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C.M.A.No.2831 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2831 of 2014

and

M.P.No.1 of 2014

The New India Assurance Company Ltd.,
No.7, B.K.Building,
Ramalinga Mudaliyar Street,
Gugai, Salem – 636 006.

... Appellant

Vs.

1. Kanimozhi
2. Minor Shasi Niranjana (11 months)
Rep. by next friend guardian,
Mother Kanimozho.
3. Devagi
4. Ramasamy
5. The Secretary,
Bharathiyar Girl's Higher Secondary School,
Deviyakurichi.
6. The Oriental Insurance Company Ltd.,
Salem.
7. The President,
Tagore Matriculation Higher Secondary School,
Deviyakurichi, Attur Taluk,
Salem District.

...Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 28.10.2013 made in O.P.NO.376 of 2012 on the file of Motor Accidents Claims Tribunal (3rd Additional District and Sessions Court), Kallakurichi.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.K.Vinod [R6]

No Appearance [R5 and R7]

Not ready in Notice [R1 to R5]

JUDGEMENT

The Civil Miscellaneous Appeal is filed against the award and decree dated 28.10.2013 made in O.P.No.376 of 2012 on the file of Motor Accidents Claims Tribunal (3rd Additional District and Sessions Court), Kallakurichi.

2. Though notice was served on respondents 5 and 7, no one appeared on their behalf. Considering the period of pendency of the appeal, they are disposed of based on the materials available on record.



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3. It is the case of the claimant that on 02.02.2010 at about 5:00 pm when the deceased was driving the lorry bearing Reg.No.TN 54 Z 5650, the offending vehicle belonging to the first respondent and insured with the sixth respondent bearing Reg.No.TN 54 Y 2699 driven by its driver in a rash and negligent manner came and dashed against the vehicle driven by the deceased in which the deceased sustained grievous head injuries and died. Therefore, the legal heirs of the deceased have filed the claim petition claiming compensation for a sum of Rs.15,00,000/-.

4. Before the Tribunal the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.7. On the side of respondents R.W.1 was examined and marked Ex.R1 on their behalf. On the basis of the oral and documentary evidences, the award was passed by the Tribunal awarding a sum of Rs.10,02,000/- to be payable in favour of the claimants by fastening the negligence on the part of the second and fourth respondents. Aggrieved by the same, the present appeal has been filed by the claimants.



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5. The learned counsel appearing for the appellant / insurance company who is the insurer of the seventh respondent vehicle submits that Ex.P1 FIR reveals that the offending vehicle was driven in a rash and negligent manner which had resulted in the accident. Therefore, fastening of liability on the vehicle belonging to the seventh respondent and insured with the appellant / fourth respondent is wholly erroneous. The trial court based on the FIR ought to have fixed the liability on the sixth respondent / insurance company which had insured the vehicle of the fifth respondent and therefore, to that extent the order passed by the Tribunal deserves to be interfered with.

6. It is further the submission of the learned counsel that the seventh respondent vehicle being the tortfeasor cannot claim compensation as against the insurer of the said vehicle fixing of 50% liability on the appellant is wholly erroneous and therefore the same requires interference.



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7. The learned counsel appearing for the sixth respondent, who is the insurer of the offending vehicle submits that the investigation conducted by P.W.1 reveals that it was only the vehicle driven by the deceased which was at fault resulting in the accident. However, erroneously the Tribunal has fastened the liability on both the vehicles by apportioning the negligent by 50% which is wholly erroneous. It is his further submission of the learned counsel that the fixation of 50% liability on the sixth respondent is not only erroneous but it is not established through any materials. Therefore, the entire burden should be fixed on the head of the appellant. He prayed for appropriate orders.

8. A perusal of the accident is not in dispute and involvement of the two vehicles is also not disputed. The ground on which the order passed by the Tribunal is put in issue is that when the FIR has fastened the liability of rash and negligent driving of the offending vehicle placing 50% liability on the appellant being the insurer of the vehicle driven by the deceased is



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erroneous and if at all the deceased had to some extent been the cause of accident as a tortfeasor the appellant is not liable to compensate the deceased. Ex.P1.FIR has been registered against the fifth respondent vehicle of which the sixth respondent is the insurer.

9. It has been the consistent view of Courts that FIR is not an Encyclopedia and need not contain all the details and it is only the final report after investigation of the witnesses which would have a bearing on the issue. In this regard the evidence of R.W.1 assumes significance. R.W.1 is an investigator of the insurance company who has called investigation which has lead to the discovery that both the vehicles involved in the accident equally contributed to accident. The oral evidence is of such an overwhelming nature that placed reliance upon the documentary evidence more particularly Ex.P.1 FIR alone cannot form the basis to hold that the deceased is either a tortfeasor or that the offending vehicle alone is the cause of the accident. Appreciating all the materials available on record both oral and documentary evidence, the Tribunal has come to a definitive conclusion



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that the driver of the offending vehicle as well as the deceased who had driven the vehicle of the seventh respondent had contributed the accident in equal proportion. Such being the case the Tribunal has equally split the liability on the heads of both insurance companies namely the appellant and the sixth respondent herein.

10. The said finding being based on proper appreciation of oral and documentary evidence no interference is warranted. Insofar as the compensation awarded under the various heads are concerned, a careful perusal of the same reveals that the Tribunal has arrived at the income of the deceased in a proper manner and by adopting proper multiplier has arrived at the compensation payable to the claimants under the heads loss of earning as well as other heads as well. The said compensation by no means to be said to be excessive or exorbitant and the same does not warrant any interference at the hands of this Court. Accordingly, the compensation awarded by the Tribunal is not interfered with.



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11. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

1.Motor Accidents Claims Tribunal (3rd Additional District and Sessions Court), Kallakurichi.

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

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