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CMA.No.1854 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1854 of 2023
and C.M.P.No.17944 of 2023

M/s.TATA AIG General Insurance
Company Limited,
Coimbatore.

... Appellants

VS.

1. Sudha

2. Santhamma

3. Minor.Sathvika
Daughter of Late. Suresh,
Rep. by her next friend and
Guardian Mother Sudha.

4. M/s.Samy Feeds Private Limited,
No.324/2, Nathampalayam,
Mulanoor,
Dharapuram Taluk,
Erode District - 638 656.

5. The Branch Manager,
M/s. United India Insurance
Company Limited,
No.5, Big Bazaar Street,
Dharapuram.

... Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 23.01.2023 in M.C.O.P.No.123 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.

For Appellants : Mr.J.Michael Visuvasam

For R3 : Mr.I.Malar

J U D G M E N T

Challenging the order of the Tribunal directing the appellant to pay compensation of Rs.1,56,620/- to the claimants / respondents 1 to 3, the present appeal is filed by the appellant Insurance Company.

2. The respondents 1 to 3 / claimants filed the claim petition for the death of one R.Suresh (the husband of the first claimant, the son of the 2nd claimant and father of the 3rd claimant) in a road accident which happened on 12.05.2012. According to the claimants, the deceased R.Suresh was riding his motorcycle bearing Registration number TN 70 D 8826 insured with the appellant / Insurance Company. When he was



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nearing Kudisathanapali, Hosur, another motorcycle bearing Registration number TN 56 Z 2940, hit the motorcycle driven by the deceased Suresh, as a result of which, he sustained injuries and died on spot.

3. According to the claimants, the rash and negligent driving of the driver of the Two Wheeler bearing Registration number TN 56 Z 2940 was the cause of the accident and that since the said vehicle was insured with the 5th Respondent / United India Insurance Company Limited, Dharapuram, the owner viz., M/s.Samy Feeds Private Limited and the insurance company are jointly and severally liable to pay compensation.

4. The Tribunal while fixing negligence on the part of the driver of the motor cycle bearing Registration number TN 56 Z 2940 also held that the deceased Suresh contributed to the accident. Therefore, the Tribunal fixed 10% towards contributory negligence on the part of the deceased. The total compensation awarded was Rs.14,09,580/- after deducted a sum of Rs.1,56,620/- (10% contributory negligence). The Tribunal while directing the fifth respondent to pay a sum of Rs.14,09,580/-, unfortunately, also directed the present appellant to pay



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the award amount of Rs.1,56,620/- (10% contributory negligence) together with interest 7.5% per annum. According to the appellant, this portion of the order passed by the Tribunal, is erroneous and therefore, the same is liable to be set aside.

5. The claimants though were served with notice and their names were also printed in the cause list, they did not appear before this Court.

6. Considering the facts and circumstances of the case, the portion of the order dated 23.01.2023 passed by the Motor Accident Claims Tribunal, Additional District Judge, Hosur in M.C.O.P.No.123 of 2014, directing the present appellant to pay compensation of Rs.1,56,620/- to the claimants is set aside.

7. It is represented by the counsel for the appellant that a sum of Rs,2,49,763/-was deposited to the credit of M.C.O.P.No.123/2014 by the appellant Insurance Company. Therefore, the Motor Accident Claims Tribunal, Additional District Court, Hosur shall refund the said amount to



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the appellant / Insurance Company, by following due process of law.

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8. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Hosur

2.M/s.TATA AIG General Insurance
Company Limited,
Coimbatore.

3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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