



CMA.(MD)Nos.780 & 781 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

CMA.(MD)Nos.780 & 781 of 2013

and

M.P.(MD)Nos.1 & 1 of 2013

CMA.(MD)No.780 of 2013

National Insurance Company Ltd.,
4132, East Raja Street, Pudukottai,
Through its Branch Manager

... Appellant

Vs.

1.Murali

(Represented by his mother and guardian Mrs.Pandiammal w/o Late Arumugam)

2.R.S.Ananth

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 09.01.2009 made in MCOP.No.49 of 2006 on the file of Motor Claims Tribunal (Additional District and Special Judge's Court) at Pudukottai and praying to set aside the same.

CMA.(MD)No.781 of 2013

National Insurance Company Ltd.,
4132, East Raja Street, Pudukottai,
Through its Branch Manager

... Appellant



CMA.(MD)Nos.780 & 781 of 2013

Vs.

1.Mani @ Subramanian

(Represented by his father and guardian Mr.Chidambaram s/o Karuppiah)

2.R.S.Ananth

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 09.01.2009 made in MCOP.No.48 of 2006 on the file of Motor Claims Tribunal (Additional District and Special Judge's Court) at Pudukottai and praying to set aside the same.

For Appellant : Mr.S.Srinivasaraghavan
(In both Appeals)

For R1 & R2 : No Appearance
(In both Appeals)

COMMON JUDGMENT

The instant Civil Miscellaneous Appeals have been filed by the Insurance Company challenging the finding on negligence by the Tribunal in the two claim petitions filed by the two minors/claimants.

2.The first respondents in both appeals have filed claim petitions stating that on 12.10.2003, at about 03.00 pm., while they were pushing the two wheeler on side of the road, a mini bus, insured with the



appellant/Insurance Company, came in the opposite direction and dashed against the two wheeler and the claimants, as a result of which, they sustained grievous injuries.

3.The second respondent in both appeals remained ex-parte before the Tribunal.

4.The appellant/Insurance Company filed a counter stating that the accident took place due to the negligence of rider of the two wheeler, that three persons travelled in the two wheeler and that in any case the compensation claimed was excessive.

5.Before the Tribunal, the claimants examined P.W.1 to P.W.5 and marked Exs.P1 to P11. The appellant neither examined any witnesses nor marked any documents.

6.The Tribunal, after taking into consideration the oral and documentary evidence, had awarded compensation of Rs.37,000/- to the first respondent in CMA.(MD)No.781 of 2013 and a sum of Rs.32,000/- to the first respondent in CMA.(MD)No.780 of 2013.



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7.The learned counsel for the appellant/Insurance Company submitted that the tribunal had erroneously awarded compensation by holding that the claimants were not riding the two wheeler, that the evidence on record is to the contrary and that in any case, the compensation awarded by the Tribunal was excessive.

8.Though notice to the respondents has been served, none has entered appearance.

9.The issues involved in the instant appeal are as follows:-

a.Whether the finding by the Tribunal on negligence is correct or not?

b.Whether the Tribunal had fixed a just and reasonable compensation?

10.As regards the first issue, it is seen that the claimants had examined P.W.1 to P.W.5 in order to prove the manner of the accident and also marked FIR in Ex.P.1, which corroborates the version of the eye witnesses. The appellant had not let in any contra evidence. In the light



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of the evidence adduced by the claimants, the Tribunal was right in holding that the driver of the mini bus, which was insured with the appellant, was guilty of rash and negligent driving.

11.As regards the quantum, the claimant in MCOP.No.48 of 2006 had established that he had suffered disability of 35% and the Tribunal had awarded Rs.25,000/- for disability and a sum of Rs.12,000/- under other heads. Hence, the compensation of Rs.37,000/- is just and reasonable. Similarly, the claimant in MCOP.No.49 of 2006 had established that he had suffered disability of 15% of Tribunal and awarded Rs.20,000/- under the head of disability and Rs.12,000/- under the other heads. Hence, the compensation of Rs.32,000/- is just and reasonable, which has to be confirmed. Accordingly, the compensation awarded by the Tribunal in MCOP.Nos.48 & 49 of 2006 is hereby confirmed.

12.The appellant/Insurance Company is directed to deposit the compensation of Rs.37,000/- and Rs.32,000/- in CMA.(MD)Nos.781 & 780 of 2013 respectively together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the



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amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a copy of this order.

13.On such deposit, the claimants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

14.In the result, these Civil Miscellaneous Appeals are dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
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To

Motor Claims Tribunal (Additional District and Special Judge's Court),
Pudukottai



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SUNDER MOHAN, J.

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