



C.M.A.No.3456 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3456 of 2024

and

C.M.P.No.28989 of 2024

United India Insurance Company Ltd.,
D.No.178, Dr.Nanjappa Road,
Opp. Chidambaram Park,
Coimbatore – 641 018.

... Appellant

Vs.

1. Lakshmi
2. Thangaraj
3. Mani
4. Vinotha
5. Vadivel

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.02.2024 made in M.C.O.P.No.527 of 2021 in the Court of the Exclusive Motor Accidents Claims Tribunal, Dharmapuri.

For Appellant : Mr.Dr.G.Paranthaman

For Respondents : Mr.D.Ramesh Kumar for R1 to R4



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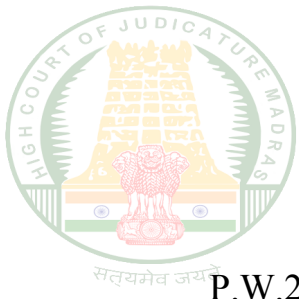
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JUDGMENT

The above appeal is filed by the appellant/insurance company against the Judgment and Decree dated 05.02.2024 made in M.C.O.P.No.527 of 2021 by the Court of the Exclusive Motor Accidents Claims Tribunal, Dharmapuri.

2. It is the case of the claimant that, on 27.09.2020 at about 11;30 am, when the deceased namely Murugan was riding his motor cycle bearing Regn.No.TN29 BD 9212 along with his friend as pillion rider, at that time a lorry bearing Regn.No.TN 52-4478 driven by its driver belonging to the fifth respondent insured with the appellant insurance company came in a rash and negligent manner and dashed the motor cycle in which the deceased was riding, due to which the deceased sustained grievous injuries and succumbed to the same. Therefore, the claimants / respondents 1 to 4 have filed a claim petition claiming a sum of Rs.50,00,000/- for the death of the deceased.

3. Before the Tribunal, the claimants had examined P.W.1 and



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P.W.2 marked Exhibits P.1 to Ex.P.18. On the side of the appellant / insurance company they examined R.W.1 and R.W.2 marked Ex.R1 and R2. After adjudication, the Tribunal awarded a sum of Rs.23,89,000/- as compensation to the claimants / respondents 1 to 4. Challenging the same, the appellant / insurer of the lorry has preferred the present appeal as against the liability fixed as against them.

4. The learned counsel appearing for the appellant / insurance company submitted that, though the F.I.R has been registered against the driver of the lorry, however, FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been lodged against the driver of the appellant's insured vehicle alone cannot be the basis to attribute rash and negligent driving on the driver of the appellant's insured vehicle. Moreover, the deceased overtook a TATA ACE vehicle without lighting any indicator, due to which the driver of the lorry has dashed the vehicle driven by the deceased. However, without considering the said aspect, the Tribunal had fastened the entire liability on the part of the appellant / insurer of the lorry which is wholly



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unsustainable.

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5. Per contra the learned counsel for the respondents 1 to 4/ claimants submit that admittedly in order to prove the negligence on the part of the driver of the lorry and the manner in which the accident had happened, the claimants examined P.W.2, eye witness, which also corroborates with Ex.P.1, F.I.R, however, in order to disprove the contents of the FIR and P.W.2, except the official witness, no independent eye witness has been examined by the appellant. In the absence of any contra evidence to prove the same, the Tribunal on the basis of the FIR and the deposition of P.W.2, had arrived at a conclusion that the driver of the lorry is negligible and fixed the entire liability as against the appellant / insurer of the lorry which does not warrant interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record.



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7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Admittedly the accident happened on 27.09.2020. In order to prove the manner in which the accident had happened, the claimants has examined an independent eye witness as P.W.2. who categorically deposed before the Tribunal that the accident had occurred solely due to the driver of the lorry. However, in order to disprove the same, no independent eye witness has been examined on behalf of the appellant / insurer of the lorry.

8. On the aspect of negligence, based on the oral testimony of P.W.1 and P.W.2 eye witnesses, coupled with the charge sheet laid against the driver of the lorry and other connected exhibits marked on the side of the claimants, concluded that the accident occurred only due to the rash and negligent driving of the driver of the lorry by fixing the entire liability as against the appellant / insurance company, which, in the opinion of this Court, is based on sound reasoning and hence, does not warrant interference.



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9. However, since, reducing under one head and giving under the other head would result in the amount to be awarded to be the same and no useful purpose would be served in modifying the compensation under the heads, while the compensation amount would remain the same, which would be nothing but an exercise in futility, therefore, this Court is not embarking upon the said modification, but suffice to confirm the compensation awarded by the Tribunal.

10. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in MCOP.No.527 of 2021 dated 05.02.2024 and the appellant / insurance company is directed to deposit the compensation of **Rs.23,89,000/-** awarded by the tribunal to the credit of MCOP.No.527 of 2021 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 six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the



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respondents 1 to 4 directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. The compensation amount shall be apportioned among the claimants as per the order of the Tribunal. Consequently, connected miscellaneous petition is closed.

02.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. The Court of the Exclusive Motor Accidents Claims Tribunal, Dharmapuri.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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