



C.M.A(MD)No.1091 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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The New India Assurance Company Limited,
Rep. by its Branch Manager,
Opp. to Anna Stadium,
Balamore Road,
Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

1.Selvi

2.Anusha

...Respondents 1 & 2 / Petitioners 1 & 2

(Minor 2nd respondent declared as major and
the first respondent is discharged from
guardianship, as per order of this Court, dated
22.02.2023 made in C.M.P.(MD) No.2309 of
2023)

3.Senthil Kumar

.

4.P.S.Girishkumar

...Respondent 3 & 4 / Respondents 1 & 2



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P. No.31 of 2003, dated 29.09.2005, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court, Kanyakumari) at Nagercoil.

For Appellant : Mr.J.S.Murali

For Respondents : Mrs.P.Jessi Jeeva Priya - for R1 & R2

: No Appearance - for R3 & R4

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the quantum and fixation of negligence on the driver of the vehicle, insured under the Insurance Company.

2. The appellant is the Insurance Company which has indemnified the motor vehicle bearing Registration No.TNK-1048 (Ambassador Car) owned by the second respondent P.S.Grishkumar. The



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said vehicle, during the currency of insurance coverage, met with the road accident on 06.06.2001 at about 10.30 p.m. It hit a pedestrian, by name, Gunaseelan, aged 35 years. Due to crush injury on the right side of his face and running over of the vehicle on his chest, the said Gunaseelan died. The FIR was registered as a hit and run case. Subsequently, the driver Senthil Kumar, who was on wheels at the time of accident was identified and a final report was filed against him. The said Senthil Kumar pleaded guilty and paid the fine amount. The wife and minor daughter of the deceased Gunaseelan preferred M.C.O.P.No.31 of 2003 on the file of the Motor Accidents Claims Tribunal, Nagercoil, claiming a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

3. The Insurance Company filed a counter stating that the Ambassador Car bearing Registration No.TNK-1048 did not involve in the accident and the accident had occurred only due to the negligence on the part of the deceased, who in a drunken state lying on the road and run over by an unknown vehicle. The Tribunal, however, negated the defence of the Insurance Company, taking note of the fact that the driver of the Ambassador Car, insured under the Insurance Company, has



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pleaded guilty and had paid fine and held that the offending vehicle had a valid insurance coverage at the time of accident and therefore, the Insurance Company is liable to indemnify the owner of the vehicle and pay the compensation.

4. Taking note of the fact that at the time of death, Gunaseelan was 35 years old and he was earning his living as a Carpenter, fixed his actual income at Rs.30,000/- (Rupees Thirty Thousand only) and after deducting 1/3rd for his personal expenditure, applied multiplier '16' to arrive at the loss of income as Rs.3,20,000/- (Rupees Three Lakhs and Twenty Thousand only). That apart, under the non-conventional heads, such as, pain and suffering, loss of love and affection and consortium, an additional sum of Rs.32,500/- (Rupees Thirty Two Thousand and Five Hundred only) was awarded. Out of total compensation of Rs.3,52,500/- (Rupees Three Lakhs Fifty Two Thousand and Five Hundred only), each claimants was ordered to share equally the compensation amount.

5. Aggrieved by the said award, the appeal has been filed by the Insurance Company on the ground that the FIR marked as Ex.P.1 does not



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disclose the identity of the offending vehicle. The vehicle bearing Registration No.TNK-1048 was implicated after 83 days of the occurrence. The Tribunal had failed to consider that regarding the fake accident claim, the Insurance Company lodged a complaint before the CBCID for re-investigation and the same was pending. Further, pointing out the discrepancies in the evidence of the defacto complainant and the so-called eyewitnesses P.W.1 and P.W.2, the learned counsel appearing for the appellant submitted that the Tribunal has totally erred in fixing the liability on the Insurance Company and also the award of Rs.3,52,500/- (Rupees Three Lakhs Fifty Two Thousand and Five Hundred only) is excessive by applying a wrong multiplier for the deceased aged between 35 to 40 years.

6. This Court, on perusing the records, finds that the contention of the appellant that the Ambassador Car bearing Registration No.TNK- 1048 did not involve in the said accident, cannot be canvassed, since the driver of the vehicle himself had admitted the guilt and paid the fine amount. Further, though there is a ground raised by the appellant that they have sought for re-investigation by the CBCID, the Insurance



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Company has not filed any document to that effect to doubt about the identity of the offending vehicle. No doubt, FIR was registered showing the accident as a hit and run case and the driver of the offending vehicle has been identified after 83 days and that by itself cannot be a ground to exonerate the liability of the Insurance Company, when there is no contra evidence.

7. As far as the quantum of compensation, this Court finds that for age (35 to 40 years), the multiplier '15' should have been applied, whereas, the Tribunal has applied '16'. Due to the additional multiplier, a sum of Rs.20,000/- (Rupees Twenty Thousand only) is awarded in excess. Hence, the award of Rs.3,52,500/- (Rupees Three Lakhs Fifty Two Thousand and Five Hundred only) is modified, after deducting Rs. 20,000/- (Rupees Twenty Thousand only) as Rs.3,32,500/- (Rupees Three Lakhs Thirty Two Thousand and Five Hundred only). The claimants 1 and 2 shall get the compensation amount equally with interest at the rate of 7.5% per annum.



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8. An application in C.M.P(MD)No.2309 of 2023 is filed to declare the second claimant as major, since she has crossed 18 years. The said application is allowed.

9. The learned counsel for the appellant- Insurance Company states that the entire award amount had already been deposited. In such a case, the claimants are permitted to withdraw their shares as per the modified award and if any amount is paid in excess, the Insurance Company can get it back.

10. In fine, the Civil Miscellaneous Appeal is partly allowed, by modifying the total award by decreasing the compensation from Rs.3,52,500/- (Rupees Three Lakhs Fifty Two Thousand and Five Hundred only) to Rs.3,32,500/- (Rupees Three Lakhs Thirty Two Thousand and Five Hundred only) with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The claimants are permitted to withdraw their shares in the modified award amount with proportionate accrued interest and cost, as per the ratio of apportionment made by the Tribunal, less the award amount already



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withdrawn, by filing necessary application before the Tribunal. The Tribunal is directed to refund the excess award amount, if any, to the appellant Insurance Company, following due process of law. No costs.

22.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
RM



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To

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- 1.The Chief Judicial Magistrate
(Motor Accidents Claims Tribunal)
Kanyakumari at Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

RM

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