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C.M.A.No.2445 of 2024 And
Cross Objection No.84 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2445 of 2024

And

C.M.P.No.19436 of 2024

And

Cross Objection No.84 of 2024

C.M.A.No.2445 of 2024:

National Insurance Company Limited
Third Party Claims Cell,
No.66, Greaves Road,
Thousand Light,
Chennai – 600 006.

... Appellant

Vs.

1.S.Rajarathinam
2.S.Vikkash Michael
3.S.Delvin Singletika
4.S.Amalorepavam
5.S.Lakshmi

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2024 in M.C.O.P.No.5059 of 2021 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.



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For Appellant : Mrs.R.Sree Vidhya
For Respondents : Mr.S.P.Yuvaraj for R1 to R4
R5 – No Appearance

Cross Objection No.84 of 2024:

1.S.Rajarathinam
2.S.Vikkash Michael
3.S.Delvin Singletika
4.S.Amalorepavam

... Cross Objectors

Vs.

1.National Insurance Company Limited
Third Party Claims Cell,
No.66, Greaves Road,
Thousand Light,
Chennai – 600 006.

2.S.Lakshmi

... Respondents

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation amount awarded in the judgment and decree dated 24.01.2024 made in M.C.O.P.No.5059 of 2021 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai by allowing this cross appeal in C.M.A.No.2445 of 2024 on the file of this Hon'ble Court.

For Cross Objectors : Mr.S.P.Yuvaraj
For Respondents : Mrs.R.Sree Vidhya for R1



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COMMON JUDGMENT

The civil miscellaneous appeal as well as the cross objection have been filed against the judgment and decree dated 24.01.2024 in M.C.O.P.No.5059 of 2021 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

2.The second respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeal and the petitioners before the Motor Accident Claims Tribunal are the cross objectors in the cross objection.

3.The brief facts of the case is that on 16.11.2021 at about 13.15 hours, the deceased S.Suresh was riding the motorcycle bearing Registration No.TN 12 AK 0284 along with pillion rider at Pattavakkam towards Korattur Road opposite to Aavin Dairy Farm, Chennai and hit against a lorry bearing Registration No.TN52 F 5358 which was parked on the road without any signal and parking light, due to which, the deceased sustained severe head injuries and was taken to Kilpauk Medical College Hospital, Chennai and he died in the said hospital on 17.11.2021.



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4. Thereafter, the dependants of the deceased S.Suresh/ respondents 1 to 4 in the civil miscellaneous appeal/ cross objectors in cross objection (hereinafter referred to as 'claimants') filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.45 Lakhs. After adjudication, the Motor Accidents Claims Tribunal, awarded a sum of Rs.22,48,000/- as compensation to the claimants and directed the Insurance Company to pay the compensation amount with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of realization and proportionate costs.

5. The learned counsel appearing for the Insurance Company submitted that the deceased is the rider of the motorcycle and due to his rash and negligent driving, the accident happened. The learned counsel further submitted that the lorry insured with the vehicle was parked with utmost care and caution and obeying all traffic rules and the accident happened at 13.15 hours in the afternoon and the deceased drove the vehicle in a rash and negligent manner and dashed against the rear side of the lorry. The learned counsel further submitted that at the time of accident, the deceased did not wear



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helmet and further submitted that Ex.P.1 – true copy of F.I.R. and Ex.P.2 – copy of final report has been marked against the rider of the motorcycle. Hence, fastening the entire liability as against the owner of the lorry and its insurer is not sustainable one. Further, the quantum of compensation awarded is also excessive and is liable to be interfered with.

6.Per contra, the learned counsel appearing for the Cross Objectors submitted that mere filing of F.I.R. and final report is not conclusive proof to prove that the negligence is on the part of the deceased and it is only for criminal case. Inorder to prove the negligence aspect, the claimants examined P.W.2 – eye witness and based on the evidence let in by the eye witness the Tribunal fastened the liability as against the owner of the lorry and its insurer, which warrants no interference. The learned counsel further submitted that the claimants are entitled for enhancement in compensation.

7.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross Objectors and perused the materials available on record.



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8.Admittedly, the lorry insured with the Insurance Company was parked on the roadside and the motorcycle dashed on the rear side of the lorry.

9.Inorder to prove the negligence aspect, the claimants have examined P.W.2 – eye witness and P.W.2 deposed the manner in which the accident took place and neither the owner of the lorry nor the Insurance Company examined any eye witness. Mere filing of F.I.R. and final report is not conclusive proof to prove the negligence aspect. Hence, based on the evidence let in by the eye witness the Tribunal fastened the liability as against the owner of the lorry and its insurer, which warrants no interference.

10.Coming to the question of quantum of compensation, the amount awarded by the tribunal, in the opinion of this Court, is just and reasonable and the same warrants no interference.

11.The civil miscellaneous appeal as well as the cross objection are dismissed. The judgment and decree dated 24.01.2024 passed in M.C.O.P.No.5059 of 2021 by the Motor Accidents Claims Tribunal, is confirmed.



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12.The Insurance Company is directed to deposit the entire award amount before the Motor Accident Claims Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the Cross Objectors/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal.

13.The civil miscellaneous appeal as well as the cross objection are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.11.2024

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

To

1.The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes),
Chennai.

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M.DHANDAPANI,J.
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