



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.1271 of 2018
and CMP. No.7776 of 2024

National Insurance Co. Ltd.,
Having Branch Office,
at Perundurai Office,
Erode Taluk,
Erode.

... Appellant

Vs.

1. Williams (Died)
2. S.Sakthivel
3. J.Inba Sathiyathan
4. Vijaya
5. Clara
6. Nishanth

Respondents 4 to 6 are residing at
Door No.7, Gnanabishegam Santhu,
Periyasemur Village, Erode Taluk and
District.

Respondent-1 Died. Respondents 4 to 6
brought on record as Lrs. Of the deceased
first respondent vide court order dated
12.06.2023 made in CMP. No.21877 to 21897 of 2022
in CMA. No.1271 of 2018 by this Court.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988, against the judgment and decree dated 21.02.2017



made in MCOP. No.64 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Erode.

For Appellant : M/s.R.Sree Vidhya

For Respondents : R1 – died
RR2 & 3 Not ready in notice
Mr.S.Kaithamalai Kumarn RR4 to 6

JUDGMENT

CMP. No.7776 of 2024 has been filed to restore the appeal which was dismissed for default on 01.09.2023.

2. Being satisfied with the reasons stated in the affidavit filed in support of the petition, the petition is allowed and the Civil Miscellaneous Petition is restored.

3. This appeal has been filed against the judgment and decree dated 21.02.2017 made in MCOP. No.64 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Erode.

4. It is the case of the claimant that on 09.10.2010 at about 9.05 am, when the first respondent was travelling as a pillion rider in the



motor cycle bearing Reg. No.TN 33 AF 9507 which was driven by the second respondent from south to north direction in the Periyavalasu to Sathy Road near, on hearing Muniappan Koil, the rider of the bike bearing Reg. No.TN 33 AF 9607, which drove in a rash and negligent manner and due to the said rashness, lost control and hit against the stone, by which, the first respondent was thrown from the vehicle and sustained grievous injuries over all his body. Since the claimant sustained severe injuries, he took treatment as an inpatient from 09.10.2010 to 20.10.2010. The first respondent herein has filed the said claim petition under Section 163(A) of the Motor Vehicles Act, 1988, claiming a sum of Rs.15,00,000/~ as compensation for the injuries sustained in the accident.

5. The third respondent is the owner of the two wheeler remained ex-parte before the Tribunal.

6. Before the Tribunal, the first respondent examined P.W.1 to P.W.6 and 31 documents were marked as Exs.P1 to P31. The appellant~Insurance Company examined one witness as R.W.1 and



marked one document.

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7. The Tribunal, considering the pleadings, oral and documentary evidence, held that due to rash and negligent driving of the rider of the two wheeler, the accident had happened and directed the appellant~Insurance Company to pay a sum of Rs.5,62,500/-.

8. Against the said award dated 21.02.2017 made in M.C.O.P.No.64 of 2014, the appellant~Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant~Insurance Company contended that as per the investigation of the insurance company, there are two vehicles involved. One unknown lorry has been hit against the two wheeler which was driven by the second respondent. Instead of implicating the lorry, the claimant set up the third respondent vehicle to get compensation from the appellant insurance company. As per Ex.P7, Accident Register, there are two vehicle involved in the accident. However, the claimant filed a petition as against the owner of



the vehicle and its insurer, which is not sustainable.

10. The learned counsel further submitted that the trial Court failed to appreciate Ex.P4/M.V.Report, which reveals that there was no accident occurred at the relevant point of time and further, an FIR was registered with a delay of eight months. The Tribunal has awarded huge compensation in respect of disability, pain and sufferings, loss of earning power and medical expenses, which needs to be interfered with.

11. Per contra, learned counsel appearing for the first respondent submitted that during pendency of the case, the first respondent died. Therefore, the legal heirs 4 to 6 have impleaded as respondents in this case. Admittedly the first respondent was travelling in a two wheeler as pillion rider along with second respondent who drove the same. Due to rash and negligent driving of the second respondent, dashed against the stone and fell down from vehicle, sustained injuries. Initially the first respondent taken treatment from the private hospital and thereafter, shifted to Government Hospital, Coimbatore. The Doctors PW3 and PW4, who have treated the first respondent, has assessed the disability at



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20%. However, To prove the case, the first respondent has examined PW2 who is the eyewitness to the occurrence. To disprove the case, the insurance company has not examined any independent witness. In the absence of any eyewitness, the Tribunal has rightly assessed the issue and fixed the negligence as against the respondents 2 & 3 and fastened the liability as against the appellant insurance company, which is perfectly in order.

12. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is just and reasonable which does not warrant any interference.

13. Heard the learned counsel appearing for the appellant~Insurance Company and the learned counsel appearing for the first respondent and perused the entire materials on record.

14. From the materials available on record, it is seen that it is the contention of the first respondent that he has travelled as pillion rider along with the second respondent in the motor cycle. The accident had



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occurred due to rash and negligent driving by the rider of the two wheeler, for which, the first respondent sustained injuries. Immediately after the accident, the first respondent admitted in the Government Hospital. To prove the same, Ex.P5/A.R. Copy has been marked. Apart from that, the wound certificates/Ex.P6,7 was issued by the Doctors and they have examined as PW3 and PW4. Discharge summary was marked as Ex.P8 and P9. Thereafter, a complaint has been registered. After perusing the above said documents, the Tribunal came to the conclusion that the accident had happened on 09.10.2010. To substantiate his claim, the first respondent examined himself as P.W.1. And PW2 eyewitness to the accident. However, the insurance company has examined any independent eyewitness before the Tribunal. Therefore, the Tribunal has rightly fixed the negligence as against the respondents 2 & 3 and fastened the liability as against the insurance company. This Court has also not inclined to interfere with the negligence aspect.

15. In respect of quantum of compensation, the Tribunal awarded a sum of Rs.1,00,000/- towards pain and sufferings, Rs.2,80,000/- towards loss of earning power which is highly exorbitant and the same has to be



modified. The claimant has taken treatment for 10 days. Therefore, pain and suffering awarded by the Tribunal is excessive. The Doctors who treated the claimant has assessed the disability at 20% Without any supporting documents, the Tribunal has fixed the monthly income at Rs.6,000/- to the claimant and awarded huge compensation towards loss of earning power and the same is set aside. The other heads awarded by the Tribunal is just and reasonable, which does not warrant any interference. The compensation awarded by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	24,000	24,000
Transportation	4,000	4,000
Extra nourishment	12,000	12,000
Damages for clothes & articles	500	500
Medical expenses	1,01,200	1,01,200
Pain and sufferings	1,00,000	50,000
Disability	40,000	40,000
Loss of earning power	2,80,000	
Total	5,62,500	2,31,700/-

16. With the above modification, this Civil Miscellaneous Appeal



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is allowed and a sum of Rs.2,31,700/~ awarded by the Tribunal as compensation to the first respondent, along with interest and costs is confirmed. The appellant insurance company is directed to deposit the award amount along with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.64 of 2014 on the file of the Motor Accidents Claims Tribunal, Erode. On such deposit, the 4th respondent is permitted to withdraw the award amount at Rs.1,26,700/- along with proportionate interest and costs, and the respondents 5 and 6 are permitted to withdraw for a sum of Rs.50,000/- each along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant~Insurance Company is permitted to withdraw the excess amount, if any already deposited before the Tribunal. No costs.

12.11.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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M.DHANDAPANI.,J

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To

Motor Accident Claims Tribunal

Erode

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