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CMA Nos.2955 and 2957 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CMA Nos.2955 and 2957 of 2024
and CMP Nos.24632 and 24636 of 2024

CMA No.2955 of 2024:

The New India Assurance Co.Ltd., D.O.
Sethu Krishna Trade Center,
No.586, II Floor, Trichy Main Road,
Gugai, Salem.

... Appellant

Vs.

1.Guna

2.Senthil

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 01.07.2023 made in MCOP No.1422 of 2021 on the file of Motor Accident Claims Tribunal (Special District Judge) Salem.

CMA No.2957 of 2024:

The New India Assurance Co.Ltd.,
TP HUB, rep. by its Manager,
having office at
Sethu Krishna Trade Center,



CMA Nos.2955 and 2957 of 2024

No.586, II Floor, Trichy Main Road,
Gugai, Salem.

... Appellant

Vs.

1.P.Ramya Krishna

2.Minor P.Dharaneshvaran

3.Minor P.Suganeshwari

(Respondents 2 and 3 represented by
guardian mother P.Ramya Krishna)

4.S.Shanthi

5.A.Subramanian

6.G.Senthil

7The Reliance General Insurance Co. Ltd.,
TP HUB, rep. By its Manager,
Office at Sri Lakshmi Complex,
1st Floor, Bharthi Street,
Swarnapuri, Omalur Main Road,
Salem.

... Respondents



CMA Nos.2955 and 2957 of 2024

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 01.07.2023 made in MCOP No.947 of 2021 on the file of Motor Accident Claims Tribunal (Special District Judge) Salem.

For Appellant in both CMAs : Mr.S.Dhakshnamoorthy

COMMON JUDGMENT

The Insurance Company have filed the appeals against the judgment and decree dated 01.07.2023 made in MCOP No. 1422 and 947 of 2021 on the file of the Motor Accident Claims Tribunal (Special District Judge) Salem questioning the negligence attributed against the driver of the lorry and quantum of compensation.

2. It is the case of the claimants that on 03.12 2020 at about 3.50 p.m, when the deceased Prakash was riding a two-wheeler bearing registration No. TN 90-F-2461 along with a pillion rider Guna/1st respondent in CMA No.2955 of 2024 slowly and diligently in Panamarathupatti to Salem main road following all the traffic rules, on his extreme left near Panamarathupatti Uga petrol bunk, the lorry bearing



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registration No. TN 29-BS-5441 insured with the appellant herein was driven by its driver in a rash and negligent manner in the opposite direction and overtook a car going ahead without noticing the above two-wheeler and hit against the same. Due to which, the said Prakash and Guna sustained grievous injuries all over the body and both were admitted in G.H., Salem and the said Prakash succumbed to death on 09.12.2020. The said Guna was shifted to "Kavery hospital and he spent a sum of Rs.1,00,000/- towards medical expenses. Due to the said accident, he is unable to sit, stand and walk and unable to do any work and he is bed-ridden. Therefore he filed a petition in MCOP.No.1422 of 2021 for a compensation of Rs.20 lakhs to be paid by the 6th respondent and appellant being the owner and the insurer of the above lorry.

(ii). At the time of accident, the deceased Prakash was aged about 30 years and was earning a sum of Rs.30,000/- per month as a coolie in Incense stick manufacturing company at Panamarathupatty. The 1st respondent in C.M.A.No.2957 of 2024 is the wife, the 2nd and 3rd respondents are the children and the 4th and 5th respondents are the parents of the deceased. Due to the death of the said Prakash, his family



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is suffering a lot financially and loss of love and affection. Therefore, they filed a petition in MCOP No. 947 of 2021 for a compensation of Rs 50 lakhs to be paid by the 6th respondent and the appellant being the owner and the insurer of the above lorry and the 7th respondent being the insurer of the above two- wheeler has been added as a formal party.

3.Before the Tribunal, during trial, in order to prove the case, on the side of the claimants, three witnesses were examined viz., PW1 to PW3 and 28 documents viz., Exs.P1 to P25 and Ex.X1 to Ex.X3 were marked. On the side of the respondents, R.W.1 was examined and three documents were marked.

4. The Tribunal, considering the oral and documentary evidence, allowed the petitions in part and awarded respective compensation to the claimants. Aggrieved by the said common award, the appellant/Insurance company has filed these appeals questioning its liability and quantum.

5. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a



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conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry belonging to the appellant/Insurance Company.

6.Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.16,95,000/- in MCOP.NO.947 of 2021 and a sum of Rs.1,17,000/- in MCOP.No.1422 of 2021 under various heads as follows :-

MCOP.NO.947 of 2021:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income (10,000 X 12 X 17) = 20,40,000-1/4 (5,10,000)	15,30,000
2.	Loss of Love and affection (20,000 X 5)	1,00,000
3.	Loss of consortium	40,000
4	Funeral Expenses	25,000
	Total	16,95,000



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MCOP.NO.1422 of 2021:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical Expenses	32,000
2.	Extra Nourishment	10,000
3.	Pain and Sufferings	15,000
4	Disability	60,000
	Total	1,17,000

7. The above compensation was directed to be paid by the 6th respondent and the appellant/Insurance company jointly and severally with interest at the rate of 7.5% per annum.

