to the claimants, his monthly income was Rs.12,000/- per month and therefore, the claim petition was filed claiming sum of Rs.25,00,000/- as compensation. The first respondent who is the owner of the offending vehicle remained exparte and the claim petition was contested by the second respondent / insurance company. The second respondent / insurance company disputed the negligence, liability and quantum. Before the Claims Tribunal, the claimants examined two witnesses and marked Ex.P1 to Ex.P17 and on the side of the respondents, neither any oral or documentary evidence was filed. The Claims Tribunal, on assessment of entire evidence on record,



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awarded Rs.16,76,500/- as compensation along with 7.5% interest, on the basis of its finding that the driver of the insurer was responsible for the accident. Aggrieved by the quantum of compensation awarded by the Claims Tribunal, the insurance company has filed the appeal.

4. Short question to be determined in this appeal is whether the compensation awarded by the Claims Tribunal is fair, just and reasonable?

5. The learned counsel for the appellant / insurance company contended that the application of multiplier 17 based on the postmortem report was untenable. The counsel further submitted that the case went on hibernation for five years from its filing i.e. 27.09.2015. Therefore, the counsel submits that the Tribunal ought not to have awarded interest for the five years period when the case was not taken up for hearing.

6. I have heard the learned counsel for the appellant and I am of the view that the contentions raised by the learned counsel for the appellant / insurance company are unsustainable. In the claim petition, in column three, the age of the deceased was given as 30 years. The postmortem certificate also refers to the age of the deceased as 30 years. The postmortem report cannot be



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ignored. It corroborates the age stated in the claim petition. Therefore, there is nothing wrong in relying on the postmortem report for corroborating the statement of the claimants on the age of the deceased. On the next submission that the Tribunal ought not to have awarded interest for the period during which the case went into hibernation i.e. 5 years, I am of the view that the claimants should not be prejudiced by the delay as the delay is not attributtal to the claimants. Therefore, the second objection is also rejected.

7. In fine, I find no merits on this appeal and this civil miscellaneous appeal is dismissed. The order of the Tribunal dated 16.08.2019 passed in MCOP.No.443 of 2014 is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.04.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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N.MALA, J.

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To



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Motor Accident Claims Tribunal,
Special District Judge Court at Dharmapuri.

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