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C.M.A.No.1906 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1906 of 2023
and C.M.P.No.18517 of 2023

M/s.The National Insurance Company Limited,
Branch Office, No.4192, East Main Road,
Pudukottai-622 001.

... Appellant

Vs.

1.Gomathi
2.Deepa
3.Vidya
4.Kesammal
5.Ramachandran
6.Krishnamoorthy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.A.C.T.O.P.No.62 of 2016 dated 25.04.2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram, Tiruppur District.

For Appellant : Ms.N.B.Surekha

For Respondents : Ms.R.Renuka Devi for R1 to R4
for Mr.N.Manoharan
R5 & R6 – Exparte



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J U D G M E N T

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The appeal has been filed challenging the findings of the Tribunal with regard to the negligence and quantum of compensation.

2.The respondents 1 to 4 herein filed a claim petition stating that on 17.04.2015 at about 05.00 P.M., while the deceased was travelling in his bike, the lorry insured with the appellant came in a rash and negligent manner, hit the vehicle in which the deceased travelled, as a result of which, the deceased sustained fatal injuries.

3.The respondents 5 & 6 herein, being the driver and owner of the lorry remained exparte before the Tribunal.

4.The appellant/third respondent in the claim petition resisted the claim stating that the deceased had hit the stationary lorry; that the accident took place only due to the negligence of the deceased; and that in any case, the claim made by the respondents/claimants, is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent was examined as P.W.1



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The respondents examined two others witnesses as P.W.2 and P.W.3. and marked 16 documents as Exhibits P.1 to P16. On the side of the respondents, one Mr.Chandrasekaran was examined as R.W.1 and 2 documents were marked as Exhibits R1 and R2.

6.The Trial Court after considering the evidence on record held that the accident took place only due to the negligence of the offending vehicle insured with the appellant and directed the appellant to pay a total compensation of Rs.10,95,000/- to the respondents/claimants.

7.The learned counsel for the appellant submitted that the evidence adduced on behalf of the appellant viz, the Final Report and Rough Sketch of the Investigating Officer would show that the accident did not take place in the manner alleged by the respondents/claimants. The Final Report would show that the deceased had hit the stationary lorry which was parked on a bridge. The learned counsel submitted that in the light of the said evidence, the Tribunal ought to have held that the deceased was the tortfeasor and in any event, ought to have fixed atleast contributory negligence on the deceased.

8.The learned counsel for the respondents 1 to 4/claimants per contra



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submitted that the award of compensation by the Tribunal is meagre. The Tribunal has not taken into consideration the future prospects and not awarded compensation under the conventional head, 'loss of estate'. Thus, the learned counsel for the respondents 1 to 4/claimants submitted that even assuming that the deceased had contributed to the accident in view of meagre compensation, no interference is called for and prayed for dismissal of the appeal.

9. On perusal of the evidence on records, it is seen that though it is the case of the appellant that the accident took place only due to the negligence of the deceased, the driver of the offending vehicle was not examined before the Tribunal. The criminal case records would have relevance if the driver of the offending vehicle, had been examined. The Tribunal after assessing the evidence on record viz., the evidence of P.W.2 and other documentary evidence, had fixed the liability entirely on the appellant, being the insurer of the offending vehicle. Even assuming that the deceased had contributed to the accident, since the Tribunal had awarded a compensation of Rs.10,95,000/- without taking into consideration future prospects, the compensation awarded by the Tribunal in the facts and



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circumstances is just and reasonable. Hence, no interference is called for.

10.The appellant is directed to deposit the compensation amount within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the same, as per the apportionment fixed by the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
pam/gvn

To

The Motor Accidents Claims Tribunal,
Additional District Court No.3,
Dharapuram,
Tiruppur District.



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SUNDER MOHAN, J.

gvn

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