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C.M.A.No.1637 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1637 of 2023
and C.M.P.No.16244 of 2023

M/s.New India Assurance Company Limited,
Obeli Towers, TP Road,
R.S.Puram, Coimbatore.

...Appellant

Vs.

1.Menahadevi

2.Kamalesh

3.Jugat Singh Rajpurohit

...Respondents

(Respondents 2 and 3 remained exparte before the Tribunal)

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2018 made in M.C.O.P.No.2376 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirupur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.P.Yuvaraj for R1



J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company challenging the award dated 30.01.2018 made in M.C.O.P.No.2376 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirupur.

2. The first respondent filed the claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Muthaiyan, who died in the accident that took place on 22.10.2015. According to the first respondent, on the date of accident i.e., on 22.10.2015 at about 7.30 p.m., while the deceased was walking at the left extreme side of the road, at that time, a two wheeler bearing registration No.TN 42 B 2506 which was driven by the second respondent belonging to the third respondent in a rash and negligent manner, dashed against the deceased. Due to the said impact, the deceased sustained fatal injuries and died and therefore, the first respondent entitled to claim a sum of Rs.30,00,000/- as compensation.

3. The respondents 2 and 3, who are the driver and owner of the offending vehicle remained ex-parte before the Tribunal.



4. The appellant/Insurance Company filed counter statement denying the averments made by the first respondent and stated that the accident has occurred only due to negligent act of the deceased. The second respondent, rider of the two wheeler belonging to the third respondent is not responsible for the accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the first respondent. In any event, the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent examined two witnesses as P.W.1 and P.W.2 and marked four documents as Exs.P1 to P4. The appellant/Insurance Company did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the second respondent, rider of the two wheeler belonging to the third respondent and directed the appellant/Insurance Company being insurer of the said two wheeler to pay a sum of Rs.14,00,000/- as compensation to the 1st respondent.



7. Against the said award dated 30.01.2018 made in M.C.O.P.No.2376 of 2015, the appellant/Insurance Company has come out with the present appeal.

8. The learned counsel for the appellant/Insurance Company submitted that the compensation awarded by the Tribunal is excessive for an accident which took place in the year 2015. The Tribunal has taken the notional income of the deceased as Rs.15,000/- per month, even though no proof was filed to establish the income. The learned counsel fairly submitted that the finding of the Tribunal with regard to the negligence and compensation under the other heads are not challenged and prayed for setting aside the award of the Tribunal and allowing this appeal. .

9. Mr.S.P.Yuvaraj, learned counsel for the respondent submitted that the Tribunal considering the oral and documentary evidence rightly fixed the notional income at Rs.15,000/- per month which cannot be faulted and prayed for dismissal of the appeal.

10. The only question involved in the instant appeal is whether the quantum of the compensation awarded by the Tribunal is just and reasonable.



11. The appellant/ Insurance Company have not challenged the finding with regard to the negligence or liability. The only point raised by the learned counsel for the appellant is that for an accident which took place in the year 2015, the notional income of Rs.15,000/- fixed by the Tribunal is excessive. This Court finds that the deceased was working as a powerloom worker as per the evidence of P.W.2. Though the respondents have not produced any documents to show the income earned by the deceased at the time of his death, considering the nature of the job done by the deceased, the year of accident and also the fact that the Tribunal had fixed the consolidated notional income at Rs.15,000/- including future prospects, this Court is of the view that the notional income fixed by the Tribunal is just and reasonable. The compensation awarded under the other heads are also just and reasonable and the same are hereby confirmed. Therefore, there is no reason to interfere with the award passed by the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.14,00,000/- awarded by the Tribunal as compensation to the first respondent along with interest and costs is confirmed. The appellant/ Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks



from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

31.07.2023

Index: Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal /
II Additional District Judge, Tirupur.

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



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SUNDER MOHAN,J.

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