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C.M.A.Nos.2005 and 2012 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.2005 and 2012 of 2022 and
C.M.P.Nos.15310 and 15386 of 2022

The Manager,
M/s.TATA AIG General Insurance Company Limited,
No.403, Pantheon Road,
Chennai- 600 007.

... Appellant in both C.M.A.'s

vs.

1. Mrs.Chithra
2. Mr.Senthil Kumar

...Respondents in C.M.A.No.
2005 of 2022

1. Mrs.Chinnakulanthai
2. Mrs.Chitra
3. Mr.Ramanujam (Minor)
4.Mr.Ranganathan (Minor)
5. Mr.Senthil Kumar
(Respondents 3 and 4 Minors
represented by mother & next friend
1st Respondent)

... Respondents in C.M.A.No.
2012 of 2022

Prayer in both C.M.A.'s: Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment and



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decree dated 26.11.2019 made in M.C.O.P.Nos.319 and 320 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee.

For Appellant (in both C.M.A.'s)	:	Mr.E.Raja Durai for M/s. M.B.Gopalan Associates
For Respondents (in both C.M.A.'s)	:	Ms.V.Suguna (R1) Notice not ready (R2)

COMMON JUDGMENT

Since the claim pertains to very same accident, these Civil Miscellaneous Appeals are taken up together and disposed of vide this common Judgment.

2. These Appeals have been filed by the Insurance Company, challenging the Award dated 26.11.2019 passed by the Motor Accident Claims Tribunal, Subordinate Court, Gingee in M.C.O.P.Nos.319 and 320 of 2013 respectively.

3. On 04.09.2013 at about 8.50 hrs, while one Chithra, (the 1st



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Respondent in C.M.A.No.2005 of 2022), was travelling as Pillion Rider with her husband Kamalakannan in a two wheeler bearing Registration No.TN 16 7745 and nearing Velachery Road, the driver of the Car bearing Registration No.TN 09-BP 1130, insured with the Appellant Insurance Company, applied sudden brake, due to which, the two wheeler dashed against the car, resulting in the accident, in which Mr.Kamalakkannan died on the spot and Mrs. Chitra, (the 1st Respondent in C.M.A.No.2005 of 2022) sustained grievous injuries.

4. Seeking Compensation in respect of injuries sustained by her, the wife of the deceased Kamalakannan filed M.C.O.P.No.319 of 2013 and the wife and children filed M.C.O.P.No.320 of 2013 for the death of the deceased.

5. On consideration of the oral and documentary evidence available on record, the Tribunal vide common award dated 26.11.2019 has awarded a sum of Rs.30,000/- to the claimant in M.C.O.P.No.319 of 2013 viz., wife of the deceased and a sum of Rs.12,79,600/- to the claimants in M.C.O.P.No.320 of 2013 who are the wife and children of the deceased.



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6. The learned counsel for the Appellant submitted that the driver of the two wheeler ought to have maintained 10 metre distance from the front vehicle and since the same was not maintained, the alleged accident has occurred. He further submitted that Tribunal failed to take note of the fact that even as per FIR, the fault is on the part of the deceased and not on the part of the driver of the car.

7. The learned counsel for the Claimants submitted that the Tribunal found that the F.I.R. was filed without recording statement of the eye witnesses to the occurrence and therefore considering the evidence of P.W.1 and P.W.2 who are the eyewitness to the accident the Tribunal has rightly come to the conclusion that the accident occurred due to the sudden application of brake by the driver of the car and therefore the finding of the Tribunal is reasonable and need not be interfered with.

8. Head both sides. Perused the records.

9. A perusal of the award would go to show that the Tribunal on



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considering the evidence of P.W.1 and P.W.2 and also considering the fact that the FIR, which was registered at the instance of the driver of the car, by fastening the liability on the deceased, which cannot form the basis for coming to a conclusion with regard to the negligence on the part of the deceased and considering the oral evidence in right perspective, the Tribunal has rightly come to the conclusion that the accident occurred due to sudden application of brake by the driver of the car, insured with the Appellant Insurance Company and fastened the negligence on the driver of the car and directed the Appellant Insurance Company to pay a sum of Rs.30,000/- as compensation to the claimant in M.C.O.P.No.319 of 2013 and a sum of Rs,12,79,600/- as compensation to the claimants in M.C.O.P.No.320 of 2013. The finding of the Tribunal based on the oral and documentary evidence is just and reasonable, I find no merits in these Appeals and they are liable to be dismissed.

10. Accordingly, these Civil Miscellaneous Appeals stand dismissed. The Appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal together with interest at 7.5% per annum from the date of the Claim Petition till the date of realization, less the amount, if any,



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already deposited to the credit of M.C.O.P. Nos.319 and 320 of 2013 respectively on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gingee, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the 1st Respondent in C.M.A.No.2005 of 2022 as well as Respondents 1 and 2 in C.M.A.No.2012 of 2022 through RTGS, within a period of three weeks thereafter. The shares of the minor claimants /Respondents 3 and 4 in C.M.A.No.2012 of 2022 are directed to be deposited in any of the nationalized banks in a fixed deposit scheme, till they attain majority and the mother of the minor claimants is entitled to withdraw the interest once in three months. No costs. Consequently, connected miscellaneous petitions are closed.

12.01.2024

Index : Yes / No
Speaking Order : Yes / No
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To:

1. The Motor accident Claims Tribunal,
Subordinate Court, Gingee.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.



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KRISHNAN RAMASAMY,J.

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