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C.M.A.Nos.1477 & 1815 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.1477 & 1815 of 2020

C.M.A.No.1477 of 2020

Gangadevi (Minor)
Rep. by her Mother

... Appellant

Vs.

ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor, E.C.R. Main Road,
Kotturpalayam,
Puducherry.

... Respondent

C.M.A.No.1815 of 2020

1.Kalaivani
2.Divya
3.Gangadevi (minor)
4.Monal (minor)
5.Tamilselvi (minor)

[appellants 3 to 5 are minors, rep. by their mother
& natural guardian, the 1st appellant]

... Appellants

Vs.

ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor, E.C.R. Main Road,
Kotturpalayam,



C.M.A.Nos.1477 & 1815 of 2020

... Respondent

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Prayer in C.M.A.No.1477 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 26.11.2019 passed in M.C.O.P.No.97 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram.

Prayer in C.M.A.No.1815 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 26.11.2019 passed in M.C.O.P.No.190 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram.

C.M.A.No.1477 of 2020 :

For Appellant : Mr.R.Thanjan

For Respondent : Mr.K.Poomalai

C.M.A.No.1815 of 2020 :

For Appellants : Mr.R.Thanjan

For Respondent : Mr.K.Poomalai

COMMON JUDGEMENT

Both the appeals arise out of a single accident.

2. The appellants in C.M.A.No.1815 of 2020 are wife and daughters



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of the deceased Loganathan. As per the claim petitions, on 15.03.2014 at about 9.00 a.m., the deceased Loganathan driven his auto bearing Regn.No.TN-09-BU-8649 along with his daughters Gangadevi, Monal and Tamilselvi and due to the sound horn of the vehicles which were coming behind the auto, the deceased dashed against the tree. Due to the accident, the deceased died while he was taken to the hospital and the said Gangadevi sustained grievous injuries all over her body including fracture in her arm. Therefore, the said Gangadevi filed a claim petition in M.C.O.P.No.97 of 2018 claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by her in the road accident and the dependants of the deceased filed a claim petition in M.C.O.P.No.190 of 2015 claiming a sum of Rs.50,00,000/- for the death of the deceased.

3. Before the Tribunal, the claimant in M.C.O.P.No.97 of 2015 had examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the respondent, they have examined one witness viz., R.W.1 and marked 1 documents viz., Ex.R.1. After adjudication, the Tribunal passed an award awarding a sum of Rs.25,000/- as compensation by ordering pay and recovery. Challenging the same, the



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claimant had filed appeal in C.M.A.No.1477 of 2020 on the ground that the Tribunal has fastened the liability as against the owner of the vehicle and not against the insurance company.

4. Before the Tribunal, the claimants in M.C.O.P.No.190 of 2015 examined two witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the side of the respondent, they have examined one witness viz., R.W.1 and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal had rejected the claim petition filed by the claimants. Aggrieved by the same, the claimants have filed the appeal in C.M.A.No.1818 of 2020.

5. The learned counsel appearing for the claimants submitted that, the award of the Tribunal in respect of the injured, directing the insurance company to pay the compensation and thereafter, recover the same from the mother of the injured is wholly unsustainable, which requires to be interfered with. Further, he submitted that, the Tribunal has rejected the claim petition filed by the claimants in respect of the deceased by fixing the negligence on the deceased is also wholly unsustainable, since he is the



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breadwinner of the family and at the time of death, he was earning a sum of Rs.25,000/- per month. Accordingly, he prays for allowing the appeals.

6. Per contra, the learned counsel appearing on behalf of the insurance company submitted that, by considering all the materials available on record, the Tribunal has passed award in the claim petitions filed in respect of the injured and for the deceased, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of the appeals.

7. Heard the learned counsel appearing on behalf of the parties and also perused the materials available on record.

8. A perusal of the materials available on record reveals that, the deceased had driven the auto and dashed the tree, due to which, he died and the other passengers have sustained injuries. P.W.2, who is an eye-witness to the occurrence, who had deposed that, due to the sound horns of the vehicles came behind the auto, the deceased suddenly taken left, thereby lost control and dashed against the tree, which caused the accident. The



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Tribunal, based on the evidence of P.W.2 coupled with Ex.P.1/FIR had arrived at a conclusion that, due to the rash and negligent driving of the deceased, the accident had happened. In view of the fact that the accident having happened at the instances of the deceased as tort-feasor, the claim petition filed in respect of the deceased, cannot be entertained and the Tribunal has rightly rejected the same, which cannot be said to be erroneous. Hence, this Court is not inclined to interfere with the award by the Tribunal in M.C.O.P.No.190 of 2015.

9. Insofar as the appellant in C.M.A.No.1477 of 2020 is concerned, it is seen from the records that the appellant has sustained only lacerated injuries, for which, the Tribunal has awarded a sum of Rs.25,000/- under the heads pain and suffering, attender charges, transportation, extra nourishment and damages to clothes, which is just and reasonable and the same does not require any interference. Further, it is evident from the records that, the auto has the permit within radius of 35 Kms in Chennai, however, the accident had occurred nearly 130 kilometers away from Chennai, which is violation of policy conditions. Therefore, considering the said facts, the Tribunal has directed the insurance company to pay the



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compensation to the appellant and thereafter recover the same from the owner of the auto, who is the mother of the appellant, since the deceased had died. Hence, the award passed by the Tribunal cannot be said to be unsustainable and same cannot be interfered with.

10. Accordingly, the Civil Miscellaneous Appeals are dismissed and the judgment and decree passed by the Motor Accidents Claims Tribunal, Special District Court, Villupuram in M.C.O.P.Nos.97 of 2018 and 190 of 2015, dated 26.11.2019 are confirmed. No costs.

08.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accidents Claims Tribunal, Special District Court, Villupuram.

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



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M.DHANDAPANI, J.,

sp

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