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CMA.No.51 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.51 of 2022
& CMP.No.342 of 2022

New India Assurance Company Limited,
Motor Third Party Claims Hub,
No.92, G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

... Appellant

-Vs-

1.Rajeswari
2.Minor.Prasanth
3.Minor.Ilamparthi
4.Minor.Kamalakaran
(minor respondents 2 to 4 represented by
their next friend/1st respondent mother Rajeswari)
5.Thimmi @ Thimmiammal
6.P.S.Senbagavalli

7.United India Insurance Company Limited,
Branch Office III No.137-D,
Cherry Road, Salem Town and District.

8.Arjunan

...Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree in MCOP.No.761 of 2008 dated 19.12.2020 on the file of Special District Judge (MACT), Dharmapuri.



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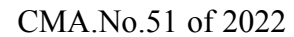
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For Appellants	: Mrs.S.R.Sumathy
For R1 to R6	: No appearance
For R7	: Mrs.R.Sreevidhya
For R8	: D/w Vide order dt.06.10.2023

JUDGMENT

The Insurance Company has come forward with this appeal challenging an award passed in MCOP.No.761 of 2008 on the file of Motor Accident Claims Tribunal, Special District Judge, Dharmapuri.

2.The admitted facts are that; on 13.08.2007 at around 11.30 p.m., close to midnight, certain lorry belonging to the third respondent and insured with the fourth respondent in the claim petition was parked on the side of the road and the rider of the motorcycle involved in this accident has ramped on the stationary vehicle from behind, due to which, the rider and pillion rider of the motorcycle died. Seeking compensation, the widow and three minor children of the pillion rider along with his mother have approached the Tribunal and the Tribunal had awarded Rs.10,86,000/- as compensation. So far as negligence is concerned, it apportioned the negligence at 75% on the driver of the lorry and 25% on the rider of the motorcycle. This is now under challenge.



6. This Court perused the award and finds that the award is intact both vis-a-vis the finding as to the negligence and also as to the quantum. It should not be forgotten that in terms of Section 122 read with Section 126 of the Motor Vehicles Act, a motor vehicle should not be parked in a public place without a driver with a valid license in the driving seat and further, the time of the accident is also close to midnight and therefore,



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the chunk of negligence must be attributed only to the driver of the lorry.

This Court finds that the approach of the Tribunal is correct. Turning to quantum, as already indicated the quantum is also just and reasonable.

7.In conclusion, this Court does not find any reasons to interfere with the award of the Tribunal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2023

Tsg



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To

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- 1.The Special District Judge (MACT), Dharmapuri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

Tsg

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