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C.M.A.No.4680 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4680 of 2019
and C.M.P.No.26490 of 2019

United India Insurance Co., Ltd.,
Branch Office,
No.11-A, MG.Road, Ambur,
Vellore District.

.. Appellant

Versus

1.Minor Meenakshi Sundaram
Rep. by Father and Guardian Veeramani
2.G.Mathaiyan
3.V.Palani

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 06.09.2010 made in MACT O.P.No. 222 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Appellant : M/s.I.Malar

For Respondents

For R1 : No such person

For R2 & R3 : No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri, in M.C.O.P.No. 222 of 2008 dated 06.09.2010.

2. The Insurance Company is the appellant herein filed the above appeal to set aside the judgment passed by the Tribunal in MACT.O.P.No.222 of 2008 on the ground of liability.

3. Brief facts of the case:-

On 30.05.2006 at about 7.30 a.m., when a Tractor bearing Regn.No.TN-33-W-8798 driven by its driver, in a rash and negligent manner, suddenly applied brake, the petitioner who was seating in the tractor fell down and the wheel of the tractor ran over the left hand and abdomen. Hence the accident occurred, due to which, the petitioner sustained fracture on left hand, and abdomen and left and right fore legs. Immediately, she was taken to Government Head Quarters Hospital,



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Dharmapuri and admitted as in-patient for treatment. Hence the claim petition.

4. Before the Tribunal, on behalf of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked and on the side of the Respondents no one was examined and no document was marked.

5. On consideration of both oral and documentary evidence, the Tribunal come to the conclusion that the alleged accident occurred due to the negligent driving of the driver of the offending vehicle and fixed the liability initially on the 2nd respondent and after amendment vide order dated 25.05.2011 in I.A.No.24 of 2011, the liability was fixed on the 3rd respondent / Insurance company and awarded compensation as follows;-

<i>Sl.Nos.</i>	<i>Head</i>	<i>Compensation</i>
1.	Extra nourishment	Rs.5,000/-
2.	Medical expenses	Rs.5,000/-
3.	Pain and suffering	Rs.25,000/-
4.	Permanent disability	Rs.90,000/-
5.	Future prospects	Rs.25,000/-
	<i>Total</i>	<i>Rs.1,50,000/-</i>



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The said sum was directed to be deposited by the 3rd respondent / appellant herein with interest at the rate of 7.5 % per annum from the date of numbering of the petitioner till the deposit of compensation. Aggrieved by the same, the present appeal.

6. The learned counsel for the appellant / Insurance Company submitted that the Tribunal erred in awarding compensation to the claimant in the absence of any documentary evidence to show that the appellant is liable to pay the compensation for the accident occurred due to the negligent driving of the driver of the tractor. The Tribunal ought to have considered that the driver of the offending vehicle was carried some children in the offending vehicle to cope up with the balance of the tractor, which is violated the policy condition. The Tribunal ought to have considered that the driver of the offending vehicle called upon the claimant to board the tractor for the balance of weight and the vehicle so ploughing the field, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and suddenly applied brake, the claimant was seating in the offending vehicle,



fell down and wheel of the offending vehicle ran over, the driver of the offending vehicle was himself cause the accident, the appellant is not liable to pay compensation to the claimant. The Tribunal ought to have considered that the oral and documentary evidence adduced by the claimant, the accident was occurred due to the negligent act of the driver of the offending vehicle, it is a clear violation of policy condition. Hence, the appeal may be allowed.

7. Heard the learned counsel appearing for the appellant and no representation for the respondents and perused the available materials on records.

8. On the point of quantum, since there is no dispute with regard to the compensation awarded by the Tribunal, the compensation awarded by the Tribunal under various heads are hereby confirmed.

9. On the point of liability, it is seen that the trial Court had not discussed about the liability issues in its order and mechanically fixed the



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liability on the 2nd respondent and after amendment vide order dated 25.05.2011 in I.A.No.24 of 2011, fixed the liability on the 3rd respondent Insurance Corporation / appellant herein. Based on the Ex.P1 and Ex.P5, the vehicle involved in the alleged accident is a tractor and no passenger will be allowed to travel in the tractor. Therefore, it is a clear violation of policy condition and hence, this Court is inclined to fix the liability on the 2nd respondent herein / owner of the vehicle and the appellant insurance company is hereby exonerated and accordingly, not liable to pay the compensation.

10. The 2nd respondent herein / owner of the vehicle is directed to deposit the entire award amount to the claimant, less the amount already paid, if any together with interest at 7.5% per annum from the date of petition till date of deposit and costs to the credit of M.C.O.P.No.222 of 2008 on the file of the Motor Vehicle Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri, within a period of six(6) weeks from the date of receipt of a copy of this order.



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11. On such deposit, the claim petitioner / 1st respondent is permitted to withdraw the award amount, on due application.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:yes/no
Internet:yes/no
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To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Dharmapuri.



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A.A.NAKKIRAN.J.,

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