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C.M.A.Nos.2627 of 2014 and 1470 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2627 of 2014 and 1470 of 2018

And

M.P.No.1 of 2014 and C.M.P.No.11681 of 2018

M/s.National Insurance Company Limited
Thanthai Periyar Perangadi,
Near Old Bus Stand,
Salem.

... Appellant in both the C.M.As.

Vs.

1.Shanthi

2.Minor Mukil

Minor represented by next friend and
natural guardian his mother Santhi

3.Krishnaveni

4.P.Madhavan

5.Rangan

6.The Branch Manager,

United India Insurance Company Limited,
104-A, Peramanur Main Road,
Peramanur, Salem.

... Respondents in C.M.A.2627/2014

1.Rajeswari

2.Minor Arun Kumar

3.Minor Ashok Kumar

Minors represented by next friend and
natural guardian their mother Rajeshwari

4.Vedi Gounder

5.P.Madhavan

6.Rangan

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7.The Branch Manager,

United India Insurance Company Limited,

104-A, Peramanur Main Road,

Peramanur, Salem.

... Respondents in C.M.A.1470/2018

Prayer in C.M.A.No.2627 of 2014:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MACT O.P.No.502 of 2003, dated 21.03.2013, on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem.

Prayer in C.M.A.No.1470 of 2018:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MACT O.P.No.1531 of 2002, dated 21.03.2013, on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem.

For Appellant : M/s.N.B.Surekha
in both the C.M.As.

For Respondents : Mr.S.P.Yuvaraj for R1 to R3
R4 – Died (Steps not taken
to bring on record)
R5 – NRN
Ms.I.Malar for R6
in C.M.A.No.2627 of 2014

Mr.M.Selvam for R1 to R3
R4 to R6 – NRN
Ms.I.Malar for R7
in C.M.A.No.1470 of 2018



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COMMON JUDGMENT

The second respondent before the Motor Accidents Claims Tribunal, is the appellant herein. These appeals have been filed seeking to set aside the order dated 21.03.2013 passed in M.C.O.P.Nos.502 of 2003 and 1531 of 2002 respectively, by the Motor Vehicle Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem.

2.The brief facts of the case is that Ezhil (deceased in M.C.O.P.No.502/2003) and Arivazhagan (deceased in M.C.O.P.No.1531/2002) were travelling in a Hero Honda Motor Cycle bearing Registration No.TN-29-M-0553 from Pappireddipatty towards Salem and when they were going near Kallathupatti bus stop one lorry bearing Registration No.TMK1895 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle, due to which, Ezhil and Arivazhagan sustained grievous head injuries and died.

3.Thereafter, the dependants of the deceased Ezhil and Arivazhagan/ claimants filed claim petitions before the Motor Vehicle



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Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem, claiming compensation of Rs.12 Lakhs and Rs.10 Lakhs respectively.

4.After adjudication, the Motor Vehicle Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem, awarded the following compensation to the claimants/ petitioners therein and aggrieved by the same, the appellant Insurance Company has filed these appeals.

(i)In M.C.O.P.No.502/2003 the tribunal directed the respondents 1 and 2 therein to jointly and severally deposit a sum of Rs.5,46,268/- as compensation to the claimants along with interest at the rate of 7.5% p.a., from the date of petition till the date of realization and proportionate costs.

(ii)In M.C.O.P.No.1531/2002 the tribunal directed the respondents 1 and 2 therein to jointly and severally deposit a sum of Rs.5,82,000/- as compensation to the claimants along with interest at the rate of 7.5% p.a., from the date of petition till the date of realization and proportionate costs.



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5.The learned counsel appearing for the appellant submitted that it is alleged that when the deceased were travelling near Kallathupatti bus stop one lorry bearing Registration No.TMK1895 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle, due to which, they sustained grievous head injuries and died. There are two F.I.Rs. registered by the law enforcing agency, one F.I.R. registered with unknown registration number and another F.I.R. was registered implicating P.Madhavan/ fourth respondent and fifth respondent respectively/ the owner of the vehicle as well as the appellant Insurance Company, against which, fourth respondent and fifth respondent respectively as well as the appellant Insurance Company have filed complaint before the CB CID and the CB CID has not yet filed any report.

6.The learned counsel appearing for the claimants submitted that unknown lorry dashed the motor cycle and ran away and hence, F.I.R. was registered as driver of unknown lorry and thereafter a person who saw the accident made before the law enforcing agency and thereafter the first respondent in the claim petitions namely, P.Madhavan was implicated. The Tribunal after considering all the



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factual aspects passed the impugned judgment, which warrants no interference.

7.Heard the arguments advanced by the learned counsel appearing on either side and perused the materials available on record.

8.Admittedly, one Ezhil and one Arivazhagan were travelling in a Hero Honda Motor Cycle bearing Registration No.TN-29-M-0553 from Pappireddipatty towards Salem and they met with an accident and lost their lives. Thereafter, the dependants of the deceased Ezhil and Arivazhagan/ claimants filed claim petitions before the Motor Vehicle Accidents Claims Tribunal.

9.Perusal of the impugned judgment reveals that to controvert the accident on the side of the respondents therein R.Ws.1 to 3 were examined. R.W.1 is the owner of the alleged offending vehicle and he stated that there is no fault on the part of his driver. R.W.2 is the clerk attached to Subramania Siva Co-operative Sugar Mills and he stated that on 11.01.2002, the offending lorry came to their mills at about 10.05 p.m. and after unloading the sugarcane it left on



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12.01.2002 at about 2.05 p.m. and the related entries made in the vehicles arrival and departure register is Ex.R3. R.W3 who was then serving in the emergency ward in Palaniyandi Hospital would say that on 15.01.2002 one Ezhil was brought by one Karunanithi saying that Ezhil met with a road accident while he was proceeding in his two wheeler on 12.01.2002 at about 7.00 p.m. a bus hit against the two wheeler. The accident register relating to the patient is Ex.R4.

10.On the side of the claimants F.I.R. was marked as Ex.P1. Ex.P2 and Ex.P11 are the post mortem certificates of Arivazhagan and Ezhil respectively. Ex.P3 is the MVI report of the bus, wherein it is stated that the accident was not due to any mechanical defect of the vehicle. Ex.P4 is the charge sheet filed on the basis of F.I.R.

11.The appellant ought to have challenged the charge sheet, instead contends that there are two F.I.Rs. registered by the law enforcing agency, one F.I.R. registered with unknown registration number and another F.I.R. was registered implicating P.Madhavan/ fourth respondent and fifth respondent respectively/ the owner of the vehicle as well as the appellant Insurance Company, which is not sustainable one. The Tribunal after considering all the factual



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aspects elaborately passed the impugned judgment, in which, this Court finds no fault.

12.The civil miscellaneous appeals stand dismissed. The decree and judgment dated 21.03.2013 passed in M.C.O.P.Nos.502 of 2003 and 1531 of 2002 respectively, by the Motor Vehicle Accidents Claims Tribunal, Additional District and Special Judge for EC Act Cases, Salem, is confirmed.

13.The appellant/ Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the respondents 1 and 3 and respondents 1 and 4 respectively, are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The respondents 2 and 2 and 3 respectively, are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of



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necessary proof with regard to their majority. If the respondents 2, and 2 and 3 are still minors, their shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minor shall be paid to the respective first respondent/ mother every quarter to be utilized for the welfare of the said minors.

14.The civil miscellaneous appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

11.10.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Motor Vehicle Accidents Claims Tribunal,
Additional District and Special Judge for EC Act Cases,
Salem.



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M.DHANDAPANI,J.
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