



C.M.A.(MD) No.397 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.397 of 2021

National Insurance Company Ltd.,
Represented by its Branch Manager,
No.175-A, Great Cotton Road,
Tuticorin.

... Appellant

Vs.

1.Raymond,
2.Daweed Raja,
3.Antony Cruz,
4.Subeyar,
5.New India Insurance Co. Ltd.,
Municipal Complex Building,
Neyyatrikarai Junction,
Neyyatrunkarai Taluk,
Trivandrum.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 14.09.2013 passed in M.C.O.P.No.75 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kuzhithurai.



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For Appellant : Mr.S.Srinivasa Raghavan

For Respondents :
for R1 : deceased
for R2, R3 & R4 : No appearance
for R5 : Mr.D.Sivaraman

JUDGMENT

The instant appeal has been filed challenging the quantum of compensation awarded by the Tribunal.

2. The first respondent filed a claim petition stating that on 14.06.2005, while he was travelling in a mini lorry, a water tank lorry insured with the appellant came in a rash and negligent manner and dashed against the vehicle, in which the first respondent was travelling, from behind, as a result of which he sustained grievous injuries.

3. The owner of the lorry/second respondent herein remained *ex parte* before the Tribunal.

4. The appellant filed a counter denying the averments in the claim petition and submitted that in any case, the compensation claimed



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was excessive.

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5. The insurance company of the vehicle, in which the appellant travelled, was impleaded as the fifth respondent filed a counter stating that they are not a necessary party and therefore, the claim petition as against them has to be dismissed.

6. The claimant/first respondent examined himself as P.W.1 and marked Exs.P1 to P19. The appellant/Insurance Company examined his employee as R.W.1 and marked the Insurance Policy as Ex.R1.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the insured vehicle and awarded the total compensation at Rs.2,67,400/-.

8. The learned counsel for the appellant/Insurance Company submitted that the finding on negligence is not in dispute. However, the quantum of compensation awarded by the Tribunal is excessive, since the award of the compensation is not based on any evidence on record; and



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the compensation awarded under the head 'Disability' is without any basis and the award of the compensation under the head 'Pain and sufferings' at Rs.1,00,000/-, in the absence of any medical evidence, is unwarranted and hence, prayed for reduction of compensation.

9. From the record, it is seen that the first respondent/claimant is no more and died, pending the appeal.

10. In view of the order that this Court proposes to pass, notice to the legal heirs of the first respondent/claimant may not be necessary.

11. The only point for consideration in the instant appeal is *'whether the compensation awarded by the Tribunal is just and reasonable?'*

12. The evidence produced by the claimant would show that the claimant had sustained grievous injuries, which include six fractures. Unfortunately, the first respondent had not examined any doctor to assess his disability. The Tribunal, on the basis of the available evidence on record and on the basis of the injuries suffered by the first respondent, had



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awarded a sum of Rs.45,000/- under the head 'Loss of income' and Rs.1,00,000/- under the head 'Pain and sufferings', besides the expenses for medical treatment of Rs.77,400/- and future medical expenses of Rs.25,000/-.

13. This Court finds no infirmity in the said award of compensation awarded by the Tribunal.

14. The learned counsel for the appellant/Insurance Company is unable to point out any other infirmity. Therefore, this Court is of the view that the award of the Tribunal has to be confirmed and hence, confirmed.

15. The appellant/Insurance Company is directed to deposit the compensation of Rs.2,67,400/- (Rupees Two Lakhs Sixty Seven Thousand and Four Hundred only), 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 proportionate costs, after deducting the amount already deposited if any, within a period of four (4) weeks from the date of receipt of a copy of this



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order.

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16. On such deposit, it is open to the legal heirs of the deceased first respondent/claimant to file suitable application before the Tribunal to withdraw the compensation amount equally, less the amount already withdrawn by the deceased first respondent/claimant, if any.

17. The learned counsel for the appellant/Insurance Company shall inform about the dismissal of the appeal to the learned counsel for the deceased first respondent, who appeared before the Tribunal by a letter through Registered Post.

18. In the result, this Civil Miscellaneous Appeal is dismissed.

No costs.

19.09.2024

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



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To:

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1.The Motor Accidents Claims Tribunal (Sub Court),
Kuzhithurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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