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C.M.A.No.3719 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3719 of 2019

And

C.M.P.No.21308 of 2019

Saradhambal

... Appellant

Vs.

1.Sathiya

2.Venkatachalam

3.The Divisional Manager

United India Insurance Company Ltd.,

AKM Tower, 1st Floor,

No.397-1, Junction Main Road,

Salem – 636 004.

4.Sathiya

5.The Divisional Manager

TATA AIG General Insurance Company Ltd.,

Peninsula Corporate Park,

Nicholas Piramal Tower,

9th Floor, Ganpatrao Kadam Mark,

Lower Poorel,

Mumbai – 400 013.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 14.02.2018 passed in M.C.O.P.No.154 of 2013, on the file of the Motor Accidents Claims Tribunal – Cum – Subordinate Judge, Gingee.



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For Appellant : Mr.B.Gurunathan
For Respondents : R1 and R4 – No Appearance
R2 – NRN (Not Ready Notice)
Mr.D.Bhaskaran for R3
Mr.Michael Visuvasam for R5

J U D G M E N T

The fifth respondent before the Motor Accidents Claims Tribunal, is the appellant herein. This appeal has been filed against the judgment and decree dated 14.02.2018 made in M.C.O.P.No.154 of 2013, on the file of the Motor Accidents Claims Tribunal – Cum – Subordinate Judge, Gingee.

2.The learned counsel appearing for the appellant submitted that on 30.01.2013 at about 11a.m., the deceased Sivaraman was riding the motorcycle bearing Registration No.TN32 AB 6211 with his brother Devakrishnan towards Salem. While so, the driver of the lorry bearing Registration No.TN 27 T 4989 came behind the motorcycle and drove the vehicle in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased lost his life, however, his brother escaped from the accident.

3.The learned counsel appearing for the appellant further submitted that the parents and brothers of the deceased filed claim



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petition in M.C.O.P.No.186 of 2013 before the Sub Court, Tindivanam and the same was transferred to I Additional District Court, Tindivanam and re-numbered as M.C.O.P. No.27 of 2015 and the same is pending. The wife of the deceased filed separate claim petition in M.C.O.P.No.154 of 2013, on the file of the Motor Accidents Claims Tribunal – Cum – Subordinate Judge, Gingee, by impleading the mother of the deceased as the fifth respondent, claiming compensation of Rs.25 Lakhs. After adjudication, the Tribunal, awarded a sum of Rs.10,45,000/- with simple interest at the rate of 6% p.a. from the date of petition till the date of realization and costs, out of which, the Tribunal granted a sum of Rs.8,45,000/- in favour of the wife of the deceased and a sum of Rs.2,00,000/- in favour of the mother of the deceased. Aggrieved by the same, the appellant / mother of the deceased has filed this appeal.

4.The learned counsel appearing for the appellant further submitted that the marriage inbetween the first respondent and the deceased was solemnized on 19.11.2012 and the accident happened on 30.01.2013 and subsequently, the first respondent performed second marriage with one Srinivasan on 30.10.2014. Once subsequent marriage was performed, the first respondent is not



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entitled to claim compensation, however, the Tribunal apportioned major portion of the amount awarded in favour of the first respondent and apportioned a meagre amount in favour of the appellant, which is not sustainable.

5. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 3 and 5. Though notice has been sent, there is no representation for the respondents 1 and 4. Till date, the appellant has not taken effective steps to serve notice on the second respondent. Considering the pendency of the civil miscellaneous appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

6. The facts in the present case is not in dispute. The mother of the deceased has filed this appeal on the ground that subsequent to the death of her son, the daughter – in – law performed second marriage and hence, she is not entitled to any compensation, however, the Tribunal awarded major part of the compensation amount in favour of the daughter – in – law. The legal status of the marriage of the deceased with the first respondent is not disputed.



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The marriage inbetween the first respondent and the deceased was solemnized on 19.11.2012 and the accident happened on 30.01.2013 and subsequently, the first respondent performed second marriage with one Srinivasan on 30.10.2014. Even then the first respondent is entitled to claim the estate of the deceased. If the first respondent had performed the second marriage when the deceased was alive, then the first respondent is not entitled for any compensation. In the present case, the first respondent performed the second marriage only after the death of the deceased.

7.Further the amount awarded by the Tribunal and the apportionment made by the Tribunal are also just and reasonable and warrants no interference. However, the Tribunal has awarded only 6% p.a. interest, which in the opinion of this Court is low and hence, the interest is enhanced to 7.5% from 6%. The third respondent Insurance Company shall deposit the compensation amount with interest at the rate of 7.5% from the date of petition till the date of realization.

8.The civil miscellaneous appeal is disposed of on the above terms. The decree and judgment dated 14.02.2018 made in



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M.C.O.P.No.154 of 2013 by the Motor Accidents Claims Tribunal – Cum – Subordinate Judge, Gingee, is modified only in respect of the interest awarded.

9.The third respondent Insurance Company is directed to deposit the award amount with interest at the rate of 7.5% from the date of petition till the date of realization before the Motor Accidents Claims Tribunal, within a period of six 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 appellant and the claimant/ first respondent 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.

10.The civil miscellaneous appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

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To

1. The Motor Accidents Claims Tribunal – Cum –
Subordinate Judge, Gingee.

M.DHANDAPANI,J.
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