



CMA.No.1153 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1153 of 2014

MP.No.1 of 2014

The New India Assurance Company Limited
Perundurai, Erode

Appellant

Vs

1. S.Krishnan
2. M.Kalisamy
3. The Correspondent, AET Matriculation Higher
Secondary School,Erode 638107
4. United India Insurance Company Limited
Erode 638011
5. M.Ravichandran
6. The Correspondent, Kongu Engineering College
Erode
7. B.Megalanathan
8. M.Perumal
9. Tata AIG General Insurance Company Limited
Coimbatore 641018

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 16.12.2013, made in MCOP.No.360 of 2011, by the Additional District Court No.3 (MACT) Dharapuram.

For Appellant : Mr.A.Saolomi

For Respondents : Mr.Ma.Pa.Thangavel-R1
Mr.V.Kadhirvelu-R6
Mr.E.Rajadurai for Mr.M.B.Raghavan-R9



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No Appearance-RR2 to 5

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 16.12.2013, made in MCOP.No.360 of 2011, by the Additional District Court No.3 (MACT) Dharapuram.
2. The 1st Respondent has filed the claim petition before the Tribunal, seeking a compensation of Rs.6,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 08.06.2010 at about 8.10 a.m. when he was travelling as a pillion rider in a motor cycle, bearing Reg.No.TN-33-L-7774, owned by the 8th Respondent and insured with the 9th Respondent and driven by the 7th Respondent, a school bus bearing Reg.No.TN-56-A-7315, belonging to the 3rd Respondent School and insured with the 4th Respondent and driven by the 2nd Respondent in a rash and negligent manner, dashed against the two wheeler, due to which he was thrown out and fell down on the road and at that time, the bus bearing Reg.No.TN-59-J-6799, belonging to the 6th Respondent College and insured with the Appellant, driven by the 5th Respondent, ran over on his left leg, due to which, he sustained fracture over his left leg and bleeding injuries all over his body. The claim petition was resisted, on various grounds, by the Appellant and Respondents 4 and 9.
3. The Respondents 5 to 8 remained exparte before the Tribunal. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P21 were marked. Finding that the claimant sustained the injuries in the alleged motor



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road accident due to the rash and negligent driving of both the drivers of the school bus and the college bus, the Tribunal has apportioned the liability in the ratio of 50%:50% on the Appellant and 4th Respondent, respectively and awarded a total compensation of Rs.,5,58,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company and the 4th Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Continuing Disability (22% x2000)	44000.00
2	Loss of Income (6 months x 5000))	30000.00
3	Transportation Expenses	5000.00
4	Extra Nourishment	5000.00
5	Pain and Suffering	25000.00
6	Medical Expenses	444000.00
7	Future Medical Expenses	5000.00
Total Compensation		558000.00

Aggrieved by the same, this appeal has been filed by the Appellant/ Insurance Company.

4. On hearing the submissions of the learned counsel for the Appellant and the contesting Respondents, though there is no quarrel over the quantum of compensation, the dispute is only with regard to the apportionment of liability in the ratio of 50:50 on the Appellant and the 4th Respondent fixed by the Tribunal.
5. Based on the entire evidence, the Tribunal found that a First Information Report was filed against the driver of the school bus and also a charge sheet was filed against him and he has also admitted the offence and paid the fine amount. However, the Tribunal, without considering the said fact, erred in



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apportioning each 50% liability on both the Appellant Insurance Company and the 4th Respondent Insurance Company. It would be appropriate to apportion 25% liability on the Appellant insurance Company and 75% on the 4th Respondent Insurance Company.

6. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to the total compensation with interest as awarded by Tribunal. In so far as the apportionment of liability is concerned, both the Appellant Insurance Company and the 4th Respondent Insurance Company are respectively directed to deposit 25% and 75% of the impugned compensation, with interest at 7.5% p.a. from the date of the petition till the date deposit, after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire award amount with interest, by filing appropriate application. No costs. Consequently, the connected MP is closed.

18.04.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm



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To

1. The Additional District Court No.3 (MACT) Dharapuram
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

Srcm

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