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C.M.A.No.2848 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.2848 of 2021
and C.M.P.No.16374 of 2021**

The Branch Manager,
The United India Insurance Company Limited,
Mayiladuthurai.

... Appellant

Vs.

1.Suresh

2.Sumathi

3.S.Nirmaladevi

4.Kolanjinathan

5.The Branch Manager,
The United India Insurance Company Limited,
Mayiladuthurai.

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2021 made in M.C.O.P.No.113 of 2016 on the file of the Motor Accidents Claims



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For Appellant : Mr.J.Chandran
For Respondents : Mr.C.T.Saravanan
for R1 and R2
No appearance for R3 and R4
Mrs.I.Malar for R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award dated 19.02.2021 passed in M.C.O.P.No.113 of 2016 by the Motor Accidents Claims Tribunal, Principal Subordinate Court, Mayiladuthurai.

2. The respondents 1 and 2 are the claimants. According to the claimants, on 04.10.2015 at about 04.00 p.m., when the deceased and his neighbours came from Thiruvidaikkazhi Village after attending condolence ceremony to their native village in a two wheeler owned by fourth respondent, who has driven the two wheeler, in which, the deceased, who is the son of the claimants, was traveling as pillion rider, a van bearing



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Reg.No.TN 51 R 7681 belonging to the third respondent came from opposite direction in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased sustained head injury and died on the hospital. Thereafter, the respondents 1 and 2 have filed the claim petition before the Tribunal. The Tribunal has partly allowed the claim petition and awarded a sum of Rs.16,00,000/- together with interest at the rate of 7.5% per annum from the date of filing of the petition till the deposit to be paid by the appellant Insurance Company. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant submits that as per FIR, at the time of accident, three persons traveled in the motorcycle, which is impermissible limit, however, the Tribunal has not fixed any negligence on the part of the driver cum owner of the motorcycle in which, the deceased/Dhivakar traveled and the compensation awarded by the Tribunal is also on the higher side.



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4. The learned counsel appearing for the respondents 1 and 2 submits that the Tribunal taking into consideration all the relevant documents placed before it, has rightly fixed the negligence on the driver of the van and awarded the compensation, which does not require any interference by this Court.

5. Heard the learned counsel appearing for the appellant Insurance Company and the learned counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the respondent No.5. Though notice was served to the respondents 3 and 4, none appeared for the respondent Nos.3 and 4.

6. Admittedly, the deceased was travelling as a pillion rider in the two wheeler driven by the fourth respondent on 04.10.2015 and the van belonging to the third respondent and insured with the appellant/Insurance Company hit behind the motorcycle, due to which, the deceased sustained serious injuries and died in the hospital. When the claim petition was filed



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before the Tribunal, the appellant/Insurance Company challenged the manner in which the accident took place stating that two wheeler was carrying three passengers and the deceased was travelling as pillion rider. The other contention of the appellant/Insurance Company was that the driver of the two wheeler did not have a valid driving license at the time of accident and therefore, there was a violation of the policy conditions and immediately after the accident, F.I.R was registered. The Tribunal has discussed the evidence and found that in the cross-examination, P.W.2 has stated that he came to the scene of occurrence after five minutes after the occurrence and therefore, the Tribunal disbelieved the version of P.W.2. Even P.W.3 also in his cross-examination has confirmed that the accident occurred only due to the negligence of the tourist van driver. The other substantiating the point is that the criminal case has been filed as against the driver of the van. Discussing the evidence and the materials placed before it, the Tribunal has come to a conclusion that the accident occurred due to the negligence of the van driver and the appellant Insurance Company is liable to pay the compensation. As fixing the entire negligence on the part of the



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van driver, this Court is unable to find any reason to interfere with such finding of the Tribunal. Therefore, challenging the award on the ground of the contributory negligence does not arise. Insofar as the quantum of compensation is concerned, the deceased was studying B.Com II year at the time of accident. Therefore, the notional income of Rs.10,000/- was fixed and the correct multiplier of “18” was adopted and 1/3rd towards personal expenses was deducted as the deceased was unmarried at the time of accident. The compensation was arrived at awarding the justifiable compensation for pain and sufferings of Rs.60,000/- to each of the respondents 1 and 2/parents of the deceased and Rs.15,000/- for funeral expenses, Rs.10,000/- for transportation charges and Rs.15,000/- towards loss of estate. Accordingly, the Tribunal arrived at the compensation of Rs.16,00,000/- and fixed the entire negligence on the appellant Insurance Company. Therefore, finding no ground to interfere with the compensation arrived by the Tribunal and the fixation of negligence on the van driver, this Civil Miscellaneous Appeal is dismissed and the award dated 19.02.2021 made in M.C.O.P.No.113 of 2016 is hereby confirmed. There shall be no



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order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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