



C.M.A.No.713 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.713 of 2021

and C.M.P.No.4284 of 2021

United India Insurance Company Limited,
Having Office at No.5,
Big Bazaar Street, Dharapuram.

...Appellant

Vs.

1.A.Sangeetha
2.Minor.A.Madhavan
3.Minor.A.Elakiya
*Minors 2 and 3 are rep. by next friend
and guardian mother A.Sangeetha*
4.G.Karthick

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 04.11.2019 made in M.C.O.P.No.131 of 2017 on the file of the Special District Court, at Erode.



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For Appellant : Mr.K.Poomalai
for Mr.A.Dhiraviyanathan

For Respondents : Mr.R.Prabakar for R1 to R3
R4 – No appearance

J U D G M E N T

This appeal is filed by the appellant Insurance Company challenging the judgment and decree passed by the Motor Accident Claims Tribunal/Special District Court, at Erode in M.C.O.P.No.131 of 2017 dated 04.11.2019.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants 1 to 3, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.



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4.The brief facts of the case are as follows:

On 20.02.2016 at about 11.00 p.m., while the deceased was walking from East to West on the extreme left side of Erode to Karur Main Road at Salaipudhur in front of Maligai Kadai Kumaraswamy's house, the first respondent riding his Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23 BW-9194 from the same direction i.e. East to West in a rash and negligent manner and dashed against the deceased due to that, he sustained severe injuries on the back side of the head and also on the left hand. Immediately, the deceased was taken to the Government Hospital, Kodumudi where he was given First-aid treatment. Since the injuries were severe, he was admitted in the Government Hospital but he succumbed to the injuries. The petitioners/claimants filed a claim petition before the Tribunal in M.C.O.P.131 of 2017, the Tribunal after adjudication has awarded a sum of Rs.14,64,060/- as compensation. Challenging the same, the present Appeal has been filed.



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5.Learned counsel appearing for the appellant submitted that the deceased was under influence of alcohol at the time of the accident and due to his negligence, the accident occurred. However, the Tribunal has fastened the entire liability on the Insurance Company. Hence, he prayed for appropriate orders.

6.Per contra, learned counsel appearing for the respondents 1 to 3 submitted that the deceased was walking on the road at the time, the fourth respondent drove the vehicle viz., Hero Honda Splendor Plus bearing Registration No.TN 23 BW 9194 in a rash and negligent manner and dashed behind the deceased. Learned counsel further submitted that there was no proof of consuming alcohol but only a smell of alcohol in the body of the deceased as per the Postmortem report. Hence, he prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the materials available on record.



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8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only on the ground of negligence.

9.Before the Tribunal, the first petitioner/ wife of the deceased was examined as PW1 and one Senthilkumar, an eye witness was examined as PW2 and on the side of the petitioners, 14 documents were marked as Exs.P1 to P14. On the side of the respondents, Dr.Lakshminath was examined as RW1 and 1 document was marked as Ex.R1.

10.Admittedly, the deceased was walking on the Erode to Karur Main Road at Salaipudhur, at the time, the first respondent riding his Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23 BW-9194 in a rash and negligent manner and dashed against the deceased due to that, he sustained severe injuries on the back side of the head and also on the left hand. Immediately, the deceased was taken to the Government Hospital, Kodumudi where he was given First-aid treatment. Since the injuries were severe, he was admitted in the



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Government Hospital but he succumbed to the injuries. A criminal case was registered in Crime No.77/2016 under Sections 279 and 337 of IPC by Kodumudi Police.

11.On perusal of the records, it is seen that only the smell of alcohol in the body of the deceased as per the postmortem report. Therefore, this Court is not inclined to accept the contention made by the appellant Insurance Company.

12.It is pertinent to note that only prohibition as per the Motor Vehicles Act, a person consumes alcohol shall not drive any vehicle. Even assuming that the deceased was consuming alcohol at the time of walking, there is no bar him to go walking. In the present case, the deceased was not driving any vehicle, he was just walking on the road.

13.This Court does not find any ground to interfere with the award passed by the Tribunal. The compensation awarded by the Tribunal is very reasonable and it does not warrant interference of this Court.



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14.The judgment and decree dated 04.11.2019 passed by the Motor Accidents Claims Tribunal/Special District Court, at Erode in M.C.O.P.No.131 of 2017, is confirmed.

15.The appellant Insurance Company is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered.

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

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Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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M.DHANDAPANI, J.

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To

- 1.The Motor Accident Claims Tribunal/
Special District Court, at Erode.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.

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