



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2302 of 2018

Cholamandalam MS General Insurance Co Ltd.,
Upstairs of State Bank of Trivangore,
9th Floor, Rajaji Salai, Salem.

... Appellant

Vs.

1. Mallika
2. Chinnayan
3. Minor Muthuselvam
3rd respondent is represented by
his mother and next friend, the first
respondent

4. Rajendiran

5. Reliance General Insurance Co. Ltd.,
3rd Floor, 408, Perundurai Road, Erode.

6. Venkatachalam

7. Priya

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment dated 07.10.2017 in MCOP. No.853 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri.

For Appellant

: Mr.K.Vinod

For Respondents

: Mr.C.Paraneedharan RR1 & 3

Mr.K.Moorthy R5



R2 – died
R6 – Left
R7 - Served

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the decree and judgment dated 07.10.2017 in MCOP. No.853 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri.

2. It is the case of the claimant that on 16.09.2011 at about 8.20 am, when the deceased Muthu was travelling as pillion rider in motorcycle bearing Reg. No.TN 48 D 1297 which was owned by the 4th respondent and insured with the 5th respondent, at that time, the person who was riding the motorcycle bearing Reg. No.TN 34 J 8226, hit against the deceased vehicle and the deceased fell down from the motorcycle. Suddenly, a lorry bearing Reg. No.TN 52 A 3962, which was owned by the 6th respondent and insured with the appellant, driven by its driver, in a rash and negligent manner, run over the head of the deceased and he died on the spot. Hence, the dependents of the deceased, who is the parents, has filed a Claim Petition before the Motor Accident Claims Tribunal, against the owner and insurer of the motor cycle, claiming Rs.10,00,000/- as compensation under various heads.

3. During the trial before the Tribunal, on the side of the claimants,



there were three witnesses examined and marked 11 documents viz., Exs.P1 to P11. On the side of the insurance company, no one was examined and no document was marked.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.28,55,000/- as compensation to the claimants payable by the insurer of the motor cycle and insurer of the Lorry. Questioning the negligence and challenging the liability, the appellant insurance company/insurer of the lorry has filed this appeal before this Court.

5. The learned counsel for the appellant submitted that the Tribunal has failed to appreciate that the accident occurred only due to rash and negligent driving of the motor cycle bearing reg. No.TN 34 J 8226, the said vehicle hit against the deceased vehicle and thereby, he fell down on the road. The driver of the lorry had no occasion to react when the motorcycle knocked down the victim. Therefore, the insurer of the lorry is not liable to pay 50% compensation to the claimants. Further the compensation awarded towards loss of income, consortium, loss of love and affection and future prospects are highly excessive. Without



considering the entire fact, the liability fixed on the appellant insurance company is not sustainable. The Tribunal ought to have reduced the percentage of the negligence fixed on the appellant. Hence, the learned counsel prays that this Court may set aside the award passed by the Tribunal and allow this petition.

6. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been sent on the respondents, they have not appeared before this Court in person or through counsel. Considering the pendency of the appeal, this Court is inclined to dispose the same based on the available records.

7. On perusal of the award passed by the Motor Accident Claims Tribunal, it is seen that the accident has not been disputed. The only disputed is whether the liability fixed on the appellant is right or not. Though it was proved before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. Due to sudden impact by both the motorcycle, the deceased, who was travelling as a pillion rider, and the rider of the same vehicle, fell down on the road. Suddenly, the lorry ran over the head of the deceased and the



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rider of the two wheeler. If the driver of the lorry applied the break suddenly, the accident would not be happened. The driver of the lorry was not driving the vehicle as per the Rules. The Tribunal has fixed the liability 50:50 on the insurer of the motorcycle and lorry, which was perfectly in order and the same need not any interference. The Tribunal has elaborately discussed the issue and rightly come to the conclusion that the insurance companies are liable to compensate the claimants for the death of the deceased and the compensation awarded to the claimants are just and reasonable. In view of the above, this Court do not find any error in the award passed by the Tribunal and there is no merit in the appeal.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. No costs.

02.11.2023

rli

Index : yes/no

Internet : yes/no

Speaking Order/Non-Speaking Order



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M.DHANDAPANI.J.,

rlh

To

The Motor Accident Claims Tribunal,
Sub Court, Sangagiri.

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