



C.M.A.No.490 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.490 of 2017
And
C.M.P.No.3211 of 2017**

The Branch Manager
M/s.National Insurance Co. Ltd.,
1st Floor, No.18, Court Street,
(Kumaran Road Corner)
Tirupur.

... Appellant

Vs.

1.Thangammal (Died)
2.Golcha Garments
(Rep. by its Dealer)
3.Raman
4.Krishnan
5.Santhakumari
6.Gopi
7.Usha

(R2 to R7/ L.Rs. of deceased R1
impleaded as per the order of this
Court dated 02.11.2023 made in
CMP Nos.25061, 25047 and 25064
of 2023 in CMA No.490 of 2017 by MDIJ)

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in



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M.C.O.P.No.328 of 2011 on 04.08.2015 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) at Tirupur.

For Appellant : Mr.J.Chandran
For Respondents : R1 – Died

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 04.08.2015 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Tiruppur, in M.C.O.P.No.328 of 2011.

2.The brief facts of the case is that on 15.01.2011, at about 11.00 hours, the first respondent was walking in the Avinashi to Tirupur Main Road near Anuperpalayam Bus Stop. At that time, the driver of the motor cycle bearing Registration No.TN-39-AX-4309, employed under the second respondent came in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming



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compensation of Rs.8 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.2,48,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed the appellant Insurance Company to deposit the compensation and to recover the same from the second respondent. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the liability. The learned counsel further submitted that the driver of the two wheeler did not possess valid licence at the time of accident, however, the Tribunal perversely fastened the liability on the appellant and awarded compensation, which is not sustainable.

5.Heard the learned counsel appearing for the appellant. The first respondent has died and her legal heirs have been brought on record. Though the appeal has been filed during the year 2017, till date, the appellant has not taken any steps to serve notice on the second respondent. Considering the pendency of the appeal, this Court is inclined to proceed with the case and decide the same based



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on the materials available on record.

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6.Admittedly, on 15.01.2011, at about 11.00 hours, the first respondent was walking in the Avinashi to Tirupur Main Road near Anuperpalayam Bus Stop. At that time, the driver of the motor cycle who was employed under the second respondent came in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained injuries.

7.Though the appellant claim that the driver of the two wheeler did not possess valid licence at the time of accident, the appellant neither examined any witness nor marked any exhibit to substantiate the same. Further this is third party claim as against the driver of the motor cycle and the Tribunal has already passed award directing the appellant Insurance Company to deposit the compensation and to recover the same from the second respondent. In view of the above, this appeal is misconceived.

8.The civil miscellaneous appeal is dismissed. The judgment and decree dated 04.08.2015 passed by the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) at Tiruppur, in M.C.O.P.No.328 of



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2011, is confirmed.

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9.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 order, if not already deposited. On such deposit, the legal heirs of the deceased first respondent are at liberty to withdraw the entire compensation amount with accrued interest and costs in equal share, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

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

02.11.2023

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

To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate) at Tiruppur.

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M.DHANDAPANI,J.
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