



C.M.A.Nos.4029 and 4030 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.Nos.4029 and 4030 of 2019

And

C.M.P.Nos.22763 and 22771 of 2019

Future Generali India Insurance Company Limited,
No.11, Divya Trade Centre, 3rd Floor,
Brindavan Road, Fairlands,
Salem – 16.

... Appellant in both the C.M.As.

Vs.

1.Aruljothi
2.Minor Navarasan
3.Minor Vinodhini
4.Lakshmi
(Minors 2 and 3 represented by Mother and NF
1st respondent herein)

5.Principal Project Manager,
Oriental Structural Engineering Private Limited,
109, Thuruvam Road, Kallakurichi Post,
Villupuram District. ... Respondents in C.M.A.4029/2019

1.Chitra
2.Minor Aishwarya
3.Minor Praveen
4.Pusammal
(Minors 2 and 3 represented by Mother and Next Friend
1st respondent herein)

5.Principal Project Manager,
Oriental Structural Engineering Private Limited,
109, Thuruvam Road, Kallakurichi Post,
Villupuram District. ... Respondents in C.M.A.4030/2019



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Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.Nos.177 and 175 of 2013 respectively, dated 06.03.2017 on the file of the Motor Accidents Claims Tribunal, Rasipuram.

For Appellant : Mr.E.Rajadurai
in both the C.M.As.

For Respondents : Mr.R.Nalliyappan for R1 to R4
in both the C.M.As.

COMMON JUDGMENT

The second respondent Insurance Company before the Motor Accidents Claims Tribunal, is the appellant herein. These appeals have been filed against the judgment and decree in M.C.O.P.Nos.177 and 175 of 2013 respectively, dated 06.03.2017 on the file of the Motor Accidents Claims Tribunal, Rasipuram.

2.The brief facts of the case is that on 30.08.2012 at about 4.10p.m., the deceased Chinnasamy (in M.C.O.P.No.177/2013) was travelling as a pillion rider in the motorcycle bearing Registration No.TN 32 P 2399 driven by the deceased Marimuthu (in



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M.C.O.P.No.175/2013) in Salem – Kallakurichi Main Road, near Thalaivasal Erikkarai opposite to Government TASMACH shop in West to South direction. At that time, the tipper lorry bearing Registration No.TN 32 L 3093 came in a rash and negligent manner and took sudden right turn and dashed against the motorcycle, due to which, the deceased died on the spot.

3. Thereafter, the dependants of the deceased Chinnasamy and deceased Marimuthu/ claimants filed claim petitions before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs and Rs.20 Lakhs respectively. After adjudication, the Motor Accidents Claims Tribunal, awarded the following compensation to the claimants/ petitioners therein and aggrieved by the same, the appellant Insurance Company has filed these appeals.

(i) In M.C.O.P.No.177/2013, the tribunal awarded a sum of Rs.9,55,000/- as compensation to the claimants along 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 amount.



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(ii) In M.C.O.P.No.175/2013, the tribunal awarded a sum of Rs.10,09,000/- as compensation to the claimants along 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 amount.

4.The learned counsel appearing for the appellant submitted that the appellant has filed these appeals challenging the negligence aspect as well as the quantum of compensation awarded by the Tribunal. The learned counsel further submitted that initially the law enforcing agency registered criminal case as against the driver of the vehicle insured with the appellant, however, after investigation, the case was referred as 'mistake of fact', however, the said fact was not properly adjudicated by the Tribunal and hence the negligence fixed on the driver of the vehicle insured with the appellant is not sustainable one and the quantum of compensation awarded by the Tribunal is also excessive.

5.Per Contra, the learned counsel appearing for the claimants submitted that in order to prove the negligence aspect, the claimants



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examined P.W.3 – eye witness and P.W.3 in his evidence has clearly deposed the manner in which the accident happened. Though the criminal case registered as against the driver of the vehicle insured with the appellant was referred as 'mistake of fact', it is not a conclusive proof to hold the negligence on the part of the deceased and no eye witness was examined by the appellant Insurance Company. In the absence of any oral and documentary evidence, the impugned judgment passed by the Tribunal warrants no interference. The learned counsel further submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable.

6.Heard the learned counsel appearing for the appellant Insurance Company as well as the learned counsel appearing for the claimants and perused the materials available on record.

7.On 30.08.2012 at about 4.10 p.m., the deceased Chinnasamy (in M.C.O.P.No.177/2013) was travelling as a pillion rider in the motorcycle driven by the deceased Marimuthu (in M.C.O.P. No.175/2013) in Salem – Kallakurichi Main Road, near Thalaivasal



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Erikkarai opposite to Government TASMAL shop in West to South direction. At that time, a tipper lorry came in a rash and negligent manner and took sudden right turn and dashed against the motorcycle, due to which, the deceased died on the spot.

8. In order to prove the negligence aspect, the claimants examined P.W.3 – eye witness and P.W.3 in his evidence has clearly deposed the manner in which the accident happened. Though the criminal case registered as against the driver of the vehicle insured with the appellant was referred as 'mistake of fact', it is not a conclusive proof to hold the negligence on the part of the deceased and no eye witness was examined by the appellant Insurance Company. In the absence of any oral and documentary evidence, the impugned judgment passed by the Tribunal warrants no interference.

9. Coming to the question of quantum of compensation, the amount awarded by the tribunal, in the opinion of this Court, is just and reasonable and the same warrants no interference.

10. The civil miscellaneous appeals are dismissed. The judgment and decree in M.C.O.P.Nos.177 and 175 of 2013 respectively, dated



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06.03.2017 on the file of the Motor Accidents Claims Tribunal, Rasipuram, is confirmed.

11.The appellant Insurance Company is directed to deposit the entire award amount before the Motor Accident 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.

12.On such deposit being made, the respondents 1 and 4/ claimants 1 and 4 in M.C.O.P.Nos.177 and 175 of 2013 respectively, 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. The respondents 2 and 3/ claimants 2 and 3 in M.C.O.P.Nos.177 and 175 of 2013 respectively, 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 and on production of necessary proof with regard to their majority. If the respondents 2 and 3/ claimants 2 and 3 in M.C.O.P.Nos.177 and 175 of 2013 respectively, are still minors, their



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shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minors shall be paid to the first respondent/ first claimant in M.C.O.P.Nos.177 and 175 of 2013 respectively/ mother every quarter to be utilized for the welfare of the said minors.

13.The civil miscellaneous appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.11.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Rasipuram.



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M.DHANDAPANI,J.
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And
C.M.P.Nos.22763 and
22771 of 2019**

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