8. The Insurance Company has filed the above appeal questioning the negligence and quantum of compensation passed by the Tribunal.

9. The learned counsel for the appellant/Insurance Company submitted that the present appeals have been filed on the ground of



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negligence as well as liability. The deceased rider was riding the two

wheeler along with a pillion rider in a rash and negligent manner and tried to overtake the lorry going ahead and lost his control and on seeing the same, the driver of the lorry slowed the lorry on his extreme left and the accident took place only due to the negligence of the said Prakash who was driving the two wheeler in an inebriated condition and without having valid driving licence. He further submitted that CCTV footage was recovered by the law enforcing agency and after perusal of the CCTV footage, the case was closed as "Further action dropped". However, the case was not properly adjudicated before the Trial Court and erroneously fixed the liability on the Insurance Company. Ignoring the negligence on the driver of the two wheeler, the Tribunal, has fastened the negligence as against the driver of the lorry, which is not sustainable.

10. Since no adverse order is passed against the respondents, notice to the respondents is dispensed with.



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11. This Court carefully considered the submission made on the side of the appellant/Insurance Company and the materials available on record.

12. This Court also carefully went through the award passed by the Tribunal.

13. The first ground to be gone is with regard to the question of negligence raised by the Insurance Company. In the present case, to prove the case of the claimants, PW2, who is an injured cum eyewitness, was examined. The Tribunal while considering the above evidence, concluded that the Insurance Company ought to have examined some independent witness in this case and whereas, they examined only the driver of the and not examined any independent witness. Hence, the Tribunal came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry belonging to the Insurance Company.



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14. It is true that there was no clinching evidence beyond reasonable doubt to establish that the accident had taken place in the manner in which the driver of the lorry had projected it. The driver will always give the version which is advantageous to him. The claimants on the other hand will give a version which is advantageous to them. That is the reason why, the Tribunal was insisting for an independent witness. In view of the same, the decision that was arrived at by the Tribunal cannot be held to be perverse.

15. The main piece of evidence on which the appellant tries to build their case is on the basis of the CCTV footage, which according to the appellant shows that it was due to the rash and negligent driving of the deceased, which had resulted in the accident. Though the alleged CCTV footage has been retrieved by the law enforcing agency, however, the said CCTV footage is not validated through a certificate issued u/s 65-B of the Information and Technology Act. When the authenticity of the



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CCTV footage has not been established through a certificate issued u/s 65-B of the Information and Technology Act, the same cannot be relied upon by the appellant to claim that the accident had happened due to the rash and negligent driving by the deceased. In such a backdrop, the Tribunal has not given much credence to the CCTV footage to fasten any liability and negligence on the deceased and such a finding recorded by the Tribunal cannot be said to be erroneous and this Court is in agreement with the same.

16. Consequently, the finding of the Tribunal by fixing the negligence against the driver of the lorry is hereby confirmed. Admittedly, the 6th respondent was the owner of the lorry at the time of accident and the same was duly insured with the appellant/Insurance Company. Therefore, there was no policy violation on the part of the owner of the lorry. Hence, the Tribunal has held that the owner of the lorry and the appellant/Insurance Company in both the cases are jointly and severally liable to pay the compensation to the claimants and the same does not warrant any interference by this Court.



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17. The only issue that arises for consideration is whether the quantum of compensation awarded by the Tribunal is reasonable or not.

18. In respect of MCOP. No.947 of 2021, the age of the deceased is 30 years and the accident occurred in the year 2020. The Tribunal after appreciating the evidence on record, has awarded a compensation to the tune of Rs.16,95,000/- for the death of said Prakash, which is perfectly in order and the same does not warrant any interference by this Court.

19. In respect of MCOP. No.1422 of 2021 is concerned, the medical board assessed the disability at 15% permanent disability. The claimant has sustained fracture on right superior pole petella. Therefore, the Tribunal has awarded a sum of Rs.4000/- per 1% disability, hence, Rs.60,000/- was awarded under the disability which is just and reasonable. The other heads awarded by the Tribunal are also just and proper which needs no interference.

20. In view of the above discussion, C.M.A.Nos2955 and 2957 of 2024 are dismissed. The compensation awarded by the Tribunal in



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respect of the above appeals are hereby confirmed. The appellant is directed to deposit the compensation as awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, the connected miscellaneous petitions are closed.

12.11.2024

msv

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

To

Motor Accident Claims Tribunal (Special District Judge) Salem.



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M.DHANDAPANI.,J

msv

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