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C.M.A.No.1418 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.1418 of 2020
and C.M.P.No.10453 of 2020**

New India Assurance Company Limited,
Porur Branch,
No.80, Arcot Road,
Porur, Chennai-600 116,
Branch Office, Poonthamallee.

... Appellant

Vs.

1.Selvam Joseph

2.Anbalagan

3.Bhanuprakash

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2020 made in M.C.O.P.No.297 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur @ Poonthamallee.



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For Appellant : Ms.S.R.Sumathy
For Respondent : Mr.M.Lokesh
for R1 and R2
No representation for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 22.01.2020 made in M.C.O.P.No.297 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee.

2. According to the respondents 1 and 2, on 13.12.2014 at about 01.15 a.m., the deceased, namely, Praveen, travelled as pillion rider along with his friend in a motorcycle bearing Registration No.TN 22 CR 2290 belonging to the third respondent at Duraipakkam 200 feet Radial Road from east to west, during that time, the rider of the motorcycle drove the vehicle in a rash and negligent manner, due to which, the deceased fell



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down from the motorcycle and sustained grievous head injuries and was admitted in the hospital, where he died. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation by the first and second respondents herein/parents against the appellant and the third respondent, who are the insurer and the owner of the vehicle. The Tribunal has proceeded to fix the total compensation at Rs.12,79,600/- under various heads. The above compensation was directed to be paid by the appellant/Insurance Company along with interest at 7.5% p.a.

4. The appellant/Insurance Company, aggrieved by the liability fixed on them and the quantum of compensation awarded by the Tribunal, has filed this appeal.

5. The learned counsel appearing for the appellant submitted that the Tribunal failed to consider the counter filed by the appellant, wherein, it has been clearly stated that the accident occurred only due to the rash and negligent driving of a van bearing Reg.No.TN 22 CH 1846 and failed to



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appreciate the FIR wherein the driver of the van was shown as accused and the appellant/Insurance Company is not liable to pay compensation, as the motorcycle belonging to the third respondent is not the offending vehicle. The compensation awarded by the Tribunal is also on the higher side. Hence, he prays for allowing this appeal.

6. The learned counsel appearing for the respondents 1 and 2 submits that due to rash and negligent driving of the rider of the motorcycle, the accident had occurred and therefore, the appellant/Insurance Company is liable to pay compensation and the compensation awarded by the Tribunal is also on the lower side. Hence, he prays for dismissal of this appeal.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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8. Admittedly, the accident took place on 13.12.2014 as the rider of the third respondent's vehicle lost his control and the deceased fell down and sustained head injuries. The deceased died during medical treatment in the hospital. The age of the deceased at the time of the accident was 23 years. The contention of the appellant/Insurance Company, who was the second respondent in the claim petition was that the accident occurred due to rash and negligent driving of the driver of the van bearing Registration No.TN 22 CH 1846 and therefore, the insurer of the van alone is responsible for the compensation to be paid to the claimants and that the claimants should have filed the claim petition under Section 166 of the Motor Vehicles Act, instead of Section 163(A) of the Motor Vehicles Act. However, the contention of the appellant/Insurance Company has been dealt with by the Tribunal on examination of Ex.P1/FIR which states that in order to substantiate the stand, the appellant/Insurance Company failed to examine the driver of the van, who was named in the FIR/Ex.P1 and therefore, on the materials available on record, the Tribunal came to a conclusion that the appellant/Insurance Company was liable to pay the compensation under



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Section 163(A) of the Act. The age of the deceased was 23 years at the time of accident and therefore, the Tribunal, after following the judgment of the *National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)*, took future prospects at 40% which seems to be justifiable and with respect to the income of the deceased, the Tribunal took into consideration the appointment order of the deceased and pay slip for the month of October 2017 and fixed the monthly salary at Rs.8,000/-. Since the deceased was unmarried at the time of accident, 50% was deducted towards personal expenses and while calculating the compensation, the Tribunal also followed the necessary guidelines issued by the Hon'ble Supreme Court of India and fixed the monthly income of the deceased at Rs.5,600/-. The Tribunal also adopted the correct multiplier of “18”, as per *Sarla Verma & Others. Vs. Delhi Transport Corporation & Others (2009 (6) SCC 121)*, and the amount awarded under the other heads, namely, loss of estate, loss of consortium and funeral expenses also seems to be reasonable and therefore, this Court finds no ground to interfere with the compensation fixed by the Tribunal. Both on the ground of negligence as well as the



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quantum of compensation, this Civil Miscellaneous Appeal is dismissed and the award dated 22.01.2020 passed in M.C.O.P.No.297 of 2015 by the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur @ Poonthamallee, is hereby confirmed. There shall be no order as to costs. Connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1. The Motor Accidents Claims Tribunal,
II Additional District Court, Tiruvallur @ Poonthamallee.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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