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C.M.A.No.4307 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

PRONOUNCED ON : 26.05.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.4307 of 2019

and

C.M.P.No.24367 of 2019

The United India Insurance Co. Ltd.,
No.70, N.S.C.Bose Road,
3rd Floor, Sowcarpet,
Chennai-600 079.

... Appellant / 2nd Respondent

vs.

1.K.Munnah

2.Saleem

3.Ameetha

4.Kaleem(Minor)

5.Babu(Minor)

... Respondents / Petitioners 1 to 5

Refeek (Minor)

(the name was deleted as per the
order in Lower Court M.P.No.9384/2014
dated 18.12.2014)

6.T.A.Shanmuga Sundar

... Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, against the Order dated 08.01.2019 made in
M.C.O.P.No.3519 of 2010 on the file of Motor Accident Claims



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Tribunal, (VI Small Causes Court), Chennai.

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For Appellant : Mr.C.Paranthaman

For Respondents : Mr.T.G.Ravichandran [R1 to R5]
R6- Unclaimed

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Order dated 08.01.2009 made in M.C.O.P.No.3519 of 2010 on the file of Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai,

2. The legal heirs of the deceased Azeena who died of in a road accident on 27.07.2010 filed the claim petition in M.C.O.P.No.3519 of 2010 under Sections 166, 140 and 142 of Motor Vehicles Act claiming compensation of Rs.6,00,000/- and at a later point of time, on petition, enhanced claim for a sum of Rs.13,71,000/- was made and ordered accordingly. The claim petition was filed by the husband, daughter and sons of the deceased Azeena.

3. The facts of the case in brief:

On 27.07.2010, at about 16.45 Hours, while the deceased



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Azeena was standing at the end of Plat Form No.12, of Central Railway Station near Koovam Canal on the leftern side of the road, a Cement Ready mixture lorry bearing Registration No.TN-10-J-3780 which was driven by its driver in a rash and negligent manner came towards Poonamallee High Road, hit her and she succumbed to the injuries. As the driver is responsible for the accident occurred, the 1st respondent being the owner of the said lorry and the Insurance Company, with whom the policy is taken for the said erred vehicle were held liable to pay compensation.

4. The Insurance Company has resisted the claim and has stated in the counter that the deceased Azeena without following the traffic rules as she was standing and thereby she has contributed to the accident, hence the Insurance Company is not liable to pay any compensation to the claimants.

5. The only point which was canvassed by the appellant/Insurance Company is that the deceased did not follow the traffic rules and as she has contributed to the accident, which was



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not considered by the learned Tribunal.

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6. Per contra, the learned counsel for the respondents/claimants besides refuting the above said details would state that because of rash and negligent driving of the driver of the lorry, the accident had occurred and the deceased never contributed the accident. He would also further put-forth that share of the father be increased as he is only granted amount of Rs.2,83,000/- out of total compensation of Rs.12,83,000/-.

7. To prove the claim on the side of the claimants, the 1st claimant, husband of the deceased has been examined as PW1 and one eye-witness Varadharajan was examined as PW2. On the claimants' side eight documents were marked as Exs.P1 to P8. Whereas on the side of the Insurance Company, M.Latha, working as Assistant in the office of R.T.O., South was examined as RW1, the Officer of the Insurance Company, Mr.Suresh was examined as RW2. On the side of the Insurance Company six documents have been marked (Exs.R1 to R6).



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9. On perusal of Ex.P2-Rough Sketch, it appears that the deceased has also contributed negligence towards the accident. In the facts and circumstances, based on the evidence available on record, the deceased has contributed to the accident to the tune of 10%.

10. In fine, award of Rs.12,83,000/- less 10% towards contributory negligence on the part of the deceased is passed. Taking note of the fact that the 1st claimant namely husband lost his wife and he was taking care of four children, the apportionment is modified as mentioned herein:



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1st claimant / Husband of the deceased is entitled to receive 40% award amount and the four children are entitled to receive 60% of the award amount equally.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the Decree and Judgment dated 08.01.2019 made in M.C.O.P.No.3519 of 2010 on the file of Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai, is modified.

(ii) The appellant/Insurance Company is directed to deposit Rs.11,54,700/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3519 of 2010 on the file of Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the 1st claimant/father is entitled to receive 40% award amount and the four children are entitled to receive 60% of the award amount equally on filing of cheque petition. The share of the minors shall be deposited in any



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one of the nationalized bank till they attain majority and the 1st

claimant, K.Munnah, father of the minors shall be permitted to

withdraw half yearly interest from the said amount. No costs.

Consequently, connected miscellaneous petition is closed.

26.05.2023

Index : Yes/No

Speaking / Non-speaking order

ssn



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To:

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1. The Motor Accident Claims Tribunal,
(VI Small Causes Court),
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,
ssn

Pre-delivery judgment in



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