



C.M.A.No.1834 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM

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

C.M.A.No.1834 of 2021

and

C.M.P.No.9863 of 2021

The Manager,
United India Insurance Co. Ltd.,
Motor 3rd Party Office,
No.73-C, MTH Road, I Floor,
Ambattur, Chennai-600 053.

...Appellant

Vs.

1.S.Purushotham (Died)

2.K.Prasad

3.Sannaboyina Kanchana

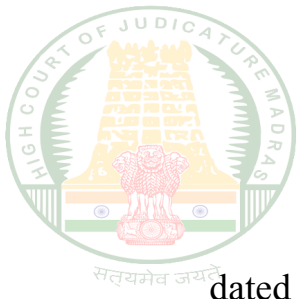
4.Sannaboyina Kowshik

5.Sannaboyina Vikas ...Respondents

[Respondents 4 & 5 represented by
his mother/Natural Guardian
of 3rd respondent Sannaboyina Kanchana]

6.Chanuboyina Bujjamma

[Respondents 3 to 6 are brought on record
as Lrs of the deceased 1st respondent
Viz., Purushotham vide Court Order



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dated 21.02.2024 made in C.M.P.No.255 of 2023
in C.M.A.No.1834 of 2021 by KRSJ]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 13.04.2016 made in M.C.O.P.No.223 of 2012 on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruttani.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : Mr.K.Naren Kumar [R3 to R6]

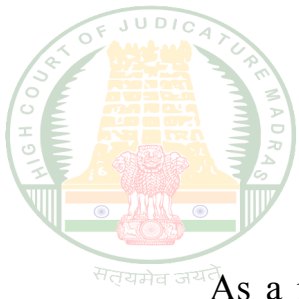
R1 – Died

R2 – Notice Dispensed with
vide Order dated 17.09.2021

JUDGMENT

Appellant/Insurance Company has been filed this appeal on the ground of quantum of compensation awarded by the Tribunal dated 13.04.2016 made in M.C.O.P.No.223 of 2012 on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruttani.

2. It is the case of the claimants that, on 12.06.2011 at about 9.50 Hrs., when the petitioner/1st respondent herein was walking to his left side of the road at Kothur Village, at that time, the driver of the lorry bearing Reg.No.Ap-16-TV-6646 driven in a rash and negligent manner coming from Naidupetta to Sri Kalahasthi, dashed against the petitioner.



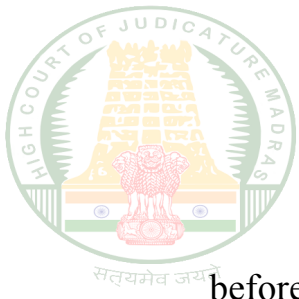
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As a result, the petitioner sustained grievous injuries and subsequently died. The accident solely due to the rash and negligent driving of the driver of the said lorry. The 1st respondent being the owner of the accident vehicle, and the 2nd respondent being the insurer of the accident vehicle both are jointly and severally liable to pay compensation to the petitioners. Therefore the claimants filed a claim petition claiming compensation of Rs.5,00,000/-. Aggrieved the same, the 2nd respondent/Insurance Company has come up with this appeal seeking to set aside the decree and judgment of the Tribunal.

3. In order to prove the negligence as well as quantum of compensation, the 1st respondent examined himself as PW1 and the Dr.J.R.R.Thiyagarajan was examined as PW2 and Exs.P1 to P6 were marked on the side of the petitioner and on behalf of the 2nd respondent/Insurance Company or owner of the vehicle, no witness was examined and no documents were marked.

4. After trial, the Tribunal awarded Rs.5,09,000/-, restricted to Rs.5,00,000/-. Challenging the same, the present appeal is preferred



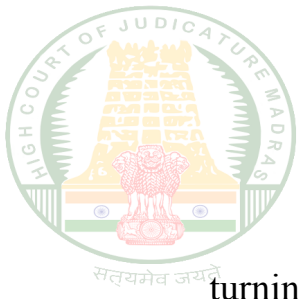
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before this Court.

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5. The learned counsel for the appellant would submit that the 1st respondent did not suffer any functional disability. In the absence of functional disability, the Tribunal applied multiplier method and awarded Rs.4,59,000/- under the head of Disability. The Tribunal awarded Rs.10,000/- towards Transportation and Rs.10,000/- towards Extra Nourishment and Rs.30,000/- towards Pain and Sufferings are also on the higher side, challenging the same, the appellant has preferred this appeal.

6. Per contra, the learned counsel appearing for the respondents/claimants, the accident is of the year 2019. Subsequently, the legal heirs filed the petition and the same was allowed and in order to prove the negligence as well as against the appellant/Insurance Company, vehicle driver was examined as PW1 and narrated the incident happened on that day and FIR also registered only against the driver of the Appellant/Insurance Company. The Doctor was examined as PW2 would clearly depose that the 1st respondent sustained fracture on his right leg and hip, for which, his left side of the hip not able to bend 60⁰ and



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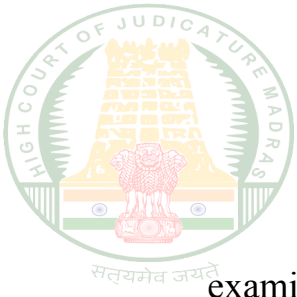
turning capacity of the leg is decreased to 50⁰ and assessed 45% disability and also there was a fracture in the radius ulna and plate was fixed thereby 80⁰ was decreased and wrist is 50⁰ thereby assessed 30% totally the Tribunal fixed the disability as 75%.

7. Based on the judgment of the Hon'ble Apex Court in ***Raj Kumar v. Ajay Kumar and another*** reported in ***2010(2) TNMAC 581(SC)***, the Tribunal has fixed Rs.3,000/- as notional income and awarded Rs.4,59,000/- is very reasonable and accordingly, he prayed for dismissal of the appeal.

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The factum and manner of the accident is not disputed by the parties and therefore, this Court is not venturing into the same.

10. In order to prove the negligence, the 1st respondent was examined himself as PW1. However, no independent witness was



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examined on the side of the appellant/Insurance Company or the vehicle owner. Hence, this Court is inclined to confirm the negligence and the compensation fixed by the Tribunal. In respect of quantum of compensation, admittedly, the Doctor was assessed the disability at 75% for the accident happened in the year 2011. At the relevant point of time Rs.3,000/- per percentage was fixed by the Tribunal and awarded only Rs.4,59,000/- for disability. However, as per Raj Kumar and Ajay Kumar case, monthly income was fixed more than Rs.5,000/-. In this case, only Rs.3,000/- was fixed by the Tribunal, thereby it is a reasonable one, which need not be interfered with. In respect of pain and sufferings and other heads also the amounts awarded by the Tribunal are reasonable and therefore, needs no interference.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the decree and judgment dated 13.04.2016 made in M.C.O.P.No.223 of 2012 on the file of the Motor Accident Claims Tribunal, Sub-Court, Tiruttani is confirmed. No costs. Consequently, connected miscellaneous petition is closed.



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

To:

1. The Motor Accident Claims Tribunal,
Sub-Court, Tiruttani.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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