



C.M.A(MD)No.637 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.637 of 2019

and

C.M.P.(MD)No.7865 of 2019

The Manager,
Cholamandalam MS General Insurance Company Ltd.,
2nd Floor, Dare House,
2 NSC Bose Road,
Chennai – 600 001.

...Appellant

Vs.

1.Minor Sabetha @ Sivapriya
2.S.Chellamuthu
3.N.Muruganantham

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 21.02.2019 passed in M.C.O.P.No.53 of 2017 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Karur.



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For Appellant : Ms.K.R.Shivashankari
For R3 : No appearance
For R2 : Expired
For R1 : Mr.K.Suresh

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal cum Principal Sub Court, Karur in M.C.O.P.No.53 of 2017, dated 21.02.2019, the insurance company has filed the present appeal.

2.The respondent No.1 is the claimant. The claimant filed the claim petition in M.C.O.P.No.53 of 2017, claiming a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation for the injuries sustained by her. By the award, dated 21.02.2019, the Tribunal awarded a sum of Rs. 89,246/- (*Rupees Eighty Nine Thousand and Two hundred Forty Six only*) as compensation along with 7.25% interest from the date of filing of the claim petition.



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WEB COPY 3.Facts of the Case:-

According to the claimants, on 16.08.2012, when the deceased/father along with his child / claimant was riding his two wheeler bearing Reg.No.TN 47 W 3300 on Noyyal – Paramathi main road, a lorry bearing Reg.No.TN 47 AA 0300 overtook his two wheeler and suddenly stopped his lorry on the left side without following the traffic rules, due to which, the two wheeler dashed against the lorry, which suddenly stopped. The claimant and her father sustained severe injuries. Even though they have taken treatment, her father died. The accident occurred only due to the negligence on the part of the driver of the lorry. Therefore, the claimant filed the claim petition, claiming a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

4.The second respondent, who is the owner of the lorry filed the counter statement and denied all the averments made in the claim petition and contended that driver of the lorry has valid driving licence and hence, the appellant insurance company is liable to pay compensation.



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5.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. They contended that the deceased himself invited the accident on his own negligence and hence, he prayed for dismissal of the claim petition.

6.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and 13 documents were marked as Ex.P1 to P13. On the side of the insurance company, R.W.1 was examined and Ex.R1 was marked.

7.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to negligent driving by the driver of the lorry and directed the appellant Insurance Company, to pay a sum of Rs.89,246/- (Rupees Eighty Nine Thousand and Two Fourty Six only) as compensation along with 7.5% interest from the date of filing of the claim petition and the heads are as follows:



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<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Disability (15%)	Rs.45,000/-
2	As per Document Ex.P.7	Rs.14,246/-
3	Loss of pain and suffering	Rs.10,000/-
4	Assistant Expenses	Rs.10,000/-
5	Transport Expenses	Rs. 5,000/-
6	Nourishment	Rs. 5,000/-
	Total	Rs.89,246/-

8. Aggrieved against the said award dated 21.02.2019, the appellant insurance company has filed the present appeal.

9.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company submits that the Tribunal erred in fixing the entire negligence on the part of the driver of the insured lorry, though the FIR was registered against the deceased and hence, he prays this Court to allow this appeal.



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10.Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the claimant submits that the learned Tribunal Judge appreciated the evidence of P.W.2 that the accident happened only due to the negligence of the lorry driver and hence, he seeks for dismissal of this appeal by disputing the averments made by the appellant insurance company.

11.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

12. The following points arise for consideration of this appeal:

12.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

12.2.Whether the compensation granted is in accordance with law?



13. Discussion on the negligence:

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According to the claimant, on 16.08.2012, when the deceased/father along with his child / claimant was riding his two wheeler namely Hero Honda Passion Pro bearing Reg.No.TN 47 W 3300 on Noyyal – Paramathi main road, a lorry bearing Reg.No.TN 47 AA 0300 overtook his two wheeler, and suddenly stopped the lorry on the left side without following the traffic rules, due to which, the two wheeler dashed against the lorry, since suddenly stopped. The claimant and her father sustained severe injuries. Even though they have taken treatment, her father died. The second respondent is owner of the lorry vehicle. The third respondent drove the said vehicle. The accident occurred only due to the negligence on the part of the driver of the lorry. On perusal of the materials available on record and considering the independent evidence of P.W.2, who clearly deposed that on 16.08.2012 at 9.15 p.m., when the deceased/father was riding his two wheeler on the left side of the road along with his child, the appellant insured lorry overtake the said two wheeler and suddenly stopped the lorry and hence, the deceased/father dashed against the lorry and sustained injury and the child/claimant also sustained injury. Therefore, both were sent to Karur Hospital. There was



14.Discussion on quantum:

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following headings:-

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<i>Sl.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	15% disabilities 15X3000	Rs.45,000/-
2	Loss of pain and suffering	Rs.10,000/-
3	Assistance Expenses	Rs.10,000/-
4	Transport Expenses	Rs. 5,000/-
5	Nourishment	Rs. 5,000/-
6	Medical expenditure as per Ex.P.7	Rs.14,246/-
	Total	Rs.89,246

14.1. The Tribunal awarded Rs.82,246/- as compensation to the claimant. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

15.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under various heads are as follows:-



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5	Transport Expenses	Rs. 5,000/-
6	Nourishment	Rs. 5,000/-
	Total	Rs.89,246/-

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal / Principal Sub Court, Karur in M.C.O.P.No.53 of 2017, dated 21.02.2019 is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit under the Cumulative Deposit Scheme in any one of the Nationalized Banks, till



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they attain majority. The mother / guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, the connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
21.02.2024
(1/2)

Index: Yes/No
Internet: Yes/No
sm/sbn

To

- 1.The Motor Accident Claims Tribunal
cum Principal Sub Court,
Karur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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