



CMA.No.1178 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.1178 of 2020

and

CMP.No.7367 of 2020

The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office, Ground Floor,
No.25-C, Arunagiri Complex,
Bypass Road, Hosur – 635 109.

...Appellant

Vs.

1. Sangeetha
2. Minor Praveen
3. Gopal
4. VEDIAMMAL

(Minor rep. by Mother and
Next Friend 1st respondent Sangeetha)

5. Ashvanth Narayana
6. Kaliyappan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree made in MCOP.No.866 of 2015, dated 13.08.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.



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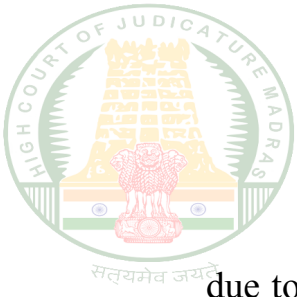
For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.S.P.Yuaraj, for R1, 2 and 4
: R3 – Died (Steps due).
: Notice not ready, for R5
: No Appearance, for R6

JUDGMENT

Challenging the judgment and decree dated 13.08.2019 made in MCOP.No.866 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, the appellant-insurance company has come up with this appeal.

2. It is the case of the claimants/respondents 1 to 4 that, on 01.03.2013 at about 16.45 hours, when the deceased Perumal was travelling as a cleaner in the TELCO 407 Tempo bearing Regn.No.KA-11-5402 owned by the 6th respondent insured with the appellant/insurance company driven by the 5th respondent and when the said vehicle was proceeding near Arapakkam SPG Petrol Bunk, as the 5th respondent/driver of the said Tempo drove the same in a rash and negligent manner, he lost control and thereby, the said Tempo capsized,

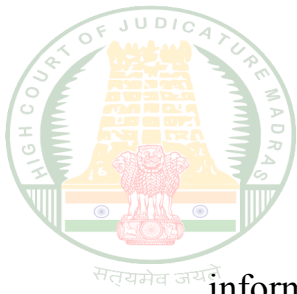


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due to which, the said Perumal sustained fatal injuries and succumbed to the same. Thereby, the respondents 1 to 4, who are the dependents of the deceased Perumal filed a claim petition claiming a compensation of Rs.20,00,000/-. Before the tribunal, the claimants examined two witnesses viz., P.W.1 to P.W.2 and marked exhibits P.1 to P.18 and on the side of the appellant/insurance company, one witness viz., R.W.1 was examined and Policy copy was marked as exhibit R.1. After trial, the tribunal came to the conclusion that the above said accident occurred due to the rash and negligent driving of the 5th respondent/driver of the appellant insured tempo and awarded a sum of Rs.18,43,046/- towards compensation for the death of the said Perumal. Challenging the same, the appellant/insurance company has come up with this appeal.

3. Learned counsel for the appellant/Insurance company submitted that, though it is the claim of the claimants that, the above said accident had taken place when the deceased was under the employment of the 6th respondent as cleaner, it is not so and the deceased was an unauthorised passenger and he travelled in the above said tempo by paying travel fair and the same is evident from the Ex.P.1, FIR. However, when the



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informant was examined as P.W.2 before the tribunal, he took a different stand, which is highly condemnable. Learned counsel further submitted that, the compensation awarded under various heads are also on the higher side and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the respondents 1 to 4 submitted that, by considering all the relevant documents, the Tribunal passed the present impugned award, which cannot be said to be erroneous. Accordingly, he prayed for dismissal of the appeal.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. The main contention of the learned counsel for the appellant relates to the fact that there is a contradiction in the deposition of the eye witness examined as P.W.2 before the tribunal and the contents of the FIR, marked as Ex.P.1 and given this contradiction, the tribunal, without providing adequate adjudication, fastened the entire liability as against



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the appellant-insurance company, which is wholly unsustainable. Further, the compensation awarded by the tribunal under the various heads is also on the higher side, which must be interfered with.

7. It has been the consistent ratio laid down by the Courts that the FIR is not a substantive document and it has to be substantiated by acceptable positive legal evidence and whatever is spoken in the FIR need not be taken at its face value and when the claimants examined an individual eye witness, viz., P.W.2 and clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle/the 5th respondent herein and when the deposition of the eye witness before the Court is contra to the FIR, the deposition would survive over and above the FIR.

8. Therefore, when the ocular testimony has clearly pointed the finger on the 5th respondent for rash and negligent driving, the mere fact that there is a contradiction in the contents of the FIR and the deposition



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of the eye witness, viz., P.W.2 alone cannot be the basis to disregard the negligence attributed to the 5th respondent.

9. When it is proved through cogent and convincing oral evidence in the form of P.W.2, the fact that the oral evidence is not in consonance with the FIR cannot be a reason to brush aside the oral evidence which has more evidentiary value than the documentary evidences.

10. Further, the appellant-insurance company had miserably failed to disprove the deposition of the individual eye witness, who was examined as P.W.2 before the tribunal and no contra evidence has been adduced by the appellant-Insurance Company in order to disprove the case of the claimants. In the absence of any contra evidence to the deposition of the P.W.2, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the 5th respondent/driver of the appellant insured vehicle and the said findings of the Tribunal cannot be interfered with.



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11. With regard to quantum of compensation, it is the claim of the appellant/insurance company that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal stands **dismissed**, confirming the impugned award dated 13.08.2019 passed by the Tribunal in MCOP.No.866 of 2015 and the Appellant-Insurance company is directed to deposit the compensation of Rs.18,43,046/- awarded by the tribunal to the credit of MCOP.No.866 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment.



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13. Though the tribunal had ordered apportionment in favour of the claimants therein, it was brought to the notice of this Court, pending the appeal, the 3rd respondent/father of the deceased had passed away. In such circumstances, this Court is inclined to modify the apportionment in the following terms. Out of the compensation arrived at by the tribunal, the 1st respondent is entitled to a sum of Rs.11,40,000/-, the 2nd respondent is entitled to a compensation of Rs.5,30,000/- and the 4th respondent is entitled to a sum of Rs.1,73,046/-, along with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the 1st and 4th respondents directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. Insofar as the apportionment of compensation in favour of the minor 2nd respondent is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till he attains majority and the quarterly interest accrued thereon shall be



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paid to the 1st respondent/mother of the minor claimant for being used for the welfare of the minor 2nd respondent by the guardian. There shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

08.01.2025

skt

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

To:

The Motor Accidents Claims Tribunal, Special District Court,
Krishnagiri.



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