



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.882 of 2017

The Divisional Manager,
Reliance General Insurance Company Limited
No.10/4/4, Thaha Plaza,
2nd Floor, South Bye pass Road,
Vannarpettai, Tirunelveli.

... Appellants/2nd Respondent

Vs.

1.Ponnammal
2.Kannan
3.Subbulakshmi
4.Minor Maheswari
(minor respondent represented
through her mother, guardian and
next friend, the first respondent
herein)

... Respondents 1 to 4/Petitioners

5.S.K.Austin Prem Anand

... 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 29.01.2016 made in M.C.O.P.No.861 of 2014 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge, Tirunelveli.

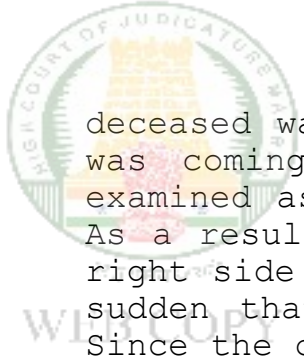
For Appellants	: Mr.V.Sakthivel
For Respondents	: Mr.R.Jim for RR1 & 4
	No Appearance for R2 and 3

JUDGMENT

Heard the learned counsel on either side.

2.The insurance company has filed this appeal questioning the impugned award on the ground of negligence as well as quantum.

3.The deceased was riding a two wheeler. He was aged only 16 years. He was not obviously possessing any driving licence. In view of the decision of the Hon'ble Supreme Court reported in **2009 (1) TN MAC 407 (SC) - Sudhir Kumar Rana Vs. Surinder Singh and Others**, the question of contributory negligence cannot be inferred from possession or non-possession of driving licence. But, this Court came to a conclusion from the manner of accident that the deceased had obviously contributed to the accident. The



deceased was going in the front in a two wheeler. The insured car was coming from behind. According to the car driver, who was examined as a witness, the two wheeler suddenly took a right turn. As a result, the car driver also had to make a sudden turn on the right side to avoid hitting the two wheeler. The process was so sudden that the car turned turtle after hitting the two wheeler. Since the car was coming from behind, one can come to the conclusion that on account of the act of the deceased alone, the car driver had to take a sudden right turn. Unfortunately, the rider of the two wheeler died in the accident. The deceased can be fastened with 10% contributory negligence. The tribunal has awarded a sum of Rs.10,37,000/-. Rs.1,00,000/- is fixed for the contributory negligence. Therefore, the award is reduced to a sum of Rs.9,37,000/-. In all other respects, the award passed by the Tribunal is confirmed. The appellant insurance company must furnish Form 16 to the claimants as proof of tax deduction at source.

4.The award dated 29.01.2016 made in M.C.O.P.No.861 of 2014 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge, Tirunelveli is modified accordingly.

5.The appellant insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, and costs, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, since the minor claimant also may attain the majority by this time, all the claimants are entitled to withdraw their share as the ratio apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by them, if any. The appellant respondent insurance company must furnish Form 16 to the claimants as proof of tax deduction at source.

6.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal/

Special Subordinate Judge, Tirunelveli.

2.The Record Keeper, V.R Section,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.V.SAKTHIVEL Advocate in SR. No. 85741

+1cc to M/s. R.JIM Advocate in SR. No. 85735

ARUL

<https://hcservices.ecourts.gov.in/hcservices/>

JS/SV:MMS/SAR.1/13.12.2017/2P-5C

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