



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal Nos.2563 of 2016 and 4462 of 2019
and
C.M.P.Nos.9407 of 2018 & 25288 of 2019

CMA No.2563 of 2016:

1. T.Vijayalakshmi

2. R.Thangaraj

... Appellants

Vs.

1. V.Srinivasan

2. N.Bhuvaneswari

3. The Branch Manager,
United India Insurance Co. Ltd.,
77, Oriental Complex,
A.S.Street, Salem.

4. S.Purushothaman

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by Special District Judge, Motor Accident Claims Tribunal, Erode in M.C.O.P.No.274 of 2014 with regard to the finding in O.S.No.584 of 2014 on the file of the learned District Munsif Court, Erode.



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For Appellant : Mr.N.Manokaran

For Respondent : Mr.S.Arunkumar R3
RR1 & 2 – NDW vide order dated 05.12.2016
R4 – No appearance

CMA No.4462 of 2019

The Branch Manager,
United India Insurance Co. Ltd.,
77, Oriental Complex,
A.S.Street, Salem.

... Appellant

Vs.

1. T.Vijayalakshmi

2. R.Thangaraj

3. V.Srinivasan

4. N.Bhuvaneswari

5. S.Purushothaman

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by Special District Judge, Motor Accident Claims Tribunal, Erode in M.C.O.P.No.274 of 2014 dated 20.06.2016.

For Appellant : Mr.S.Arunkumar

For Respondent : Mr.N.Manoharan R1
R5- No appearance



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COMMON JUDGMENT

Since the issue in both the appeals are one and the same, the same are disposed by way of this common order.

2. These appeals have been filed both by the claimant as well as the Insurance company against the award passed by the Special District Judge, Motor Accident Claims Tribunal, Erode in M.C.O.P.No.274 of 2014 dated 20.06.2016.

3. The case of the claimant is that on 25.11.2013 at about 4.45 p.m. The deceased was riding a motorcycle along with the pillion rider bearing Reg. No.TN 33 H 5617 near Samigoundanpalayam Privu Road at Nasiyanoor on the left side of Salem to Coimbatore NH 47 Road, at that time, on the opposite direction, the innova car bearing Reg. No.TN 30 AB 1516 driven by the driver insured with the insurance company in a rash and negligent manner and dashed behind the motorcycle, due to which, the rider and the pillion rider sustained grievous injuries and admitted in the hospital and the rider died. It is under these



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circumstances, the claimants and the injured claimant have filed separate claim petitions seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car belonging to the first respondent in CMA.No.2563/2016. The Tribunal has awarded a sum of Rs.14,33,575/- to the claimants. Questioning the award passed by the Tribunal, the claimants filed CMA.No.2563 of 2016 and the insurance company filed CMA. No.4462 of 2019.

5. The learned counsel for the claimants submitted that admittedly the deceased is the daughter of the claimants and wife of the 4th respondent in CMA.No.2563 of 2016, but the deceased and the 4th respondent got separated from the date of the marriage itself. Hence, the 4th respondent in CMA.No.2563 of 2016 filed a divorce petition against the deceased and the same was not pursued in view of the death of the deceased. However, the claimants have filed a suit in O.S.No.554/2014 to



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declare them as the legal heirs and the same was dismissed with liberty to file fresh suit.

6. The learned counsel further submitted that the suit filed by the appellants is not at all necessary in the absence of any dispute as to the legal status of the claimants who are the parents of the deceased.

7. The learned counsel for the Insurance Company submitted that the claimants are employed in Government Service and earnings of the deceased is not adequately proved. Further, without deciding the issue of dependency, the Tribunal erred in holding that the claimants are entitled to the said amount upon the outcome of the suit in OS.No.554 of 2014 inspite of the fact that the insurance company and the husband of the deceased are not a party in the said suit.

8. Heard the counsel for claimants and the learned counsel for Insurance company.

9. This Court carefully considered the submissions made on



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either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.

11. The facts of the case are not in dispute. Admittedly, the deceased performed marriage with the 4th respondent in CMA.No.2563 of 2016, due matrimonial dispute between them, they were living separately. On 25.11.2013, when the deceased was riding the motorcycle along with her mother, who is the one of the claimant in the appeal, they met with an accident and the mother sustained injuries and the deceased died. After trial, the Tribunal has fixed the liability as against the insurance company. Hence, there is no discussion required with regard to the negligence aspect. The issue arises before this court is whether the claimants are entitled to get compensation or not. As already stated that there is a matrimonial dispute between the deceased and the 4th respondent in CMA.No.2563 of 2016 and the 4th respondent/husband set ex-parte before the Tribunal in the claim petition and he has not claimed his right before it.



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12. According to the insurance company, the claimants, who are the parents of the deceased, are not entitled to get compensation as they are employed in Government Service. Before the Tribunal, the claimants have established that the deceased mother was working as VAO and she was treated as a temporary appointee and her monthly salary was fixed Rs.14,420/- as on 31.10.2013 and she was retired from service on 30.04.2015 itself. To prove the same, the claimants has produced the salary slip. Hence, the award passed by the Tribunal is perfectly in order. Further, the suit in OS. No.554 of 2014 on the file of the District Munsif court, Erode has dismissed as withdrawn and the the 4th respondent in CMA.No.2563 of 2016 has also not raised any claim. Hence, this Court feels that the claimants are entitled to get compensation as awarded by the Tribunal. With regard to the finding of the disposal of the suit in OS. No.554 of 2014 is not necessary.

13. The Tribunal is directed to disburse the award amount to the claimants. The Insurance Company is directed to deposit the entire compensation, less the amount already deposited, together with interest



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at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The apportionment of compensation between the claimants shall be as ordered by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

14. CMA No.2563 of 2016 stands disposed of with the above directions. CMA No.4462 of 2019 stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

05.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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1. The Judge, District Munsif Court, Erode.
2. The Special District Judge, Motor Accident Claims Tribunal, Erode.



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M.DHANDAPANI, J.

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