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CMA.No3690 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3690 of 2019

and

C.M.P.No.10177 of 2019

Periyasamy (Died)

1.Indirani

2.R.P.Ramya

3.Minor P. Prabha

Rep. By her next friend,

Guardian mother Indirani

...Appellants

Vs

1.Chinnathambi

2.The Oriental Insurance Company Limited,

Kumar Complex, 1st floor,

No.146, West Car Street,

Tiruchengode.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 is filed against the judgment and decree in MCOP.No.28 of 2013 dated 28.11.2018 on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

For Appellants : Mr.T.S.Arthnareeswaran,

For Respondent-1 : Unclaimed

For Respondent-2 : Mr.J.Chandran



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants / claimants to set aside the impugned award dated 28.11.2018 passed in MCOP.No.28 of 2013 by the Motor Accident Claims Tribunal (Subordinate Judge Court), Tiruchengode.

2. The case of the appellants is that on 31.05.2012 at about 10.30 a.m., the deceased Periyasamy was walking on Tiruchengode to Namakkal Road, near Pathai Muniyappan Kovil Mandagapalayam, Tiruchengode. The person who was driving the vehicle bearing Regn.No.TN-52-D-0263 (Bajaj Pulsor) came from the opposite direction driving in a rash and negligent manner and hit against the deceased who sustained grievous injuries on his forehead, right side head blood injuries, right hand knee and all over the body. The deceased was immediately taken to the Government Hospital, Tiruchengode and thereafter shifted to KMCH Hospital, Erode and admitted as an in-patient from 31.05.2012. Claiming compensation of a sum of Rs.10,00,000/-, the claimants have filed a petition in MCOP.No.28 of 2013 before the Motor Accidents Claims Tribunal, Tiruchengode.



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3. Controverting the same, the second respondent / Insurance Company has filed a counter affidavit denying the allegations made by the appellants. The Insurance Company denied the age, occupation and income of the deceased and put the same for strict proof. They denied the medical expenses spent by the appellants. They refuted that the rider of the motor cycle was not having valid and effective driving license at the time of the accident. He was having only learner's license to ride the motor cycle. He must have one permanent license holder as a pillion rider till he take the permanent license. Hence the owner of the motor cycle had violated the policy conditions. This petition suffers from non-joinder of necessary parties. There is no nexus between the injuries and the death since the accident had taken place on 31.05.2012 whereas the death was caused on 05.05.2013. Thus, he sought for dismissal of the claim petition.

4. Before the Tribunal, on the side of the appellants, five witnesses were examined as P.W.1 to P.W.5 and marked fifteen documents which were marked as Ex.P1 to Ex.P15. On the side of the second respondent / Insurance Company, one witnesses was examined as R.W.1 and five



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documents were marked as Exs.R1 to R5.

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5. The Tribunal, after examining the witnesses and analyzing the materials available on record, awarded a compensation of Rs.20,03,763/- payable by the respondents, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with costs.

6. Not satisfied with the quantum of compensation, the appellants/claimants have filed the present Civil Miscellaneous Appeal.

7. Heard the submissions made on either side and perused the materials available on record.

8. The learned counsel for the appellants/claimants has submitted that due to the said accident, the deceased suffered grievous injuries and thereafter he died. But the compensation awarded by the Tribunal is inadequate and on the lesser side. The Tribunal ought to have granted more compensation. Hence, he prays to allow the Civil Miscellaneous Appeal.



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9. The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and hence, the same does not require any interference by this Court. Hence, he prays for dismissal of the Civil Miscellaneous Appeal.

10. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal has made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the Bajaj Pulsor bearing Regn.No.TN-52-D-0263. Though the vehicle is properly insured and having insurance policy on the date of accident, the second respondent / Insurance Company denied its liability on the ground of non-joinder of necessary parties and also that the accident had taken place on 31.05.2012 whereas the death was caused on 05.05.2013. It is found that the respondents are liable to pay compensation to the appellants for the death caused to the deceased Periyasamy. The Tribunal relying on the judgments of this Court in CMA(MD) 1283 of 2005 dated 18.08.2017, has



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held that the respondents are liable to pay a compensation to the claimants.

11. A perusal of the records would reveal that the accident had taken place on 31.05.2012 and the MCOP was filed on 30.10.2012. Also, the deceased died on 05.05.2013. It is also an absurd one to state that a sum of Rs.17,00,000/- was spent towards medical bills from 31.05.2012 to 05.05.2013. It is also found that they are seeking amendments in all headings apart from medical bills in order to enhance the award amount.

12. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal has rightly fixed liability on the respondents to pay compensation to the claimants and awarded an overall compensation of Rs.20,03,763/- with interest at 7.5% p.a., from the date of petition till the date of deposit. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

13. In view of the above, nothing survives for further adjudication in



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the Civil Miscellaneous Appeal and the same is accordingly dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

20.04.2023

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal/
Subordinate Judge Court, Tiruchengode.

2. The Section Officer,
VR Section,
High Court, Madras.



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A.A.NAKKIRAN., J.

gv

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