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C.M.A.No.736 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.736 of 2020

And

C.M.P.No.4541 of 2020

The Branch Manager
United India Insurance Company Limited
Pondicherry.

... Appellant

Vs.

Elakkiyammal (died)

1.Alamelu

2.Sekar

3.Elumalai

4.Manickam

5.Arumugham

6.Gajendiran

7.Ayyanarappan

(amended as per order in I.A.No.10/2015 dt.22.8.2016)

8.Saravanan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.06.2019 made in M.C.O.P.No.294 of 2009, on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge), Tindivanam.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.Saranraj for R1, R2, R4 to R7

R3 & R8 – Disd. vide order dt.21.12.2023



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J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 25.06.2019 passed by the Motor Accidents Claims Tribunal (1st Additional District Judge), Tindivanam, in M.C.O.P.No.294 of 2009.

2.The learned counsel appearing for the appellant submitted that the deceased respondent is the wife of the deceased Venu Chettiyar and the first respondent is the daughter of the deceased Venu Chettiyar and respondents 2 to 7 are the sons of the deceased Venu Chettiyar/ claimants and they filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs alleging that on 05.06.2007 at about 04.00 p.m., the deceased Venu Chettiyar was travelling as pillion rider in the motorcycle, bearing Registration No.PY-01-AJ-5024 from Konalur Village to Vellimedu Pettai near Atthipakkam Village, the rider of the motorcycle drove the vehicle in a rash and negligent manner and dashed against a rock on the left side of the road, due to which, he lost his life. After adjudication, the Tribunal awarded a sum of Rs.8,75,000/- as



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compensation to the

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claimants along with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit with costs and directed the appellant to deposit the amount at the first instance with liberty to recover the same from the eighth respondent without filing separate petition.

3.The learned counsel appearing for the appellant further submitted that as per Ex.P1 – F.I.R., the subject vehicle was driven by the deceased Venu Chettiyar and one Radha Kishnan was travelling as pillion rider, however, the Tribunal believing the words of P.W.2 who is an eye witness fastened the liability as against the appellant which is not sustainable one. The learned counsel further submitted that the amount awarded as compensation is also on the higher side.

4.The learned counsel appearing for the claimants submitted that R.W.2 is the Sub Inspector of Police and she is not eye witness. She is only the law enforcing agency who registered the F.I.R., based on the information given by one Radha Kishnan and further submitted



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that the said Radha Kishnan was not examined before the Tribunal.

The learned counsel further submitted that though the interested person did not come forward to make complaint before the law enforcing

agency immediately, mere delay in filing the F.I.R., will not vitiate the claim of the claimants. The learned counsel further submitted that the Tribunal considering the evidence let in by P.W.2 who is an eye witness and after considering all the factual aspects, awarded compensation which is just and reasonable and the same warrants no interference.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the claimants and perused the materials available on record.

6.This appeal has been filed questioning the liability as well as the quantum of compensation. Before the Tribunal, the second respondent examined himself as P.W.1 and one Lingasamy/ eye witness was examined as P.W.2. The claimants have marked Ex.P1 to Ex.P4. The appellant has examined R.W.1 to R.W.3 and marked



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Ex.R1 to Ex.R5.

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7.Though the appellant claim that as per Ex.P1 – F.I.R., the subject vehicle was driven by the deceased Venu Chettiyar and one Radha Kishnan was travelling as pillion rider, however, R.W.2 is the

Sub Inspector of Police / the law enforcing agency who registered the F.I.R., based on the information given by one Radha Kishnan and she is not an eye witness and the said Radha Kishnan was not examined before the Tribunal. The appellant has not examined any eye witness before the Tribunal. Hence, the Tribunal believing the words of P.W.2 who is an eye witness fastened the liability as against the appellant. Further, the Tribunal has directed the appellant to deposit the award amount and to recover the same from the second respondent. Hence, this Court is not inclined to interfere with the liability aspect.

8.Insofar as the quantum of compensation is concerned, the Tribunal after considering all the factual aspects, awarded compensation which is just and reasonable and the same warrants no interference. The pay and recovery ordered by the Tribunal is confirmed.



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9.The civil miscellaneous appeal is dismissed. The judgment and decree dated 25.06.2019 passed by the Motor Accidents Claims Tribunal (1st Additional District Judge), Tindivanam, in M.C.O.P.No.294 of 2009, is confirmed.

10.It is represented by the learned counsel appearing for the appellant Insurance Company that pursuant to the order of this Court dated 27.02.2020 made in C.M.P.No.4541 of 2020 in C.M.A.No.736 of 2020, the appellant has already deposited 50% of the award amount. Hence, the appellant Insurance Company is directed to deposit the balance award amount with interest at the rate of 7.5% p.a. before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment.

11.The civil miscellaneous appeal dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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

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To

1.The Motor Accidents Claims Tribunal,
(1st Additional District Judge), Tindivanam.

M.DHANDAPANI,J.
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